

## LUNA COUNTY ORDINANCE NO. 26

## AN ORDINANCE ESTABLISHING THE LUNA COUNTY NATURAL RESOURCE PLANNING AND REVIEW PROCESS

**WHEREAS**, Luna County has been granted police powers, which allows New Mexico counties to promulgate land use, resource management, and planning resolutions and ordinances necessary to "provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, and convenience of any county or its inhabitants,"<sup>1</sup> to protect the tax base and public welfare of Luna County and its citizens, and

**WHEREAS**, New Mexico law provides to the County the power to promulgate ordinances that "are effective within the boundaries of the county, including privately owned land or land owned by the United States"<sup>2</sup> in order to provide for the protection of the health, safety and welfare of its citizens, and

**WHEREAS**, numerous federal and state laws provide for consultation and coordination with county and local government with respect to federal and state regulatory actions and decisions, and

**WHEREAS**, the Luna County Interim Land Use Plan further finds that natural resource planning is in the best interest of the public health, safety, and general welfare of the people of the County and further establishes a general policy committing the County to preserving and protecting its rural way of life, its customs and cultural heritage through the preservation of its natural resources, protection of property rights, and support of economic and social stability.

<sup>1</sup> N. M. Stat. Ann. 4-37-1 (1978).

<sup>2</sup> N. M. Stat. Ann. 4-37-2, 4-37-3 (1978).

STATE OF NEW MEXICO } SS.  
County of Luna  
I certify that this instrument was filed  
for record at 11:03 A. M.

JUL 2 1 1994

as Recorded in book 23, page 1049  
of 1089  
Natalie Pacheco, County Clerk  
Deputy  
Reception No. 94-03503

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF LUNA COUNTY:**

That this Natural Resource Planning and Review Ordinance is hereby adopted to protect the public health, safety, and welfare of the County, and the Luna County tax base.

**BE IT FURTHER RESOLVED,** that all federal and state agencies proposing to undertake any activities or decisions which may affect the quality of the human environment in Luna County, as defined in this ordinance, henceforth shall comply with the following:

- Luna County Natural Resource Planning and Review Ordinance.
- All federal and state laws providing consultation and coordination with the County; and
- The Luna County Interim Land Use Plan, to the extent that it applies

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**Section 1: Luna County Natural Resource Planning and Review Ordinance Purposes And Policies.**

(a) The Purpose of the Luna County Natural Resource Planning and Review Ordinance is to provide a problem solving process to eliminate or significantly reduce conflicts or negative impacts on the human environment within Luna County as a result of state or federal actions. An important component of the problem solving mechanism shall be the planning coordination and review process utilizing the following decision making process:

1. Describe proposed action(s) and purpose and need.
2. Identify issues, opportunities, and concerns.
3. Describe desired conditions.
4. Develop alternatives.
5. Evaluate alternatives to eliminate or reduce negative effects.
6. Propose methods to monitor results of the plan.
7. Document analysis and decision.

(b) The Luna County Commission adopts the Natural Resource Planning and Review Ordinance to fulfill the following policies:

1. The Luna County Interim Land Use Plan commits the County to preserving and protecting its rural way of life, customs and cultural background through the protection of natural resources and property rights. The Interim Land Use Plan is determined to be in the best interests of the public health, safety, and general welfare of the people of the County. Furthermore, it is determined that the implementation of the Interim Land Use Plan is through the adoption of the Natural Resource Planning and Review Ordinance.

2. Continuing pressures and conflicting demands on the County's natural resources require that the County use all practical means and measures to foster and promote the general welfare, to create and maintain conditions under which humans and nature can exist in a productive harmony, and to fulfill the social, economic, and other requirements of present and future generations of Luna County residents.

3. The County seeks to promote and preserve community stability. This objective includes taking steps to ensure that the economy of the

County and its tax base remain stable and productive.

(c) **Human environment**, for purposes of this ordinance, shall mean the physical, natural and economic environment that reflects the need (1) to assure safe, healthful, productive, aesthetic, and culturally pleasing surroundings, (2) to provide for the widest range of beneficial uses of the environment, (3) to preserve the important customs and cultures of the citizens in Luna County, as well as the historic and natural aspects of the County's heritage, (4) to maintain, wherever possible, an environment which supports diversity and variety of individual choice and responsibility. People are an integral part of the environment; human needs shall be the priority in striving for a quality environment.

