

Otero County

Subdivision Regulations

Ordinance No. 07-02

Adopted March 27th, 2007



Otero County, New Mexico

BLACK – EXISTING LANGUAGE

BLUE – PROPOSED ADDITIONS BY PLANNING COMMISSION 1/26/2009

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ARTICLE 1. GENERAL PROVISIONS

Section 1.1 Title

This ordinance shall be known and may be cited as the “Otero County Subdivision Regulations” and shall be referred to elsewhere herein as “these Regulations”.

Section 1.2 Authority

These Regulations are created pursuant to the enabling authority set forth in §§ 47-6-1 *et seq.*, NMSA 1978; §§ 4-37-1 *et seq.*, NMSA 1978; and §§ 3-20-5, 3-20-6, and 3-20-9 NMSA 1978.

Section 1.3 Purpose

These Regulations are adopted for the following purposes:

1. To provide for and protect the public health, safety, and general welfare of the County;
2. To guide the future growth and development of the County in accordance with any official plans adopted by the County;
3. To provide for adequate light, air, and privacy; to secure safety from fire, flood, and other danger; and to prevent overcrowding of the land and undue congestion of population;
4. To protect and conserve the value of land throughout the County and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings;
5. To provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the County, having particular regard to the avoidance of congestion in the streets and highways, and pedestrian traffic movements appropriate to the various uses of land and buildings; and to provide for the proper location and width of streets;
6. To establish reasonable standards of design and procedures for subdivisions and resubdivisions in order to further the orderly layout and use of land, and to ensure proper legal descriptions and monumenting of subdivided land; and
7. To prevent the pollution of air, streams, and ponds; to assure the adequacy of drainage facilities; to safeguard the water table, and to encourage the wise use and management of natural resources throughout the County in order to preserve the integrity, stability, and beauty of the community and the value of the land.

Section 1.4 Jurisdiction

These Regulations shall govern all subdivisions of land within the County, but not within the boundaries of municipalities. The County and a municipality shall exercise concurrent jurisdiction over the territory within the platting jurisdiction of both the County and the municipality, as provided in §§3-20-5 and 3-20-9 NMSA 1978.

Section 1.5 Written Decisions

Whenever the Board of County Commissioners or its delegate is required by these Regulations to make a decision, the decision shall be in writing and supported by findings of fact and conclusions of law which are sufficient for meaningful review.

Section 1.6 Interpretation

The provisions of these Regulations are held to be minimum requirements. Whenever any provisions of these Regulations conflict with other laws, rules, regulations, covenants, or ordinances, the more restrictive shall govern. These Regulations shall be construed broadly to promote the purposes for which they were adopted.

Section 1.7 Appendices

The Board of County Commissioners is hereby authorized to adopt by Resolution the specific requirements for technical appendices to this ordinance covering the following subjects: Appendix A: Plat Certifications and Forms; Appendix B: Water Quality and Liquid and Solid Waste Disposal Requirements; Appendix C: Water Use and Conservation; Appendix D: Terrain Management; and Appendix E: Streets, Roads, Alleys, Easements, and Other Rights-of-Way.

ARTICLE 2. DEFINITIONS

verification of completion	Document from the county engineering department verifying that the subdivision is surveyed and staked and roads are constructed to county specifications and all improvements have been completed as per the approved preliminary plat and draft disclosure statement
certificate of exemption	Documentation from the Planning Coordinator stating that a claim of exemption has been approved.
claim of exemption	An assertion made by a land owner that the proposed conveyance of certain newly created parcels does not constitute a subdivision because of any one of the exceptions to the definition of a subdivision.
common promotional plan	Any plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where such land is either (1) contiguous to or part of the same area of land, or (2) is known, designated or advertised as a common unit or by a common name.
County	The County of Otero.
contiguous	Refers to adjacent parcels sharing a boundary line or separated only by a road, right-of-way, or easement.
disclosure statement	Statement required to be given to persons acquiring an interest in subdivided land; this statement complies with the requirement of §47-6-17 NMSA 1978.
Immediate family member	Husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, step grandson, granddaughter, step granddaughter, nephew, and niece, whether related by natural birth or adoption.
Lease	To lease or offer to lease land.
parcel	Unit of land capable of being described by location and boundaries and not dedicated for public or common use.
person	Any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity.
Planning Coordinator	County Administrative employee responsible for coordinating and processing subdivision applications and related planning matters. May serve as Recording Secretary to the Otero County Planning Commission.
Plat, final	Map certified by a licensed, registered land surveyor, which contains a description of the subdivided land with ties to permanent monuments, prepared in a form suitable for filing of record. This is the plat of the subdivision to be sold in accordance with the approved preliminary plat.
Plat, Preliminary	Map certified by a licensed, registered land surveyor, which contains a description of the land to be subdivided, precise character and layout of the land and the planned subdivision and the existing conditions in and around it. Prepared and submitted for evaluation by the planning commission and the Board of County Commissioners, for approval for construction, development. (See Article 4.)

Plat, summary review

Map certified by a licensed, registered land surveyor, which contains a description of the land subdivided under a Type three B or a Type Five summary review procedure, with ties to permanent monuments, prepared in a form suitable for filing of record. This is the plat of the developed final product based on the approved summary review preliminary plat completed. (See Article 6 7)

sell

To sell or offer to sell land.

subdivide

To divide a surface area of land into 2 or more parcels.

subdivider

Any person/agent who creates or who has created a subdivision, individually or as part of a common promotional plan, or any person engaged in the sale, lease, or other conveyance of subdivided land; however, "subdivider" **does not** include any duly licensed real estate broker or salesperson acting on another's account.

subdivision

The division of a surface area of land, including land within a previously approved subdivision, into two (2) or more parcels for the purpose of sale, lease, or other conveyance; or for building development, whether immediate or future; however "subdivision" **does not** include the following:

1. **The** sale, lease, or other conveyance of any parcel that is thirty-five (35) acres or larger in size within any twelve (12) month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with § 7-36-20 NMSA 1978, for the preceding three (3) years;
2. **The** sale or lease of apartments, offices, stores, or similar space within a building;
3. **The** division of land within the boundaries of a municipality;
4. **The** division of land in which only gas, oil, mineral, or water rights are severed from the surface ownership of the land;
5. **The** division of land created by court order where the order creates no more than one (1) parcel per party;
6. **The** division of land for grazing or farming activities, provided the land continues to be used for grazing or farming activities;
7. **The** division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;
8. **The** division of land to create burial plots in a cemetery;
9. **The** division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one (1) parcel per tract of land per immediate family member;
10. **The** division of land created to provide security for mortgages, liens, or deeds of trust, provided that the division of land is not the result of a seller-financed transaction;
11. **The** sale, lease, or other conveyance of land that creates no parcel smaller than one-hundred forty (140) acres.
12. **The** division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as

described in § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; school, college, or other institution with a defined curriculum and a student body and faculty which conducts classes on a regular basis; or to any church or group organized for the purpose of divine worship, religious teaching, or other specifically religious activity; or

13. The sale, lease, or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five (5) year period, provided that a second or subsequent sale, lease, or other conveyance from the same tract of land within five (5) years of the first sale, lease, or other conveyance shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey shall be filed with the County Clerk indicating the five (5) year holding period for both the original tract and the newly created tract.

terrain management

Control of floods, drainage, and erosion, and measures necessary to adapt proposed development to existing surface and subsurface soil characteristics and topography.

time of purchase, lease, or other conveyance

Time of signing any document obligating the person signing the document to purchase, lease, or otherwise acquire a legal interest in land.

Type One Subdivision

Any subdivision containing five hundred (500) or more parcels, any one of which is less than ten (10) acres in size.

Type Two Subdivision

Any subdivision containing at least twenty-five (25) but not more than four hundred ninety-nine (499) parcels, any one of which is less than ten (10) acres in size.

Type Three A Subdivision

Any subdivision containing at least six (6) but not more than twenty-four (24) parcels, any one of which is less than ten (10) acres in size.

Type Three B Subdivision (Summary Review Type)

Any subdivision containing at least two (2) but not more than five (5) parcels, any one of which is less than ten (10) acres in size.

Type Four Subdivision

Any subdivision containing twenty-five (25) or more parcels, each of which is ten (10) acres or more in size.

Type Five Subdivision (Summary Review Type)

Any subdivision containing not more than twenty-four (24) parcels, each of which is ten (10) acres or more in size.

