

## ROOSEVELT COUNTY

Orig.

## ORDINANCE #93-8

## AN ORDINANCE, ESTABLISHING THE ROOSEVELT COUNTY ENVIRONMENTAL POLICY AND PLANNING AND REVIEW PROCESS

## RECITALS:

WHEREAS, Roosevelt County's economy is dependent upon private, state and federal land and resource development and protection, and

WHEREAS, the Roosevelt County Land Use Policy Plan sets forth the general declaration of the County's customs, culture and economic stability, and

WHEREAS, Roosevelt County Commission accepts and supports the purpose and philosophy of the National Environmental Policy Act's purpose to "encourage the productive and enjoyable harmony between man and his environment...stimulate the health and welfare of man." (42 USC §4321 The National Environmental Policy Act of 1969, as amended, purpose, §2). and

WHEREAS, Roosevelt County wishes to protect the environment for the beneficial use of present and future Roosevelt County citizens, as well as to protect the economy and community stability (customs and culture) and

WHEREAS, Roosevelt County Environmental Planning and Review is designed for early detection and mitigation (reducing or eliminating) possible negative effects of state or federal proposed actions to Roosevelt County customs, culture, private property rights and interests or economic stability and

WHEREAS, National Environmental Policy Act, as amended, and the Council on Environmental Quality (40 CFR §1506.2) provide mechanisms for intergovernmental coordination and joint environmental planning and

WHEREAS, Roosevelt County Environmental Policy and Review procedures and guidelines shall be consistent with the requirements of NEPA and implementing regulations.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF ROOSEVELT COUNTY

## I. DECLARATIONS

A. THAT THIS ORDINANCE CREATES THE ROOSEVELT COUNTY PLANNING AUTHORITY:

1. Roosevelt County has been granted by the New Mexico State Legislature "Home Rule" powers,

necessary and proper to provide for safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of its citizens. The Home Rule Validation Act (§4-37-10 to 4-37-13, N.M.S.A. 1978, as amended) allows New Mexico counties to develop land use, resource management and environmental planning resolutions and ordinances necessary to secure the public health, safety, convenience, and welfare and shall be liberally construed to carry out its purposes. (§4-37-1, N.M.S.A. 1978, as amended).

2. Furthermore, New Mexico statutes provide for counties to develop ordinances for controlling not only private fee property but also ordinances for regulating uses on federal land. (§4-37-3, N.M.S.A. 1978, as amended).

B. ROOSEVELT COUNTY ENVIRONMENTAL POLICY:

1. Protection of the customs and culture in Roosevelt County is the essence to the future environmental quality for the citizens of the County.
2. Provides assurance, for all Roosevelt County citizens, of safe, healthful, productive and a culturally and an aesthetically supportive environment. (42 USC §4331 (b)(2)).
3. Creates and maintains conditions under which people and nature can continue to coexist in productive harmony to fulfill the social, cultural and economic requirements of the present and future generations of Roosevelt County citizens.
4. Requires government agencies at all levels to consider social, culture and economic stability factors, short and long term benefits, and costs and alternatives that support these community factors and values.
5. Requires government agencies at all levels to give written notification to and to coordinate with Roosevelt County Land Management Agency in joint participation on any planning or study of the County or its citizens. (16 USC §1604 a, and 43 CFR §1601.0-5, c, e., 40 CFR §1506.2.(b)(c)(d), USC §4231). This

requirement shall include, but not be limited to actions under the, Endangered Species Act, as amended, (16 USC §1533 (b) (5), 16 USC §1533 (b) (5) (A) (ii), 16 USC §1533 (i), Natural Resources Defense Council v. Clark, No. 86-0548 August 13, 1987, E.D. CA (setting aside Executive order for failing to adequately respond to public comments)., 16 USC §1533 (f) (1) (A), 16 USC §1533 (f) (4), 16 USC §1533(f) (5), 16 USC §1533 (f) (2), 16 USC §1535 (c) (1), 16 USC §1532 (18).), Clean Water Act, as amended, or Wetlands Act., as amended, (Catron County Comprehensive Plan, pgs. 1-16, A1-25, A1-26, A1-27, October 1992).