## Section 2: Findings of the Luna County Commission

The Luna County Commission finds and declares:

(a.) We, the governing body of Luna County, reaffirm the fundamental rights of mankind as enumerated in the American Declaration of Independence and acknowledge the limited nature of government as intended by the nation's founding fathers

(b.) Based on these cherished traditions, we declare that all natural resource decisions affecting Luna County shall be guided by the principles of protecting private property rights, other protectable interests, and local customs and cultures, while maintaining traditional economic structures through self-determination, which shall provide new economic opportunities through reliance on free markets. Resource decisions made in this manner will enhance environmental quality<sup>3</sup> and protect and enhance the tax base of Luna County to meet the needs of present and future generations, and shall also provide adequate infrastructure necessary for both public and private land resources and environmental quality.

(c.) We support the purpose of the National Environmental Policy Act (NEPA)<sup>4</sup>:

to "encourage the productive and enjoyable harmony between man and his environment...to stimulate the health and welfare of man... assure a safe, healthful, productive, aesthetically and culturally pleasing surroundings ...and maintain, wherever possible, an environment which

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<sup>3</sup> Luna County Ordinance No. 17: Luna County Interim Land Use Policy Preamble, 2/14/92.

<sup>4</sup> 42 USC 4321 & 4371, 40 CFR 1502.1; 40 CFR 1508.4

supports diversity and variety of individual choice", and "to provide full and fair discussion of significant environmental impacts and shall inform decision makers...of reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the **human environment**...[and] Include in every recommendation or report on proposals... and actions significantly affecting the quality of human environment, a detailed assessment of the impact."

(d.) A significant percentage of the land within the boundaries of Luna County is administered by federal and state land agencies. Luna County shall exercise to the greatest extent of its powers, all opportunities to influence and affect federal resource management activities and decisions within Luna County that affect the public health, welfare, and safety of the citizens of the County.

(e.) A viable and sustainable economy is essential for the continued health and welfare of the County's community, as well as for a healthy environment.

(f.) A direct correlation exists between the lack of a stable economy and increases in crime and juvenile delinquency, and a decline in the mental health of residents. Communities whose economies suffer due to policy changes made by federal or state agency actions experience sharp increases in crime, juvenile delinquency, abuse of children and spouses, and displacement of families.

(g.) Luna County and various federal and state agencies depend upon the goods and services provided by Luna County through roads, schools, human services, emergency and medical services, fire protection, and law enforcement. Luna County's economy also depends on activities and enterprises that occur on federal and state lands, including, but not limited to, livestock grazing, mineral development and recreation.

### Section 3: Objectives Of The Ordinance

The objectives of Luna County Natural Resource Planning and Review process are hereby declared to be: (see figure 1)

- a. To disclose to federal and state agency decision makers, and to County officials, and the public the potential impact of any proposed federal or state agency action on the social cultures and customs, property rights, community economic stability, and tax base of Luna County.
- b. To identify ways to avoid or to reduce the adverse impacts to the County interests, and to mitigate or remove such

adverse impacts through development of alternatives that will eliminate or reduce the impacts.

- c. To promote intergovernmental coordination for the expressed purposes of reducing duplication of planning efforts, and to provide for a more comprehensive planning process in order to improve the quality of the human environment.
- d. To enhance public education and participation.
- e. To facilitate the Luna County Commission's ability to plan and manage fiscal assets, including its tax base and physical resources, for support of environmental, social, cultural, and community values related to the well-being and health of present and future generations in Luna County.
- f. To foster community involvement in self government.

**Disclose environmental impacts:** significant environmental effects of proposed federal and state agency actions or decisions on physical, social cultures, customs, property rights and the economic stability that impact county tax base..

**Identify and prevent environment damage:**

- ◆ Mitigation measures
- ◆ Alternatives
- ◆ Mitigation monitoring

**Disclose agency decision making:** ways to avoid or significant reduce negative impacts

**Promote intergovernmental coordination:**

- ◆ Early consultation
- ◆ Inter agency fiscal management
- ◆ Public Hearings
- ◆ Joint planning
- ◆ Cooperative planning

**Enhance public participation:**

- ◆ Public notice requirement
- ◆ Response to comments
- ◆ Availability of documents
- ◆ Public education

**Foster local capability:** enhance county capability to plan and manage resources and environmental and community qualities for the well-being of the present and future generations to preserve county tax base

Figure 1



**Section 4: Compliance With Requirements Of Consultation And Coordination**

(a) State and federal agencies are required under their respective laws, regulations, and policies to provide early consultation and planning coordination with the County. It is intended that coordination and consultation occur for all actions that may significantly affect Luna County interests.