TYPES OF SUBDIVISIONS		
Type	Number of Parcels	Size of Smallest Parcel
One	500 or more	Less than 10 acres
Two	25 to 499	Less than 10 acres
Three A	6 to 24	Less than 10 acres
Three B *	2 to 5	Less than 10 acres
Four	25 or more	10 acres or more
Five *	2 to 24	10 acres or more

* Summary Review Type Subdivision

utility company

Company providing utility services. (See UTILITIES)

utilities	Electric power, telephone service, cable TV service, gas service or other like services. (See UTILITY COMPANY)
vacation	Act of rescinding (canceling) all or part of a recorded subdivision plat, including legal deductions and grants of easements.

ARTICLE 3. PREAPPLICATION PROCESS (SUBDIVIDER’S OPTION)

Section 3.1 Pre-application Procedure

- A. Conference (optional): For the purpose of expediting applications and reducing subdivision design and development costs, a subdivider may request an informal pre-application conference in accordance with the requirements provided in these Regulations. The pre-application conference is intended to provide general advice to the subdivider about the procedures and data requirements for subdivision review and approval. The sub divider or agent may contact the Planning Coordinator for information or to schedule a pre-application conference.
- B. No fee shall be required for a pre-application conference.
- C. Neither the sub divider nor the County shall be bound by any statements made during the pre-application conference.
- D. At the request of the subdivider, the County Planning Coordinator shall provide sufficient information and application forms for preliminary plat submittal in order to proceed with the County subdivision process.

Section 3.2 Pre-application Data Requirements

- A. A sketch plan shall be prepared by the subdivider which shows the proposed layout of streets and lots, with estimated dimensions. The location of the proposed subdivision must be described on a vicinity map of the area.
- B. In addition to the sketch plan and location map, the subdivider shall provide information including, but not limited to, the following:
 - 1. Name and mailing address of the subdivider and designated agent, if any;
 - 2. Name of owner or owners of land to be subdivided; and
 - 3. Accessibility of site to roads and utilities.

ARTICLE 4. PRELIMINARY PLAT AND DRAFT DISCLOSURE STATEMENT DATA REVIEW PROCESS

Section 4.1 Preliminary Plat and Draft Disclosure Statement Submittal

- A. Preliminary plat required. Preliminary plats shall be submitted for Type One, Type Two, Type Three A, and Type Four subdivisions. Type Three B subdivisions and all Type Five subdivisions are subject to review under the summary review procedure set forth in Article Six of these Regulations.
- B. Application/Fees. A subdivider shall submit fifteen (15) copies of the preliminary plat, draft disclosure statement, and supporting documentation in accordance with the requirements provided in Section 4.2 of these Regulations. In addition to the preliminary plat and supporting documentation, the subdivider must submit a completed application form available from the Planning Coordinator and pay the required administrative fees.
- C. Real Estate Taxes. The subdivider shall submit a copy of the latest paid tax receipts or an affidavit from the Treasurer’s Office verifying that the taxes are paid on the total land to be subdivided.

Section 4.2 Preliminary Plat and Draft Disclosure Statement Data Requirements

- A. Preliminary Plat Specifications. The preliminary plat map shall be prepared by a licensed, registered surveyor at a scale of two-hundred (200) feet to one (1) inch or larger and printed on sheets twenty-four by thirty-six (24 X 36) inches. Sheets shall be numbered in sequence if more than one sheet is used. The preliminary plat map shall be prominently titled Preliminary Plat along with the name of the subdivision.

The Preliminary Plat shall show the following:

1. title (subdivision's name), scale, north arrow, and date of plat;
2. existing and proposed tract boundary lines in bearings and distances, with ties to permanent survey markers conforming to engineering standards to which all dimensions, angles, bearings and similar data shall be referred;
3. All lots, and blocks (if any), numbered in sequence, and other sites, with acreage and accurate dimensions, bearings, or deflection angles, and radii, arcs, and central angles of all curves;
4. Location, dimensions and purpose of all easements, and any dedicated public site or area; annotate easements of record with book and page number where recorded and attach a copy in the disclosure statement;
5. Names and right-of way widths and centerline data of existing and proposed roads or other right-of-way in and adjacent to the subdivision;
6. Existing and proposed utilities on and adjacent to the site;
7. Locations, dimensions, and purpose of any land to be dedicated to the public use or for the use of the owners of parcels fronting or contiguous to the land, including any improvements to be made to the land;
8. Location of any registered archaeological, historical, or culturally significant features on the site (Including any graves);
9. A vicinity map showing the relationship of the subdivision site to its general surroundings;
10. Delineation of any 100-YEAR 1% chance storm flood plain as designated by the Federal Emergency Management Agency;
11. Names and addresses of the owner or owners of land to be subdivided, the subdivider (if other than the owner), and the land surveyor;
12. Names of owners of contiguous land parcels;
13. A surveyor's certification and certification for Board of County Commissioner's approval, in the format provided in Appendix A of these Regulations, including legal description indicating range, township, and section within which the subdivision is located;
14. The certification (in the format provided in Appendix A of these Regulations) of a surveyor registered in New Mexico attesting to the accuracy of the plat, and the date of the survey;
15. The following additional requirements shall be placed on the Preliminary Plat or on a supplemental Preliminary Plat or overlay at the same scale with the subdivision roads and lots outlined on it. Existing topography and any re-grading plans, indicating contour intervals sufficient for planning purposes, any and all known existing improvements and surface features like houses, barns, fences, old water wells, irrigation ditches, mines or gravel pits, buried electric cables, pipe lines, telephone and T.V. cable company service lines, and surface electric power lines and poles, fences, driveways, roads, and trails especially if different from roads and utility

easements to be dedicated; all current and past points and sources of any potential pollution in the area like buried fuel tanks, old septic tanks, dumped fill material and current or past dump sites on or near subdivision land and any surface irrigation or flood control structures, or filled in depressions that still hold water or that acted as a water ponding area before; all surface water flow paths existing or having existed along with any constructed diversion ditch, dam or earth berm in place on or off of the subdivision;

- B. **Draft Disclosure Statement.** The preliminary plat shall be accompanied by a draft disclosure statement in accordance with the standardized format provided in Appendix A of these Regulations. The disclosure statement must be prepared on the form approved by the County and shall not be altered from that format. A disclosure statement is required for all subdivisions. The purpose of the disclosure statement is to permit the prospective purchaser, lessee, or other person acquiring an interest in subdivided land to make an informed decision about the purchase, lease, or other conveyance of the land. When submitted with the preliminary plat, the disclosure statement shall be prominently marked DRAFT at the top of the first page.

At a minimum, the supporting documentation required for the draft disclosure statement shall provide sufficient information to determine that:

1. Water is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;
2. Water is of an acceptable quality for human consumption and measures are taken to protect the water supply from contamination;
3. There is a means of liquid waste disposal for the subdivision;
4. There is a means of solid waste disposal for the subdivision;
5. There are satisfactory roads to each parcel, including entry and exit for emergency vehicles, and there are appropriate utility easements to each parcel;
6. Terrain management protects against surface flooding, inadequate drainage, and erosion;
7. There are protections for cultural properties, archaeological sites, and unmarked burials that may be directly affected by the subdivision, as required by the Cultural Properties Act;
8. The subdivider can fulfill the proposals contained in the disclosure statement for the subdivision; and
9. The subdivision will conform to the New Mexico Subdivision Act and these Regulations.

C. **Disclosure Statement Attachments.**

Disclosure Statement Attachments shall at a minimum, include:

1. Water supply plan including conservation, water quality, and fire protection components;
2. Liquid waste disposal plan; limits on types any methods of septic systems; limits on improvements that can be built on the lot.
3. Accessibility of site to roads and utilities;
4. Terrain management plan, includes soil types and conditions, drainage and surface flow data; runoff to be generated by improvements on the lots shall be contained on the lots.

No increase in discharge from the subdivision when improvements are built; and evaluation of sub-surface drainage adequacy related to septic systems;

5. A vicinity map (U.S. Geological Survey map, scale 1:24000) showing the relationship of the subdivision site to its general surroundings, and the location of all existing drainage channels, water and erosion control structures, arroyos, watercourses and water bodies within three (3) miles of the subdivision; and a separate aerial photograph with the subdivision outlined and located to view the drainage area at the best possible scale to enlarge upstream from the subdivision to get three miles or more as necessary to cover the drainage area.
6. Plan for registered cultural properties protection if any registered cultural properties are located in or contiguous to the proposed subdivision;
7. Financing contract demonstrating conformity to regulation Z truth in lending requirements if owner financing is to be available to purchasers.
8. Shared road and or water well operation and maintenance agreements if applicable
9. subdivision covenants if applicable.