6. Provides for a private party to receive compensation equal to the devaluation of his land or private rights from any governmental agency whose act devalues said land or rights.
7. Roosevelt County Environmental Policy is not to be construed to interfere with county or municipal zoning or subdivision ordinances.
8. No violation of this Ordinance shall be found if the party or parties affected by a government agency land decision release, in writing, the government agency of all responsibility for the violation within thirty (30) days of the date of the agency decision.

## II. PURPOSE OF THE ENVIRONMENTAL POLICY

- A. The Roosevelt County Land Management Agency shall establish an environmental assessment and review policy to coordinate with state and federal plans to protect the resources for future generations as well as protect the economic and community (customs and cultures) stability for present and future generations.

## III. PREPARATION AND REQUIREMENTS OF ENVIRONMENTAL REPORTS

### A. PROPOSALS AND ASSESSMENTS:

Specific and detailed methods shall be developed and implemented in a coordinated way to assess social, cultural and economic impact analyses required by NEPA. (42 USC §4331 (b) (2) (4) §4332 (2) (C) (I)-(V) and (2) (G), 40 CFR §1502.14).

Furthermore the "affected environment" shall include the "human environment," consisting of social, cultural and economic factors. According to federal law, federal agencies are required to assess "direct effects and their significance...indirect effects and their significance" (40 CFR §1502.16).

B. THE MINIMUM REQUIREMENT FOR PREPARING AN ENVIRONMENTAL ASSESSMENT:

1. REQUIREMENTS:

- a. Impacts on environment (biological-physical).
- b. Assessment on local society (culture, social, governance, schools).
- c. Assessment of - economy (industries and customs).
- d. Assessment of private property rights takings.
- e. Mitigation plans.
- f. Public involvement requirements.

2. INDIVIDUAL REQUIREMENTS-EXPANDED:

a. ASSESSMENT ON ENVIRONMENT:

The environmental assessment shall also include identification of any effects on the County's natural resource assets and environmental quality.

- 1. Effects on oil and gas resources
- 2. Effects on range and crop lands resources
- 3. Effects on watershed resources
- 4. Effects on private water rights
- 5. Effects on environmental quality: air, water, energy, soils, etc
- 6. Effects on the integrated resource planning and management in which County private parties and/or public interests are involved
- 7. Effects on multiple use, sustained yield and range resource laws
- 8. Effects on private investments and costs into public land resources

9. Effects on the "productive and enjoyable harmony between man and his environment...stimulate the health and welfare of man...and supports diversity and variety of individual choice, according to NEPA mandate." (42 USC §4321).

b. ASSESSMENT ON LOCAL SOCIETY:

The environmental assessment shall also include identification of any effects on County culture, governance, schools and other local programs.

1. Effects on culture due to population loss
2. Effects on culture of Roosevelt County, specifying the possible limitations and restrictions on cultural beliefs and practices, maintenance of cultural and community cohesion and kinships
3. Effects on local governance; to protect the health, safety and social and cultural well being of its citizens; effects on local leadership and environmental values for resource protection and development, and the ability to finance public programs such as bonding capacity
4. Tax revenue losses to local governments (village, town and county) and schools
5. Effects on emergency services, infrastructure, environmental services and long term consequences on future community well being, stability of governance and the education of children

c. ASSESSMENT OF IMPACTS ON LOCAL ECONOMY:

The assessment shall also include identification of any effects on County economy and customs, services and businesses.