(b) Police powers in New Mexico grant the Luna County Commission the planning power and authority to protect the health, safety, and welfare of its citizens.<sup>5</sup> Pursuant to this ordinance and consistent with federal and state laws, regulations, and policies, Luna County shall be consulted at the earliest possible moment by each and every federal agency whose decisions, activities, or other actions may affect Luna County or the interests of its people.

(c) The federal laws and regulations that require consultation and coordination in planning with the County, are set forth in, but not limited to Appendix A attached and incorporated into this Ordinance.

(d) State laws expressly provide for consultation with County government or with the public. State law also authorizes state agencies to enter into a Memorandum of Understanding to provide a means for inter-government coordination and cooperation. The specific state laws and regulations are also set forth in, but not limited to Appendix A attached and incorporated into this ordinance.

**Section 5: Luna County Commission Joint Planning with Federal Resource and Environmental Decision Making Process**

(a) **Federal Compliance:** The Luna County Land Planning and Review procedures for coordinated planning with federal agencies shall be consistent with the primary federal decision making process specified in the Council on Environmental Quality (CEQ), 40 CFR 1506.2: Federal agency coordination and joint planning with state, tribal and local government planning. Furthermore, in the event that environmental assessment and documentation are required by both this Luna County Ordinance and the respective federal agency, a combined document shall be coordinated and jointly prepared by the County Commission and the designated federal agency (and when appropriate, state agency).

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<sup>5</sup> N. M. Stat. Ann. 4-37-1 (1978).

(b) **Purpose:** The purpose of joint planning is to provide a problem solving process in order to reduce duplication of effort and to provide for a more comprehensive record of decision according to 40 CFR 1506.2, specifically:

- Preparation of environmental documents
- Public hearings
- Planning processes
- Environmental research

(c) **Joint Preparation of Environmental Assessment Documentation:** When deemed appropriate, a coordinated environmental assessment planning process shall be established for federal actions and plans within Luna County to enhance the human environment. Within the requirements of this ordinance and federal laws<sup>6</sup>, federal agencies shall work jointly with Luna County. The County Commission shall use the environmental assessment process detailed in this ordinance and shall notify the initiating federal agency. Furthermore, when appropriate, the Luna County Commission shall be considered a joint lead agency with one or more federal agencies, pursuant to 40 CFR 1506.2 (c), which further states:

Where states and local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, federal agencies shall cooperate in fulfilling these requirements as well as those of federal laws so that one document will comply with all applicable laws.

(d) **Criteria for Initiating Joint Planning with Federal Agencies:** The primary purpose of joint planning is to provide agency decision makers with input from the government entities affected by a proposed federal decision. When deemed necessary, the Luna County Commission shall identify significant adverse impacts on the human environment as defined by this ordinance and set forth in the triggering criteria listed below. If the County initiates joint planning, the process outlined in Section 1(a) shall be followed. Furthermore, joint lead planning and coordination shall be initiated according to the following triggering criteria:

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<sup>6</sup> 40 USC 4331(B)(2)(4), 4332(2)(C)(I)-(V) and (2) (G), 40 CFR 1501.2(d)(c); 1502.6(b)(4) & (c)