D. Utility easement approval. An affidavit on the form provided in Appendix A of these Regulations shall be submitted with the preliminary plat to demonstrate that all utility companies that will be providing service to the subdivision have reviewed the preliminary plat and approved utility easements.

E. Phased subdivisions. Subdivisions which are proposed to be phased and filed in multiple final plats shall include an anticipated phasing schedule for the final plats and a schedule of improvements.

Section 4.3 Preliminary Plat and Draft Disclosure Statement Deemed Complete

On receipt of the application, fees, land tax receipts or county treasurer affidavit, and the required number of copies of the preliminary plat, draft disclosure statement, and supporting documentation, the Planning Coordinator shall review all materials in order to determine if the preliminary plat is ready to begin the review process. If there are no deficiencies, the preliminary plat is deemed complete for agency review by written notice to the subdivider within thirty (30) days after the date of application.

If the preliminary plat is incomplete or does not comply with the submittal requirements provided in these Regulations, the subdivider shall be notified in writing and given a maximum time period of sixty (60) days to correct the deficiencies and return the preliminary plat for consideration.

Section 4.4 Agency Review

A. Plat and draft disclosure statement transmittals. Within ten (10) days after the date that the preliminary plat is deemed complete, the Planning Coordinator shall forward a copy of the preliminary plat, draft disclosure statement and supporting documentation to the following state and local agencies with a request for review and opinions.

One file copy of the Preliminary plat, draft disclosure statement and accompanying materials will be retained by the subdivision coordinator and eight (8) copies will be mailed by certified mail, return receipt requested, to:

1. New Mexico Highway and Transportation Department – six (6) copies;
2. New Mexico Office of Cultural Affairs and all others below receive one copy each;
3. New Mexico State Engineer’s Office;

and ~~five (5)~~ ~~six (6)~~ additional Copies shall be hand-delivered and receipted or mailed by Certified Mail, return receipt requested to:

4. New Mexico Attorney General’s Office
5. New Mexico Environment Department; [Health Division](#)
6. [New Mexico Environment Department, Drinking Water Bureau](#)
- ~~6. [Otero County Fire Services Coordinator;](#)~~
- ~~7. [Otero County G.I.S. Office and Flood Plain Manager;](#)~~

- 7 Otero County Office of Emergency Management
- 8. 8. Otero County Road Department; and
- 9. 9. Otero County Soil and Water Conservation District.

The eight (8) revised copies of the preliminary plat, disclosure statement, including agency comments, and supporting documentation shall be distributed later: Seven (7) are for the Planning commissioners and one is for administration to copy for the board of county commissioners public hearing book. If any changes are needed as a result of the review agencies adverse opinion or recommendations, these eight copies shall be revised to contain the changes before they are distributed. The planning coordinator will return them to the subdivider who is responsible to revise them and return them not later than seven (7) days before the planning commission meeting

Copies may also be mailed or delivered to public agencies as deemed necessary.

- B. Agency response. The state and local agencies shall have thirty (30) days from their receipt of the preliminary plat and draft disclosure statement and attachments, to review and return an opinion regarding them. The Planning Coordinator shall obtain receipts or other proof showing the date the opinion request was received by each state or local agency. Any adverse agency response should detail all deficiencies.
- C. Adverse opinion. If any opinion from a public agency is adverse, the Planning Coordinator shall forward a copy of the adverse opinion to the subdivider and request that additional information is provided to the County within thirty (30) days after receipt to respond to the concerns of the appropriate agency. The Planning Coordinator shall forward a copy of such additional information upon receipt to the appropriate agency, which shall have thirty (30) days after the date the subdivider submits the additional information and it is transmitted and received by the reviewing agency in order to revise its opinion. Adverse opinions from any reviewing agency and then the response to it from the subdivider shall also be faxed to the other reviewing agencies as supplemental data for their consideration. This shall be done to make sure that the other agencies are provided with all of the data that can impact their evaluation of the subdivision. There is no additional extension of the response time needed because the thirty (30) days already required for communications between the subdivider and the reviewing agency finding deficiencies is adequate for the other agencies if it impacts them and they need the time. The Planning Coordinator shall obtain receipts or other proof showing the date the additional information was received by each state or local agency. When the subdivider has made revisions in his preliminary plat or draft disclosure data to correct deficiencies noted by the reviewing agencies, he shall retrieve the eight (8) copies of the preliminary plats and draft disclosure statements for review by the planning commission and the board of county commissioners from the subdivision coordinator and revise them and return them.
- D. Favorable opinion. If the opinions received from all agencies are favorable, the County shall schedule a public hearing for consideration and action on the preliminary plat within thirty (30) days following the receipt of such favorable opinions. If the County does not receive a requested opinion within the specified thirty (30) days, it shall proceed with the required public hearing.
- E. Revised opinion. The County shall schedule a public hearing for consideration and action within thirty (30) days after the receipt of a revised opinion from the appropriate agency. If the County does not receive a revised opinion within the specified thirty (30) days after the date the subdivider submits the additional information and it is transmitted to and received by the reviewing agency, it shall proceed with the required public hearing.
- F. Additional Copies. Provide five (5) additional copies of the Preliminary Plat and Disclosure Statement to County Staff.

Section 4.5 Planning Commission Review

- A. Scheduling. A Review by the Planning Commission shall be scheduled by the Planning Coordinator for the next normal scheduled Planning Commission meeting which will take place before the public hearing is conducted at the next Board of County Commissioners meeting. On the Sunday afternoon before the Planning Commission meeting, the Planning Commissioners, the subdivider, and any other interested members of the public may visit the site of the subdivision and inspect the terrain. Written notice will be provided to the subdivider regarding time and date of the Planning Commission visit to the site of the subdivision and the scheduled meeting to review the preliminary plat and draft disclosure statement. The subdivider, his representative, or agent is required to attend the Planning Commission review meeting.

The preliminary plat and draft disclosure statement and accompanying material plus any and all other data or documents submitted for consideration in the reviewing process and copies of all data and correspondence between the reviewing agencies and the subdivider shall be assembled by the subdivision coordinator under his summarizing outline cover

document, and mailed or delivered to each member of the Planning Commission not later than six days before the scheduled Planning Commission review meeting.

Contiguous property owners and any other individuals who have requested to be notified by the Planning Coordinator shall be mailed a notice of the date, time of day and the purpose of the Planning Commission comprehensive review meeting and the separate public hearing scheduled at a later date before the Board of County Commissioners.

During the Planning Commission review meeting, the Planning Commission shall allow all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, but not to examine witnesses testifying during the meeting. A record of the Planning Commission meeting shall be kept. The opinions of the public agencies shall be made a part of the record.

[Note: See Section 4.6 Public Hearing for Preliminary Plats and Draft Disclosure Statements below. The Planning Commissions review meeting notice shall be integrated with and published as part of the notice of the public hearing, the Planning Commission review should be made part of the same notice.]

- B. Planning Commission Recommendation. The Planning Commission shall review the physical site of the subdivision, the revised preliminary plat, the revised draft disclosure statement and all data, documentation, material, opinions and correspondence received from state and local review agencies and any other interested parties. The Planning Commission shall then, before the public hearing is conducted, make a recommendation to the board of County Commissioners to approve, approve with conditions, or disapprove the preliminary plat and draft disclosure statement. If a recommendation is made to approve with conditions or disapprove the plat and or draft disclosure statement, the conditions or reasons for disapproval **and** any planning commissioner's statement for record and the numbers voting for and against the motion, or if the vote is unanimous, must be forwarded to the Board of County Commissioners and **to** the subdivider with the recommendation.

Section 4.6 Public Hearings on Preliminary Plats and Draft Disclosure Statements

- A. Scheduling. The County shall conduct a public hearing within forty-five (45) days from the receipt of all requested public agency opinions where all such opinions are favorable, or within forty-five (45) days from the date all public agencies complete their review of any additional information submitted by the subdivider. If a requested opinion is not received within the forty-five (45) day period, the County shall proceed with the public hearing. Notice of the public hearing shall be given at least twenty-one (21) days before the hearing date.
- B. Notice. The notice of public hearing shall be published in a newspaper of general circulation in the County and shall contain the following information. When a Planning Commission review-meeting announcement can be integrated with the public notice announcement of the public hearing, the Planning Commission review meeting date and time of day shall be included in same public notice announcement.
1. Subject of the hearing;
 2. Time and place of the hearing;
 3. Manner for interested persons to present their views; and
 4. Place and manner for interested persons to review copies of any favorable or adverse opinions and of the subdivider's proposal.
- C. Notification. Copies of the notice of public hearing shall be transmitted to the following:
1. The subdivider filing the application for preliminary plat approval;
 2. Those public agencies which initially received copies of the preliminary plat and supporting documentation with a request for opinion;
 3. Any interested person who previously requested such notice and provided a stamped, self-addressed envelope for such purpose; and
 4. Owners of property contiguous to land proposed to be subdivided.