1. Effects on private investment backed expectations
2. Effects on the economic value of private water rights

3. Effects on direct, indirect and cumulative employment, specifying jobs and wage impacts
4. Effects on the base industries of grazing of cattle and other livestock, dairy, oil and gas, farming (dryland and irrigation of all crops), mining (caliche and gravel), feedlots and pipelines
5. Effect on local business directly and indirectly related to the resources decisions or plans
6. Effects on housing, real estate values, residential energy
7. Effects on threshold for business demand and markets
8. Limiting effects on long term consequences on future community well being, stability, and expansion and further specifying impacts on servicing debts (lending)

d. ASSESSMENT OF PRIVATE PROPERTY TAKINGS:

The environmental assessment shall also include identification of any effects on property rights and protected interests in the County.

e. MITIGATION PLANS:

In addition to the requirements above, the environmental assessment shall evaluate the impacts on property rights, using the Presidential Executive Order 12630, entitled "Government Actions and Interference with Constitutionally Protected Property Rights" and the Attorney General's guidelines "Evaluation of Risk and Avoidance of Unanticipated Takings". In addition, the Roosevelt County Land Management Agency mandates that the following tests or criteria be used in assessing possible taking of private property rights:

- \*\* Physical invasion (actual intrusion or land withdrawal).
- \*\* Loss of economic value and investment backed expectations.

\*\* Effects of customary uses and culture.

\*\* Basic rules of fairness and due process procedures.

1. It is the policy of the County that public agencies (local, state, and federal agencies) should not approve projects as proposed if there are feasible mitigation measures available which would lessen or reduce the significant social, cultural, property rights and economic impacts on the citizens of Roosevelt County. (40 CFR §1502.14).
2. The Roosevelt County Land Management Agency requires that state and federal government agencies meet with the Roosevelt County Land Management Agency to jointly plan and study mitigating alternatives.
3. The Roosevelt County Land Management Agency intends to assist public agencies in systematically identifying both significant and cumulative effects of proposed public actions, and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. (40 CFR §1508.20).

f. PUBLIC INVOLVEMENT REQUIREMENT:

1. During the preparation of an environmental document or amendment to a proposed project or plan, the Roosevelt County Land Management Agency and government agencies (state and federal) shall provide opportunities for the involvement of Roosevelt County citizens, local governments and schools, utility companies, civic, other community groups and all economic segments with Roosevelt County, through a process of public hearings and other means which the Roosevelt County Land Management Agency deems appropriate.



2. State and federal government agencies shall coordinate joint public involvement in planning, programs and processes with Roosevelt County Land Management Agency in accordance with the Council On Environmental Quality Regulations. (CEO Public Involvement, 40 CFR §1506.6 (3); and, Joint Public Hearings, 40 CFR §1506.2.b.3 and §1506.2.c.f).

#### IV. PENALTIES

- A. All violations of this Ordinance are subject to prosecution in state courts.
- B. Trespass, as found in the New Mexico statutes, shall be considered a criminal offense and shall be prosecuted as such (International Primate Protection Leagues, et al. V. Administrators of Tulane Education Fund, et al., No. 90-89, § 4-37-3, N.M.S.A. 1978, as amended).
- C. No violation of this Ordinance shall be found if the party or parties affected by a governmental agency land decision, release, in writing the governmental agency of all responsibility for the violation within thirty (30) days of the date of the agency decision.

#### V. SEVERABILITY

A. That if any provision of this County Ordinance or the application thereof is held invalid such invalidity does not affect any other provision of this Ordinance which can be given application, and to those ends the provisions of this Ordinance are severable.

**PASSED, ADOPTED AND SIGNED** by the Roosevelt County Board of County Commissioners as Roosevelt County Ordinance No. 93-8 and recorded with the Roosevelt County Clerk this 15<sup>th</sup> day of November, 1993.

Board of Roosevelt County Commission

By:

Blonnie Rea  
Blonnie Rea, Chairman

A T T E S T

Maudene Haragan  
Roosevelt County Clerk

BR/vjc



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MAUDENE HARAGAN-CLERK

BY Mina Bellier