1. When a proposed action(s) may have significant negative effects on the human environment of the County, as defined by this Ordinance.
2. When a proposed action(s) may adversely affect the health, safety or welfare of the County pursuant to N.M.Stat. Ann. 4-37-1, and CEQ health and safety clause (40 CFR 1508.27(b)).
3. When a proposed action(s) may significantly affect the fiscal resources of the County or its infrastructure support to federal resource agencies, such as roads, schools, emergency services, and other public works. Impacts on County infrastructure can in turn result in significant impacts on the physical environment of federal lands, and the need for an environmental assessment. These revenue sources include but are not limited to the following federal laws:
  - Taylor Grazing Act, 43 U.S.C. 415g, and Federal Land Policy and Management Act, 43 U.S.C. 1753(g);
  - Payment In Lieu of Taxes, 32 U.S.C. 6901-6906;
  - Mineral Leasing Act, 30 U.S.C. 191, 192; Potassium Leasing Act, 30 U.S.C. 286;
  - Mineral Leasing Act, 30 U.S.C. 355.
4. When proposed federal actions result in unfunded mandates that may adversely effect Luna County fiscal management.
5. When a proposed action(s) may adversely affect social and economic activities, property rights and investments that in turn provide support to federal resources and land management. Much of the federal lands water developments in Luna County were developed and are maintained by private ranchers. Federal proposed actions could have direct negative effects on the rancher's ability to maintain water sources for wildlife. It could also indirectly effect the ranch operations, which in turn, would have negative effects on federal resource management, causing a significant affect on the physical environment, and the need for an environmental impact assessment.
6. When a proposed action(s) "significantly" affects "critical elements of concern" as defined in 40 CFR 1508.27(b): the degree to which the action affects public health or safety, prime farmlands, flood plains, waste, air and water quality, highways, cultural resources, or highly controversial projects.
7. When the proposed federal action threatens a violation of local

environmental or resource laws (NEPA 40 1508.27(b)).

(e) **Funding:** funding required for this coordinated planning effort does not constitute any financial obligation on behalf of the County. It merely recognizes the responsibility of the federal agency to consult early in the planning process with the County.

(f) **Joint Public Hearings:** Joint public hearings shall be conducted "to the fullest extent possible" in accordance with NEPA requirements.<sup>7</sup> See Appendix D attached and incorporated into this ordinance for public involvement guidelines.

(g) **Joint Planning Processes:** For coordinated resource project and program planning, NEPA and the Federal Land Policy and Management Act require that the Luna County Commission be notified and consulted at the earliest time possible and that federal agencies shall cooperate to the fullest extent possible<sup>8</sup>. Following notification, the County Commission shall make a formal decision as to whether to pursue intergovernmental coordinated planning. A possible approach for intergovernmental resource planning is outlined below in (h).

(h) **Joint Resources and Environmental Research:** Because of the nature of mixed land jurisdictions in the county, the Luna County Commission may request federal agencies: to coordinate resource management policies and plans to encourage individual land stewardship, and to assist in environmental quality under the Joint Environmental Research clause of NEPA. The purpose of the pilot intergovernmental research between county, state and federal agencies should be to develop an integrated approach to resource management through:

1. Understanding of the customs and cultures of Luna County, especially related to resource management, land use and environmental values and beliefs, such as self-regulation and stewardship.
2. Identifying outputs/product requirements for improving resource conditions and trends, and for enhancing community and economic stability of the County.
3. Developing desired conditions that support #2 above, including standards and monitoring methods.

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<sup>7</sup>40 CFR 1506.2.b.3

<sup>8</sup> 40 CFR 1506.2(b); 32 USC 1604(F)(5)

4. Coordinating the development of resource management approaches for the preferred management alternative that supports the human environment of Luna County as defined in this Ordinance.

**Section 6: The Role and Responsibilities of the Luna County Commission:**

(a) **The County Role:** The County shall make it a priority to consult and coordinate with federal and state resource agencies. The County Commission, as it deems necessary, shall enter into an intergovernmental agreement for joint planning and preparation of environmental assessment documents. When the County is involved, the joint planning process shall incorporate the planning steps outlined below.

(b) **The Assessment of the Human Environment:** The environmental affects analysis in Luna County shall include customs and cultures, property rights of the people affected by respective decisions and proposed actions and the production of goods and services needed to achieve and maintain the community values and economic stability. Appendix B: Environmental Assessment Guidelines is attached and incorporated into this ordinance. The County should specifically address the following issues:

1. The resources and economic thresholds necessary to support family stability, avoid community stress and breakdowns common to communities;
2. Impacts on the County due to loss of existing population;
3. Role that shared beliefs and values play in support or opposition to the proposed actions or decisions;
4. Importance of resource use and protection in preserving cultural values;
5. Maintenance and protection of property rights, other civil rights and individual freedoms; and
6. Impacts on the County's ability to perform its governmental and fiscal responsibilities.