- D. Participation/record. An owner/developer of the proposed subdivision shall appear at the public hearing scheduled pursuant to Section 4.5 unless he/she/they have provided a signed and notarized statement authorizing a designated agent to appear on their behalf. Failure of the owner/developer or designated agent to appear at the public hearing to provide additional required information may result in the Board of County Commissioners tabling the application. At the public hearing, the County shall allow all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, and to examine witnesses testifying at the hearing. A record of the public hearing shall be kept. The opinions of the public agencies and the planning commissions' recommendations shall be made a part of the record.
- E. Action. Within thirty (30) days after the public hearing, the Board of County Commissioners shall approve, approve with conditions, or disapprove the preliminary plat, disclosure statement and attachments at a public meeting, the date, time, and place of which shall be announced publicly at the conclusion of the public hearing. A decision on approval may also be made at the conclusion of the public hearing. The Planning Coordinator shall inform the subdivider in writing of the decision of the Board of County Commissioners.

Section 4.7 Expiration of Preliminary Plat

- A. Expiration. An approved or conditionally approved preliminary plat shall expire twenty-four (24) months after its approval or conditional approval. Upon request by the subdivider, an additional period of no more than twelve (12) months may be added to the expiration date by the Board of County Commissioners.
- B. Phased development. If the preliminary plat was approved for phased development, the subdivider may file final plats for portions of the development, and the expiration date of the preliminary plat shall be extended for an additional thirty-six (36) months after the date of the filing of each final plat. The number of phased final plats shall not exceed four (4) phases.
- C. Extension. Before the expiration date of the approved or conditionally approved preliminary plat, the subdivider may submit to the Board of County Commissioners an application for extension of the preliminary plat for a period of time not exceeding thirty-six (36) months. The period of time specified in this Section shall be in addition to the period of time provided in Subsection B of this Section.
- D. Expiration effect. The expiration of the approved or conditionally approved preliminary plat shall terminate all proceedings on the subdivision, and no final plat shall be filed without first processing a new preliminary plat.

ARTICLE 5. FINAL PLAT REVIEW PROCESS

Section 5.1 Final Plat Submittal

- A. Conformity. Following approval or conditional approval of a preliminary plat, and before the expiration of the preliminary plat, the subdivider shall prepare a final plat in substantial conformity with the approved or conditionally approved preliminary plat. Subdivisions proposed to be phased in multiple final plats shall be submitted as indicated on the phasing schedule submitted with the preliminary plat.
- B. Application. A subdivider shall submit a final plat, disclosure statement, and supporting documentation, in accordance with the requirements provided in these Regulations. Final plat submittal is initiated by submitting a completed application on a form provided by the Planning Coordinator, two (2) copies of the final plat, final disclosure statement, and supporting documentation. Submittal is made to the Planning Coordinator.

Section 5.2 Final Plat Data Requirements

- A. Filing specifications. The original drawing of the final plat shall be submitted to the County Clerk for recording and shall be prepared in waterproof ink on Mylar or acetate or other durable material suitable for reproducing copies. Two drawings on Mylar and one paper copy are required for filing with the Otero County Clerk. An extra paper copy will be required if the subdivider wishes to retain a copy with recording information. Final plat maps shall be drawn at a scale of two hundred (200) feet to one (1) inch or larger and printed on sheets twenty-four by thirty-six (24 x 36) inches. When more than one sheet is used to include the entire subdivision, all sheets shall be cut to the same size and shall show appropriate references to other sheets of the subdivision. The final plat shall be titled "Final Plat" in a prominent place on the map along with the name of the subdivision.

- B. Plat specifications. The final plat shall be prepared by a NM licensed, registered surveyor in accordance with the specifications set out in Section 5.2A, above, and shall include the following information
1. Title (subdivision's name), scale, north arrow, and date of plat;
 2. Legal description indicating the range, township, and section within which the subdivision is located with permanent monuments, or descriptions and ties to such monuments, to which all dimensions, angles, bearings, and similar data on the plat shall be referred;
 3. Tract boundary lines in bearings and distances, easement and right-of-way lines, and property lines of all lots and other sites, with accurate dimensions, bearings, or deflection angles, and radii, arcs, and central angles of all curves;
 4. Lot lines, with lot and block numbers, and acreage of each lot;
 5. Location, dimensions, and purpose of all easements, and any dedicated public site or area; annotate easements of record with book and page number where recorded and attach a copy in the disclosure statement;
 6. Name, right-of-way width, and centerline data of roads or other right-of-ways in and adjacent to the subdivision; residential lots and other sites, with accurate dimensions, bearings, or deflection angles, and radii, arcs, and central angles of all curves;
 7. Utilities on and adjacent to the site;
 8. Number of each parcel in progression, with its dimensions, and the dimensions of all land dedicated for public use or for the use of the owners of parcels fronting on or contiguous to the land;
 9. Names and addresses of the owner or owners of land to be subdivided, the subdivider (if other than the owner), and the land surveyor;
 10. Delineation of any 100-year 1% chance flood plain as designated by the Federal Emergency Management Agency;
 11. The certification (in the format provided in Appendix A of these Regulations) of a surveyor registered in New Mexico attesting to the accuracy of the plat, and the date of the survey.
 12. Certification (in the format provided in Appendix A of these Regulations) demonstrating that all utility companies that will be providing service to the subdivision have reviewed the plat and approved utility easements;
 13. Location of any registered archaeological, historical, or culturally significant features on the site; (Including any marked graves).
 14. A surveyor's certification and certification for Board of County Commissioners approval in the format provided in Appendix A of these Regulations.
 15. A vicinity map showing the relationship of the subdivision site to its general surroundings;
 16. A certificate by the Otero County Board of Commissioners or their designated representative certifying that the subdivider has complied with the following:
 1. All improvements have been installed in accordance with the requirements of this Ordinance OR;
 2. A performance bond, certificate of deposit or other security as approved by the Board of County Commissioners must be filed with the County Clerk in sufficient amount to assure completion of developer-provided improvements. The bond shall be based on engineering cost estimates. The performance bond will not be required after acceptance of a Maintenance Bond;
 3. The maintenance bond in the amount of 15% of the performance bond must be filed and continued for the two-year test period of the developer-provided improvements after preliminary acceptance and until final acceptance by the Board of County Commissioners.
 4. Entered into a contract with the Board of County Commissioners guaranteeing successful completion of all improvements.