(c) **Comparative Evaluation of Alternatives:** The environmental document must discuss a range of alternatives to federal proposed actions that could feasibly attain the basic project proposal objectives. It must evaluate the comparative merits of each alternative. Appendix C, attached and incorporated into this ordinance. The Luna County Commission is to evaluate proposed federal and state

actions using the criteria below:

1. Impacts on the revenues to the County and on its tax base;
2. Impacts on private land and property rights;
3. Impacts on customary uses and activities and on cultural values;
4. Cumulative effects on the above;

(d) **Mitigation Planning:** The purpose is to solve problems involving alternative uses of available resources (required by NEPA<sup>9</sup>). It is a decision making process designed to eliminate or minimize impacts on those resources. Mitigation is the key step in the decision making process.

1. Mitigation is one of the alternatives that must be considered in identifying the scope of the environmental analysis process and document.
2. Appendix C provides mitigation planning guidelines.

(e) **Implementing and Monitoring the Resource Decision:** A reporting or monitoring program must be adopted for mitigation measures that were made a condition to the proposed action/decision approval. Monitoring shall be provided by the lead agency (in coordination with joint lead agencies) to assure that their decisions are carried out in compliance with the mitigation plan during plan implementation<sup>10</sup>. In implementing decisions, the Luna County Commission, when deemed appropriate<sup>11</sup>, shall:

1. Discourage agencies from approving or implementing projects with significant adverse impacts on the human environment when feasible alternatives and mitigation measures can eliminate or lessen the impacts.
2. Include appropriate conditions in grants, permits or other approvals and condition funding of actions on mitigation.
3. Inform cooperating or commenting agencies on progress in carrying

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<sup>9</sup> NEPA (102)(2)(e).

<sup>10</sup> 40 CFR 1505.3

<sup>11</sup> 40 CFR 1505.3

out mitigation measures which they have proposed and which were adopted by the agency making the decision.

4. Upon request, make available to the public the results of the relevant monitoring.

5. Require as a part of the decision that a decision must be totally funded, including mitigation, or not funded at all, and therefore, not implemented.

6. Include features of an effective monitoring program (see Appendix C: Figure 7).

(f) **Environmental Assessment Documentation Requirements:** County environmental assessments when, deemed appropriate, shall include the requirements of this ordinance, paralleling NEPA documentation requirements<sup>12</sup>. The format shall include the Informal Letter, Initial Assessment Report (IAR) or the detailed Environmental Impact Report (EIR) as outlined in Appendix E attached and incorporated into this ordinance.

#### Section 7: Coordination and Consultation with State Government Agencies

(a) The Luna County Commission is further authorized to enter into a Memorandum of Understanding or an Intergovernmental Agreement to assure the effective coordination and consultation with state agencies, whose regulatory actions or decisions may affect the interests of Luna County and its citizens. Such agreements shall provide for the exchange of information, coordinated planning, public hearings, and environmental, social and or economic assessments when necessary in the County; it shall foster a cooperative spirit that will preserve the culture and customs of Luna County and further ensure the continued stability of the communities within Luna County.

(b) Luna County Commission when deemed appropriate, shall use the problem solving process outlined in Section 6, above, and the appendices B, C, D, and E.

#### Section 8: Exclusions

A major purpose and intent of this ordinance is to protect private property rights through intergovernmental consultation and coordination. Hence, nothing in this ordinance shall be construed to extend regulation

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<sup>12</sup> 42 USC 4332(2)(c), NEPA 102(2)(c); 40 CFR 1508.9, 1508.11

by the County to private property or to private business enterprises.

Section 9: Implementation of the Luna County Environmental Planning & Review Process

(a) The Luna County Commission shall adopt administration and oversight guidelines.

(b) The Luna County Commission shall appoint a committee to provide oversight responsibilities in the implementation of this ordinance.

(c) The Luna County Commission may develop environmental and resource related agreements with appropriate state and federal agencies to carry out elements of the coordination and review process.

Section 10: Severability

In the event any court of competent jurisdiction rules any provision hereof to be invalid, the remainder of this ordinance shall be severed therefrom and shall remain in full force and effect.

Section 11: Recording and Authentication

This ordinance shall be recorded in the books kept for that purpose and shall be authenticated by the signature of the County Clerk and shall take effect in accordance with the law.