- C. Affidavit. The final plat shall contain a statement that the land being subdivided is subdivided in accordance with the final plat. The final plat shall be acknowledged by all owners of record and subdivider or their authorized agents in the manner required for the acknowledgment of deeds. Every final plat submitted to the County Clerk shall be accompanied by an affidavit of the owner(s) and subdivider, or authorized agents, stating whether or not the proposed subdivision lies within the subdivision regulation jurisdiction of the County. A copy of the final plat shall be provided to every purchaser, lessee, or other person acquiring an interest in the subdivided land before sale, lease, or other conveyance.
- D. Dedication. The final plat shall contain a certificate stating that the Board of County Commissioners has accepted, accepted subject to improvement, or rejected on behalf of the public, any land offered for dedication for public use in conformity with the terms of the offer of dedication. Full conformity with County road construction standards, the roads may be accepted for maintenance by the County after the required warranty period is completed. Acceptance of offers of dedication on a final plat shall not be effective until the final plat is filed in the Office of the County Clerk or a resolution of acceptance by the Board of County Commissioners is filed in that office
- E. Disclosure statement. For all subdivisions, a disclosure statement shall be prepared in accordance with the standardized format on the forms provided in Appendix A of these Regulations. The forms in Appendix A shall not be altered in any way. It is unlawful to sell, lease, or otherwise convey land in a subdivision until the subdivision is completed and the required disclosure statement has been filed along with the final plat with the County Clerk, the Board of County Commissioners, and the Attorney General's Office; and until the prospective purchaser, lessee, or other person acquiring an interest in the subdivided land has been given a copy of the disclosure statement. The disclosure statement submitted with a final plat shall be a complete and final copy as approved by the Board of County Commissioners. It shall **not** be labeled as a draft. The disclosure statement shall include a signature page in the format provided in Appendix A of these Regulations and shall be signed by the owner/developer.
- F. Restrictive Covenants. Restrictive covenants, if any, shall be attached to the disclosure statement and referenced in the disclosure statement where appropriate
- G. Conformity. The Board of County Commissioners shall not approve the final plat of any subdivision if the subdivider has not fulfilled or cannot reasonably demonstrate that he can fulfill the proposals contained in his previously approved Preliminary plat and draft disclosure statement or if the lots are not surveyed and staked with the roads surveyed and located in conformance to the Final Plat or if the subdivider has not conformed with the New Mexico Subdivision Act and the County's subdivision ordinance.
- H. Land Sales Act. Any subdivider who has satisfied the disclosure requirement of the Interstate Land Sales Full Disclosure Act may submit the approved statement of record in lieu of the disclosure statement required by the New Mexico Subdivision Act. However, any information required in the New Mexico Subdivision Act and not covered in the subdivider's statement of record shall be attached to the statement of record.
- I. Environment Department approval. For any subdivision requiring construction of a public community water supply system or a community liquid waste system, documentation of approval from the New Mexico Environment Department shall be required for final plat approval.
- J. Recording. The final plat is in full force and effect only after having been recorded in the office of the County Clerk within one (1) year after the date of approval by the Board of County Commissioners.
- K. Water permit. A copy of the water permit issued by the State Engineer will be required only for Type 1 subdivisions and any subdivision with a completed and approved community public water system.
- L. Sample Contracts. The subdivider shall submit a sample copy of sales contracts, leases, and any other documents which will be used to convey an interest in the subdivided land and include them as attachments to the disclosure statement along with documentation demonstrating that any seller financed mortgages shall be in compliance with regulation Z, truth in lending.

Section 5.3 Final Plat Deemed Complete

A subdivider shall prepare a final plat, disclosure statement, and supporting documentation in accordance with the requirements provided in Section 5.2 of these Regulations. Final plat submittal is initiated by submitting a completed application on the prescribed form available from the Planning Coordinator, along with two (2) copies of the Final Plat, disclosure statement, and supporting documentation. The Planning Coordinator shall review all materials in order to determine whether the final plat and disclosure statement are complete. If there are no deficiencies, the final plat will be deemed complete for review by written notice to the

subdivider within thirty (30) days after the date of application. If the final plat is incomplete or does not comply with the submittal requirements provided herein, the subdivider shall be notified and will be given a reasonable time not to exceed the preliminary plat expiration date to correct the deficiencies and return the final plat for consideration.

Section 5.4 Decision on Final Plat and Disclosure Statement

- A. Action. Final plats and disclosure statements submitted to the County for approval shall be approved or disapproved by the Board of County Commissioners at a public meeting within thirty (30) days after the date the final plat is deemed complete.
- B. Denial. The Board of County Commissioners shall not deny a final plat and disclosure statement if it has previously approved a preliminary plat and draft disclosure statement with supporting documentation for the proposed subdivision and it finds that the final plat is in compliance with the previously approved preliminary plat and draft disclosure statement and documentation, and that the subdivider has surveyed and staked. Denial of a final plat shall be accompanied by a finding identifying the requirements that have not been met.
- C. Improvement agreement. If, at the time of approval of the final plat, any public improvements have not been completed by the subdivider as required by these Regulations, the Board of County Commissioners **may, shall** as a condition preceding approval of the final plat, require the subdivider to enter into an agreement with the County, on mutually agreeable terms, to thereafter complete the improvements at the subdivider's expense. [See Appendix A, Sample Agreement](#)
- D. Failure to act. If the Board of County Commissioners does not act upon a final plat within the required period of time, the subdivider shall give the Board of County Commissioners written notice of its failure to act. If the Board of County Commissioners fails to approve or reject the final plat within thirty (30) days after that notice, the Board of County Commissioners shall, upon demand by the subdivider, issue a certificate that the final plat has been approved.
- E. Final Plat. When all material is in order, the subdivider shall provide five (5) additional copies of the Final Plat and Disclosure Statement to County Staff.

Section 5.5 Water Permits

- A. In acting on the permit application, the State Engineer shall determine whether the amount of water is sufficient in quantity to fulfill the maximum water requirements for the subdivision.
- B. The board of County Commissioners shall not approve a final plat for a Type 1 subdivision or any new subdivision with an approved public water system unless the sub divider has a letter or agreement with an existing community water system or demonstrates that there is a State Engineer permit for subdivision water use issued according to:

- § 72-5-1: New appropriations of surface water
- § 72-5-23: Changes in place of use
- § 72-5-24: Changes in purpose of use or point of diversion
- § 72-12-3: New appropriations of ground water
- § 72-12-7: Changes in purpose of use or location of well

ARTICLE 6. SUMMARY REVIEW

Section 6.1 Summary Review Plat and Disclosure Statement Submittal

- A. Qualifications. The following type of subdivisions shall be submitted to the County for approval under summary review procedure:
 - 1. Type Three B subdivisions unless the land within a subdivision has been previously identified in the County Comprehensive Plan or County Zoning Ordinance (if applicable) as an area subject to unique circumstances or conditions that require additional review; and
 - 2. All Type Five subdivisions.
- B. A pre-application conference is available before application for summary review and approval (See Section 3.1).

- C. Application/fees. A subdivider shall submit ten (10) copies of the summary review plat, disclosure statement and supporting documents described in these Regulations, and a completed application on the form provided by the Planning Coordinator. The subdivider is required to pay the summary review fee at the time the plat and supporting documentation are submitted.
- D. Real Estate Taxes. The subdivider shall provide a certificate from the Otero County Treasurer which states that all property tax obligations are current on the land parcels to be subdivided, and that the property is assessed on the rolls of the Otero County Assessor.

Section 6.2 Summary Review Plat and Draft Disclosure Statement Data Requirements

- A. Filing Specifications. Upon approval, the original drawings of the summary review plat and the disclosure statement shall be filed with the County Clerk. Original plats shall be prepared in waterproof ink on Mylar or acetate or other durable material at a scale of two hundred (200) feet to one (1) inch or larger and printed on sheets minimum eighteen by twenty-four (18 x 24) inches and maximum twenty-four by thirty-six (24 X 36) inches. Sheets shall be numbered in sequence if more than one sheet is used. The summary review plat shall be considered as a final plat suitable for filing with the County Clerk. The summary review plat shall be prominently titled "Summary Review Plat" along with the name of the subdivision.
- B. Plat Specifications. The summary review plat shall be prepared by a licensed, registered surveyor and shall include the following information:
1. title, scale, north arrow, and date of plat;
 2. legal description indicating the range, township, and section within which the subdivision is located.
 3. location of subdivision in relation to well-known landmarks (vicinity map);
 4. subdivision boundary lines, easement and right-of-way lines, and property lines of all lots and other sites, with accurate dimensions, and ties to monuments;
 5. acreage measurements and identification numbers for each lot;
 6. Location, dimensions, and purpose of all easements;
 7. Delineation of any 100-year flood plain 1% chance storm as designated by the Federal Emergency Management Agency;
 8. existing and proposed utilities on and adjacent to the site;
 9. location, dimensions and purpose of all land dedicated for public use or for the use of the owners of parcels fronting on or contiguous to the land;
 10. location of any registered archeological significant features on the site, (including any marked graves);
 11. names and addresses of owner or owners of land to be subdivided and of contiguous property, the subdivider (if other than the owner), and the land surveyor;
 12. the certification (in the format provided in Appendix A of these Regulations) of a surveyor registered in New Mexico attesting to the accuracy of the plat, and the date of the survey;
 13. certification for the County Planning Commission approval certificate in the format provided in Appendix A of these Regulations; and
 14. certification by the Otero County Administrator or his designated representative that the subdivider has complied with Article 8 of these Regulations and that the plat is approved for filing.
- C. Affidavit. The summary review plat shall contain a statement that the land being subdivided will be subdivided in accordance with the summary review plat. The summary review plat shall be acknowledged by all owners of record and subdivider, or their authorized agents, in the manner required for the acknowledgment of deeds. Every summary review plat submitted to the County Clerk as a final plat shall be accompanied by an affidavit of the owner(s) and subdivider, or authorized agents, stating whether or not the proposed subdivision lies within the subdivision regulation jurisdiction of the County. A copy of the summary review plat

shall be provided to every purchaser, lessee, or other person acquiring an interest in the subdivided land before sale, lease, or other conveyance.