PASSED, APPROVED AND ADOPTED this 12<sup>th</sup> day of July, 1994.

Bert Irwin  
Bert Irwin, Chairman

Fred Herrera  
Fred Herrera, Member

Tom Lindsay  
Tom Lindsay, Member

ATTEST:

Natalie Pacheco  
Natalie P. Pacheco, County Clerk





## APPENDIX A

### FEDERAL & STATE LAWS AND REGULATIONS PROVIDING FOR CONSULTATION WITH COUNTY GOVERNMENT

#### I. FEDERAL LAWS AND REGULATIONS PROVIDING FOR CONSULTATION WITH COUNTY GOVERNMENT

The following federal laws and regulations require federal agencies to consult with state and local governments or the public.

##### 1. **National Environmental Policy Act ("NEPA")**, 42 U.S.C. § 4331, 40 C.F.R. § 1506.6:

a. Congressional policy declares...that it is the continuing policy of the federal government, in cooperation with State and local governments...to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may...assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings;<sup>13</sup> and "...preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice." 42 USC 4331 (B).

b. Prior to making any detailed statement, the responsible federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and view of the appropriate federal, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes. 42 USC 4332 (2).

c. Make available to states, counties, municipalities, institutions, and individuals, advice and information useful

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<sup>13</sup>42 USC 4331(b)(2).

in restoring, maintaining, and enhancing the quality of the environment. 42 USC 4332 (2).

d. Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

40 CFR 1506.2 (a) and (b):

- (1) Joint planning processes.
- (2) Joint environmental research and studies.
- (3) Joint public hearings.
- (4) Joint environmental assessments.

e. Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable state and local requirements, unless the agencies are specifically barred from doing so by some other law and such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more state or local agencies shall be joint lead agencies. Where state laws or local ordinances have environmental impact statement requirements in addition to those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws. 40 CFR 1506.2 (c).

f. To better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. 40 CFR 1506.2 (d).

2. **Intergovernmental Cooperation Act**, 3 U.S.C. §§ 301, 42 U.S.C. § 4231(a), provides that federal agencies are to coordinate programs and plans with state and local governments. See also Presidential

Executive Order 12372 (July 14, 1982).

3. **Federal Land Policy and Management Act ("FLPMA")**, 43 U.S.C. §§ 1701, et seq.,

a. "The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give federal, State and local governments and the public adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands." 43 U.S.C. § 1712(f).

b. Coordination with local government is required in addition to public involvement by regulation for development of land use plans, guidance and revision or amendment of plans. 43 C.F.R. § 1610.3.

c. "In exercising his authorities under this Act, the Secretary by regulation shall establish procedures, including public hearings where appropriate, to give the federal, state, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in the preparation and execution of plans and programs for, and the management of the public lands." 43 U.S.C. § 1739(e).

d. "The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act." 43 U.S.C. § 1740.

4. **Endangered Species Act (ESA)** 16 U.S.C. § 1533.

a. "With respect to any regulation proposed by the Secretary to implement a determination, designation or revision referred to in subsection (a)(1) or (3) [listing or critical habitat], the Secretary shall...give actual notice of the proposed regulation (including complete text of the regulation) to the state agency in each state in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;" 16 U.S.C.

§ 1533(b)(5)(A)(ii).

- 50 C.F.R. §§ 424(c)(ii); 424(c)(iii).
- Public comment of at least 60 days from C.F.R. and 30 days in all other rules. 50 C.F.R. 424.16(c)(2).
- Public hearings if requested. 50 C.F.R. 424.16(c)(3).

b. The Secretary shall prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan." 16 U.S.C. § 1533(f)(4).

c. Guidelines for classifying petitions and review of potentially threatened or endangered species shall have public notice and opportunity for comment. 16 U.S.C. § 1533(h).

d. Secretary is to cooperate with the states "to the maximum extent practicable." 16 U.S.C. § 1535(a). This includes signing cooperative agreements and working with state fish and wildlife programs.

5. **Administrative Procedure Act ("APA")**, 5 U.S.C. § 553, requires notice and comment of proposed regulations.