- D. Dedication. The summary review plat shall contain a certificate stating that the Board of County Commissioners has accepted, accepted subject to improvement, or rejected on behalf of the public, any land offered for dedication for public use in conformity with the terms of the offer of dedication. Upon conformity with County road construction standards, the roads may be accepted for maintenance by the County. Acceptance of offers of dedication on a summary review plat shall not be effective until the review plat is filed in the Office of the County Clerk or a resolution of acceptance by the Board of County Commissioners is filed in that office.
- E. Disclosure Statement. For all subdivisions, a disclosure statement shall be prepared in accordance with the standardized format on the forms provided in Appendix A of these Regulations. It is unlawful to sell, lease, or otherwise convey land in a subdivision until the required disclosure statement has been filed with the County Clerk, the Board of County Commissioners, and the Attorney General's Office; and until the prospective purchaser, lessee, or other person acquiring an interest in the subdivided land has been given a copy of the disclosure statement. [For all Summary Review Subdivisions with slopes of more than 4% or which have arroyos or waterways running through them or which require the construction of a new road, a terrain management plan as described in Appendix D, Section D.3 Terrain Management Plan for Summary Review shall be included.](#)
- F. Utility easement approval. An affidavit in the format provided in Appendix A of these Regulations shall be submitted with the summary review plat to demonstrate that all utility companies that will provide service to the subdivision have reviewed the summary review plat and approved utility easements
- G. Restrictive Covenants. Restrictive covenants, if any, shall be attached to the disclosure statement and referenced in the disclosure statement where appropriate. The subdivider or his agent shall provide a copy of the restrictive covenants to all prospective purchasers.
- H. Fees. Required fees for summary review must be paid at the time the plat is submitted. All fees are non-refundable.
- I. Land Sales Act. Any subdivider who has satisfied the disclosure requirement of the Interstate Land Sales Full Disclosure Act may submit the approved statement of record in lieu of the disclosure statement required by the New Mexico Subdivision Act. However, any information required in the New Mexico Subdivision Act and not covered in the subdivider's statement of record shall be attached to the statement of record.
- J. Advertising Standards. The advertising standards covering the sale, advertise for sale, offer for sale, lease, or other conveyance of subdivided land provided in Article 10 of these regulations shall be applicable to summary review plats.
- K. Sample Contracts. The subdivider shall attach a sample copy of sales contracts, leases, and any other documents which will be used to convey an interest in the subdivided land and include them as attachments to the disclosure statement along with documentation demonstrating that any seller financed mortgages shall be in compliance with regulation Z, truth in lending.
- L. Recording. [The summary review plat is in full force and effect only after having been recorded in the Office of the County Clerk within one \(1\) year after the date of approval by the Planning Commission.](#)

Section 6.3 Summary Review Plat Deemed Complete

On receipt of the application, fees, summary review plat, disclosure statement, and supporting documentation, the Planning Coordinator shall review all materials in order to determine if the summary review plat is ready to begin the review process. If there are no deficiencies, the summary review plat will be deemed complete for review by written notice to the subdivider within thirty (30) days after the date of application. If the summary review plat *or* disclosure statement is incomplete or does not comply with the submittal requirements, the subdivider shall be notified in writing and given a maximum time period of thirty (30) days to correct the deficiencies and return the summary review plat and disclosure statement for consideration.

Section 6.4 Review and Approval of the Plat and Disclosure Statement

- A. Review of summary review plat. The summary review plat and supporting documents shall be reviewed by the Otero County Road Department, Otero County G.I.S. Office, Otero County Examining Surveyor, and any other public agency deemed necessary by the County. These agencies shall submit written comments within thirty (30) days of receipt of the summary review plat and disclosure statement and copies of the comments shall be forwarded to the subdivider or his designated agent.

- B. Summary review plat approval. Within thirty (30) days of the date the summary review plat and disclosure statement are deemed complete, the County shall, at a public **meeting, hearing,** approve, approve with conditions, or disapprove the summary review plat. The Board of County Commissioners may delegate the authority to approve any qualified subdivision under summary review to the Planning Commission or other committee.
- C. Improvement agreement. If, at the time of approval of the summary review plat for filing, any public improvements have not been completed by the subdivider as required by these Regulations, the Board of County Commissioners shall, as a condition for approval of the summary review plat for filing, require the subdivider to enter into an agreement with the County, on mutually agreeable terms, to thereafter complete the improvements at the subdivider's expense. All public improvements (roads, etc.) shall be completed with twenty-four (24) months of Planning Commission approval of the summary review plat. Upon request by the subdivider, an additional period of no more than twelve (12) months may be added to the expiration date by the Board of County Commissioners.
- D. Requirement for construction to commence. Construction shall commence within one year of summary review plat approval. If construction is not commenced within one year of summary review plat approval, the subdivision will be deemed abandoned unless an extension is requested and approved prior to the expiration of one year. There shall be no limit to the number of extensions which may be requested. If construction is not commenced within one year, or an extension granted, review and approval will again be required of any subdivision prior to any development.

ARTICLE 7 SPECIAL PROCEDURES

Section 7.1 Succeeding Subdivisions

- A. Standards. Any proposed subdivision may be combined with a previous subdivision and upgraded for classification purposes by the Board of County Commissioners if the proposed subdivision includes:
 1. A part of a previous subdivision that has been created in the preceding seven (7) year period; or
 2. Any land retained by a subdivider after creating a previous subdivision if the previous subdivision was created in the preceding seven (7) year period.

Section 7.2 Vacation of Plats and Easements

- A. Cause. Any final plat filed in the office of the County Clerk may be vacated or a portion of the final plat may be vacated if:
 1. the owners of the land proposed to be vacated sign an acknowledged statement declaring the final plat or a portion of the final plat to be vacated, and the statement is approved by the Board of County Commissioners; or
 2. the Board of County Commissioners finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County.
- B. Request for vacation. The vacation of all or a portion of a final plat shall be initiated by submittal of a written request for vacation to the Planning Coordinator. The written request shall be made by submittal of nine (9) completed copies of a Request to Vacate form available at the office of the Planning Coordinator. The request must be accompanied by the required fees and nine (9) copies of the subdivision plat showing the areas to be vacated. The request must also be accompanied by nine (9) copies of letters from electric and telephone companies and any other relevant utility company stating their approval of or objections to the proposed vacation. Vacations proposed within an extra-territorial zone must be accompanied by nine (9) copies of written comments from the municipality or village having concurrent jurisdiction which states the approval of or objections to the vacation. The County may require a certified survey if necessary to properly designate the area(s) to be vacated. Further steps in the review process will not be taken until nine (9) copies of the complete request, including required letters and copies of plat, and any required survey is submitted and fees are paid.
- C. Notice to contiguous land owners. The Planning Coordinator shall identify and mail notice of the Request to Vacate by certified mail, return receipt requested, to contiguous land owners a minimum of fifteen (15) days before the scheduled Planning Commission hearing. The notice shall contain the date, time, and place of the Planning Commission hearing, along with a description or copy of the Request to Vacate. The notice shall also state a procedure and deadline for submitting written comments.

- D. Planning Commission review and hearing. A public hearing before the Planning Commission shall be scheduled. Notice of the public hearing shall be published in the Alamogordo Daily News and notice given to contiguous land owners a minimum of fifteen (15) days before the hearing.

During the public hearing, the Planning Commission shall review any written comments received and shall give any person attending the hearing an opportunity to comment on the proposed vacation. At the conclusion of the hearing and after consideration of all comments, written and oral, the Planning Commission shall make a recommendation that the Request to Vacate be approved, approved with conditions, or denied. Conditions for approval or reasons for denial shall be clearly stated. This recommendation shall be forwarded to the Board of County Commissioners.

- E. Action by the Board of County Commissioners. Within thirty (30) days of the Planning Commission review and recommendation, the vacation and recommendation of the Planning Commission shall be presented to the Board of County Commissioners for approval, approval with conditions, or denial.

In approving the vacation of all or a part of a final plat, the Board of County Commissioners shall decide whether the vacation will adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated. In approving the vacation of all or a portion of a final plat, the Board of County Commissioners may require that roads dedicated to the County in the final plat continue to be dedicated to the County.

- F. Filing. The approved statement declaring the vacation of a portion or all of a final plat or survey, if one was required, shall be filed in the office of the County Clerk. The County Clerk shall mark the final plat with the words Vacated or Partially Vacated and refer on the final plat to the volume and page on which the statement of vacation is recorded.

- G. Utilities. The rights of any utility existing before the total or partial vacation of any final plat are not affected by the vacation of a final plat.

Section 7.3 Variances

- A. Planned development area. The Board of County Commissioners may grant a variance from the standards and requirements of these Regulations if it is presented with a plan and program for a simple land division, or a new town, a complete community, or a neighborhood unit which, in the judgment of the Board of County Commissioners, provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and which also provides such covenants and other legal provisions as will assure conformity to and achievement of the plan.

- B. Conditions and limitations. A variance shall not be granted which will cause the Board of County Commissioners to absorb costs over and above those typically associated with subdivision approval. In granting variances, the Board of County Commissioners may require such conditions as will:

1. Substantially secure the objectives of the standards of these Regulations; and
2. Not adversely affect the health, safety, and general welfare of the public, if otherwise consistent with the general purpose and intent of these Regulations and if not injurious or detrimental to the surrounding area.

- C. Procedures. The following procedures and requirements shall apply to all requests for variances under these Regulations.

1. Requests for variances shall be submitted in writing prior to or at the time of request for plat approval on the prescribed form available from the Planning Coordinator for that purpose, and upon payment of the required administrative fee.
2. Variance requests shall be reviewed in public hearings at the same time public hearings are held for approval of the plat.
3. Notice of the request for variance shall be given in the same manner as notice is provided for any public hearing required in these Regulations and shall comply with the requirements of the Open Meetings Act of the State of New Mexico.
4. Variance requests shall be submitted to the state or other reviewing agency having expertise in the subject matter for which the variance is sought, and shall be governed by the same time limits.

5. The Board of County Commissioners shall make written findings of fact regarding each of the requirements of these Regulations and shall produce those findings of facts as a portion of its decision and order on each request for variance.
6. The decision and order shall be prepared, signed, and filed within five (5) working days after the public hearing at which the variance is considered.

Section 7.4 Exemptions

- A. Approval required. It is unlawful for any person to divide a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease, or other conveyance or for building development, whether immediate or future, unless such person either obtains approval for a subdivision as provided in these Regulations or files and obtains approval for a Claim of Exemption as provided in this Article.
- B. Verification of exemption.
 1. Any person claiming entitlement to an exemption under the provisions of these Regulations shall file a written claim of exemption on the prescribed form available from the Planning Coordinator. Where there is more than one owner, all owners of record of the property involved shall file the Claim of Exemption. Written claim shall be filed with the office of the Board of County Commissioners before making the land division for which the claim of exemption is made.
 2. The Planning Coordinator shall review the claim of exemption and supporting documents and shall mail written notice of whether the exemption has been approved or denied to the person claiming the exemption within thirty (30) days after receipt of the completed claim of exemption; provided, however, that the thirty (30) day period shall not begin to run until the person claiming the exemption has delivered a completed Claim of Exemption and all supporting documents to the Planning Coordinator.
 3. If the Claim of Exemption is approved, or if the Planning Coordinator fails to mail written notice to the claimant within thirty (30) days after receipt of the completed Claim of Exemption and all supporting documents, the person claiming the exemption may divide the land in the manner proposed in the Claim of Exemption without complying with the provisions of these Regulations.

Approved Claims of Exemption shall be filed with the Otero County Clerk at the same time the conveyance document and/or survey is filed.
 4. If the claim of exemption is denied, the person claiming the exemption may appeal the denial as provided in Article 13 of these Regulations or may submit an application for a subdivision as provided in these Regulations.

Section 7.5 Protection of Cultural Properties, Archaeological Sites, and Unmarked Burials

- A. Unmarked human burials.
 1. According to state policy, any human burial in the state in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.
 2. All subdividers 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, entombed, or sepulchered in any unmarked burial ground except by authority of a 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.
- B. Registered cultural properties. Any person desiring to subdivide land in the County shall review the latest edition of the State Register of Cultural Properties (“the Register”) that has been provided to the County by the State Historic Preservation Division.
 1. If there are no such properties entered in the Register that are within the boundaries of the proposed subdivision, the subdivider shall provide a signed affidavit to that effect in the application package for subdivision approval;

2. If any such properties entered in the Register exist within the boundaries of the proposed subdivision, the subdivider shall provide a signed affidavit to that effect in the application package for subdivision approval. The County will then consult with the Historic Preservation Division pursuant to the Cultural Properties Act, §§ 18-6-1 through 18-6-17 N.M.S.A. 1978.

ARTICLE 8. REQUIRED IMPROVEMENTS

Section 8.1 Construction of Required Improvements

- A. Improvement requirements. The subdivider shall install and construct such improvements, if any, as are required by these Regulations in the manner and to the design standards provided in these Regulations. Approval of the preliminary plat is authorization for the subdivider to proceed with the minimum improvements required by these Regulations. Before the construction of any improvements or the submission of any bond or other improvement guarantee, the subdivider shall furnish the County with all plans necessary for the construction of such improvements. These plans shall be reviewed by the Board of County Commissioners and, if in accordance with these Regulations, shall be approved by the County, allowing the subdivision development to proceed.
- B. Improvement agreement. The County may shall enter into a subdivision improvement agreement with a subdivider. This agreement shall constitute a binding contract between the subdivider and the County and shall contain those terms and conditions agreed to by the subdivider and the County. [See Appendix A \(Sample Agreement\)](#)

Section 8.2 Road Development

- A. Construction schedule. Roads within a subdivision shall be constructed only on a schedule approved by the Board of County Commissioners. In approving or disapproving a subdivider's road construction schedule, the Board of County Commissioners shall consider:
 1. the proposed use of the subdivision;
 2. the period of time before the roads will receive substantial use;
 3. the period of time before construction of homes will begin on the portion of the subdivision serviced by the road;
 4. the county regulations governing phased development; and
 5. the needs of prospective purchasers, lessees, and other persons acquiring an interest in subdivided land in viewing the land within the subdivision.
- B. Safety. All proposed roads shall conform to minimum County safety standards.
- C. Demonstration of use/access. The Board of County Commissioners shall not approve the grading or construction of roads unless and until the subdivider can reasonably demonstrate that the roads to be constructed are necessary to provide access to parcels or improvements. It is unlawful for the subdivider to grade or otherwise commence construction of roads unless the construction substantially conforms to the schedule of road development approved by the Board of County Commissioners.

Section 8.3 Improvement Guarantees

- A. Assurance. In order for the County to be assured of the completion of required improvements, the subdivider shall agree to either:
 1. All improvements have been installed in accordance with the requirements of this Ordinance OR;
 2. A performance bond, certificate of deposit or other security as approved by the Board of County Commissioners must be filed with the County Clerk in sufficient amount to assure completion of developer-provided improvements. The bond shall be based on engineering cost estimates. The performance bond will not be required after acceptance of a Maintenance Bond;
 3. The maintenance bond in the amount of 15% of the performance bond must be filed and continued for the two-year test period of the developer-

provided improvements after preliminary acceptance and until final acceptance by the Board of County Commissioners.

4. Entered into a contract with the Board of County Commissioners guaranteeing successful completion of all improvements. [See Appendix A \(sample Agreement\)](#)

ARTICLE 9 RECORDING PARCELS

- A. Authority. § 47-6-9(A)(17) NMSA 1978 requires counties to enact regulations for recording all conveyances of parcels with the County Clerk. As defined in the Act, the term “parcel” means “land capable of being described by location and boundaries and not dedicated for public or common use.”
- B. Purpose. Recording conveyances of parcels provides anyone interested in acquiring land, and lenders, with important information about the condition of title. Recording conveyances of all parcels also provides public officials with information needed to detect illegal subdividing. The purpose of this information is to protect buyers and lenders and to help enforce the Act and these Regulations by making all conveyances of parcels matters of public record.
- C. Requirements. Any person who sells, leases for a term, including options, in excess of five (5) years or otherwise conveys any interest in any parcel located in whole or in part in the County shall record or have recorded the deed, lease, real estate contract, notice of lease, notice of real estate contract, or other document of conveyance with the County Clerk no later than five (5) days after the closing or thirty (30) days after the date on which the document is signed, whichever comes first. Deeds held in escrow pursuant to the terms of a real estate contract are not required to meet the recording deadlines as set out in this paragraph.
- D. Form and certification. Any deed, lease for a term including options in excess of five (5) years, real estate contract, notice of lease, notice of real estate contract, or other document used to convey any interest in any parcel located in whole or in part in the County shall be in a form acceptable for recording and duly acknowledged and certified as required by the provisions of §14-8-4 NMSA 1978.

ARTICLE 10 ADVERTISING STANDARDS

- A. Filing requirements. Copies of all brochures, publications, and advertising relating to subdivided land shall be filed with the Board of County Commissioners and the Attorney General within fifteen (15) days after initial use by the subdivider.
- B. Requirements/restrictions. Brochures, disclosure statements, publications, and advertising of any form relating to subdivided land shall:
 1. not misrepresent or contain false or misleading statements of fact;
 2. not describe deeds, title insurance, or other items included in a transaction as "free" and shall not state that any parcel is “free” or given as an “award” or “prize” if any consideration is required for any reason;
 3. not describe parcels available for “closing costs only” or similar terms unless all such costs are accurately and completely itemized, or when additional parcels must be purchased at a higher price;
 4. not include an asterisk or other reference symbol as a means of contradicting or substantially changing any statement;
 5. accurately portray, if subdivision illustrations are used, the subdivision in its present state and, if illustrations are used portraying points of interest outside the subdivision, state the actual road miles from the subdivision;
 6. not contain artists’ conceptions of the subdivision or any facilities within it unless clearly labeled as such, and shall not contain maps of the subdivision unless accurately drawn to scale with the scale indicated;
 7. not contain references to any facilities, points of interest or municipalities located outside the subdivision unless the distances from the subdivision are stated in the advertisement in actual road miles; and
 8. refer to the location where the subdividers disclosure statement may be obtained.

ARTICLE 11 REQUIREMENTS PRIOR TO SALE, LEASE, OR OTHER CONVEYANCE

It is unlawful to sell, lease, or otherwise convey land within a subdivision before the following conditions have been met:

- A. Final plat approval and filing. The final plat shall be approved by the Board of County Commissioners and shall be filed with the County Clerk of the county in which the subdivision is located. If a subdivision lies within more than one county, the final plat shall be approved by the Board of County Commissioners of each county in which the subdivision is located and shall be filed with the County Clerk of each county in which the subdivision is located.
- B. Relevant documents. Approved disclosure statements with attachments of all documents which will be used to convey an interest in the subdivided land shall have been approved and recorded as per the county regulation and procedures.
- C. Permanent marks. All corners of all parcels and blocks within a subdivision shall be permanently marked with metal stakes in the ground and a reference stake shall be placed beside one corner of each parcel.

ARTICLE 12 ADMINISTRATIVE FEES

Administrative fees shall be established by Resolution of the Board of County Commissioners annually.

ARTICLE 13 APPEALS

- A. Who may appeal.
 - 1. Any person who is adversely affected by a decision of the Planning Commission in approving or disapproving a subdivision plat may appeal to the Board of County Commissioners within fifteen (15) days after the date of the action of the Planning Commission. The Board of County Commissioners shall hear the appeal and render a decision within thirty (30) days after receiving the notice of appeal.
 - 2. Any person who is adversely affected by a decision of the Board of County Commissioners in approving or disapproving a subdivision plat may appeal to the District Court of the county in which the subdivision is located within thirty (30) days after the date of the action of the Board.
- B. Appeal process.
 - 1. The appeal shall consist of a whole record review, and the reviewing authority, whether it is the Board of County Commissioners or the District Court, shall set aside the action of the lower tribunal only if it is found to be:
 - a. arbitrary, capricious, or an abuse of discretion; or
 - b. not supported by substantial evidence; or
 - c. otherwise not in accordance with law.
 - 2. Any party to the action in District Court shall have full appellate rights in accordance with the laws of the State of New Mexico and the rules of appellate procedure for the State of New Mexico.
 - 3. The appeal shall be perfected by filing a written notice of appeal which sets forth the specific portion or portions of the decision being appealed. A copy of the decision or order being appealed shall be attached to the notice of appeal. The appeal shall be perfected upon filing of the notice required by these Regulations and payment of the required administrative fee.

ARTICLE 14 ENFORCEMENT, PENALTIES, AND REMEDIES

- A. Purpose and Authority. Violations of the provisions of these Regulations shall be prosecuted in the manner provided by law to protect the health, safety, and welfare of the public according to the County's authority under the New Mexico Subdivision Act, §§ 47-6-1 *et seq.*, NMSA 1978. The remedies provided in these Regulations shall be cumulative and not exclusive.
- B. Investigation of Alleged Violations. All written, signed complaints alleging one or more violations of the provisions of the New Mexico Subdivision Act or these Regulations shall be referred to the Board of County Commissioners for investigation. The Board of County Commissioners shall direct an investigation of the complaint and take such action as is warranted. The Board of County Commissioners shall inform the complainant in writing of what actions have been taken or will be taken in response to the complaint.
- C. Penalties and Remedies. Violations of these Regulations shall be subject to the following penalties, remedies, and enforcement procedures:
1. **Utility connections.** Any water, sewer, electric, or gas utility that connects service to individual parcels within a subdivision before a final plat for the subdivision has been approved by the Board of County Commissioners or before the landowner holds a valid building permit, may be fined a civil penalty of up to five hundred dollars (\$500) by the Board of County Commissioners. The Board of County Commissioners may also require that any utility connected in violation of this section and of §47-6-27.2 NMSA 1978 be disconnected.
 2. **Suspension of Right of Sale.** The Board of County Commissioners may suspend or revoke approval of a plat as to unsold, unleased, or otherwise not conveyed portions of a subdivider's plat if the subdivider does not meet the schedule of compliance approved by the Board of County Commissioners.
 3. **Injunctive Relief, Mandamus.** The Board of County Commissioners, the District Attorney, or the Attorney General may apply to the District Court for any one or more of the following remedies in connection with violations of the New Mexico Subdivision Act and these Regulations:
 - a. injunctive relief to prohibit a subdivider from selling, leasing, or otherwise conveying any interest in subdivided land until the subdivider complies with the terms of the New Mexico Subdivision Act and these Regulations;
 - b. injunctive relief to compel compliance by any person with the provisions of the New Mexico Subdivision Act and these Regulations;
 - c. rescission and restitution for persons who have purchased, leased, or otherwise acquired an interest in subdivided land that was divided sold, leased, or otherwise conveyed in material violation of the New Mexico Subdivision Act or these Regulations; or
 - d. a civil penalty of up to five-thousand dollars (\$5,000) for each parcel created in knowing, intentional, or willful violation of the New Mexico Subdivision Act or these Regulations.
 4. Bond not required. The Board of County Commissioners, the District Attorney, and the Attorney General shall not be required to post bond when seeking a temporary or permanent injunction or mandamus according to the provisions of the New Mexico Subdivision Act.
 5. Criminal penalties.
 - a. §47-6-27 NMSA 1978 provides that:
 - i) any person who knowingly, intentionally, or willfully commits a material violation of the New Mexico Subdivision Act is guilty of a misdemeanor, punishable by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one (1) year, or both; and
 - ii) any person who is convicted of a second or subsequent knowing, intentional, or willful violation of the New Mexico Subdivision Act is guilty of a fourth degree felony, punishable by a fine of not more than twenty-five thousand dollars (\$25,000) per violation or by imprisonment for not more than eighteen (18) months, or both.

ARTICLE 15 AMENDMENT

These Regulations may be amended from time to time as conditions warrant. Amendments shall be made by ordinance adopted by the Board of County Commissioners in accordance with §4-37-1 *et seq.*, NMSA 1978 compilation as amended.

ARTICLE 16 SEVERABILITY

The provisions of these Regulations are severable, and if any provision, sentence clause, section, or part hereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of these Regulations or their application to other persons or circumstances. It is hereby declared to be the intent of the County that these Regulations would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included herein, and if the person or circumstances to which these Regulations or any part thereof are inapplicable had been specifically exempted therefrom.

ARTICLE 17 REPEAL AND EFFECTIVE DATE

These Regulations repeal Otero County Ordinance No. 97-03. These Regulations shall become effective on the 26th day of April, 2007.

ADOPTED this 27th day of March, 2007.

BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, NEW MEXICO

BY: _____
DOUG MOORE
Chairman

ATTEST: _____
ROBYN M. SILVA
Otero County Clerk

(SEAL)