6. **Clean Water Act**, 33 U.S.C. §§ 1251, et seq.

a. It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of the states to prevent, reduce and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources and to consult with the Administrator in the exercise of his authority under this chapter." 33 U.S.C. § 1251(b).

b. Public participation in the development, revision, and enforcement of any regulation, standards, effluent limitation, plan or program established by the Administrator or any State under this chapter, shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and public regulations specifying minimum guidelines for

public participation in such process." 33 U.S.C. § 1251(e).

c. It is the policy of Congress that the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any state. Federal agencies shall cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources." 33 U.S.C. § 1251(g).

d. The Administrator, shall, after careful investigation and in cooperation with other federal agencies, state water pollution control agencies, interstate agencies, and the municipalities and industries involved prepare or develop comprehensive programs for preventing, reducing or eliminating the pollution of the navigable waters and ground waters and improving the sanitary conditions of surface and underground waters." 33 U.S.C. § 1252(a).

**7. Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq.**

a. State solid waste regulatory programs authorized. 42 U.S.C. § 6926.

b. State underground storage tank programs authorized. 42 U.S.C. § 6991c.

**8. Clean Air Act, 42 U.S.C. §§ 7401, et seq.**  
Public involvement in preparation of state and regional implementation plans, 42 U.S.C. § 7410.

**9. Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq.**

**10. Community Right to Know, 42 U.S.C. §§ 11001 et seq.**, implements broad authority to inform members of the public regarding the existence or presence of regulated substances.

**II. STATE LAWS AND REGULATIONS PROVIDING FOR CONSULTATION WITH COUNTY GOVERNMENT.**

The following state laws provide for state agencies or commissions to consult with local governments or to provide notice.

1. N.M. Stat. Ann. § 16-3-4, State Trails System, Parks, Recreation, and Fairs

In the planning and designation of trails, the secretary shall give due regard to the interests of federal or state agencies, counties, municipalities, private landowners and interested individuals and recreational and conservation organizations. The secretary shall give full consideration to the inclusion of trails from all categories within the system.

2. N.M. Stat. Ann. § 17-1-1 et seq. Wildlife Statutes

- a. N.M. Stat. Ann. § 17-1-14, requires notice and hearing for revocation of permit.

- b. N.M. Stat. Ann. §§ 17-2-41, 17-2-44, require hearings for development of endangered species list or plan.

3. N.M. Stat. Ann. § 19-2-2, requires the United States to notify the state public lands commission, governor, and county of intention to relinquish legislative jurisdiction over federal land within the state.

4. N.M. Stat. Ann. §§ 67-3-15, 67-3-28, 67-3-31, 67-3-32, State Highway Construction, Location, and Maintenance, requires state to advise towns of planned road construction and maintenance and cooperation through cooperative agreements as to costs.

5. N.M. Stat. Ann. §§ 42A-1-14, 42A-1-18, Condemnation Proceedings requires notice to county of condemnation proceedings.

6. N.M. Stat. Ann. §§ 9-3-1 et seq., Mining and Mineral Development.

- a. N.M. Stat. Ann. § 69-3-2 requires persons locating mining claims to record such location with the county; required to file amended locations,

- b. N.M. Stat. Ann. § 69-3-3, requires filing of annual affidavits of labor and assessment with the county.

c. N.M. Stat. Ann. § 69-3-12.1, requires public hearing for consolidation of claims for development, N.M. Stat. Ann. § 69-9-6.

7. N.M. Stat. Ann. § 69-25A-14, Surface Mining Act.

Within ten days after the granting of a permit, the director shall notify the local governmental officials in the municipality, if any, and county, in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

8. N.M. Stat. Ann. § 69-25B-7, Reclamation of Abandoned Mines.

The director, pursuant to the state reclamation plan, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the counties or the appropriate subdivisions of the state in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices.

9. N.M. Stat. Ann. § 72-12-26, Underground Wells. Drilling of underground wells requires application to state engineer and public notice in the county where well will be drilled.

10. N.M. Stat. Ann. § 72-18-25, Flood Control Districts. Notice of change in flood control district to county.

11. N.M. Stat. Ann. § 73-8-1, Drainage Districts Within Federal Reclamation Projects. Authorizes creation and administration of special districts, including drainage districts which are attached to federal reclamation projects.

12. N.M. Stat. Ann. §§ 73-10-1, et seq., Irrigation Districts In Cooperation with Federal Reclamation Projects, authorizes creation and administration of irrigation districts in association with federal

reclamation projects and coordination with county; provides for election of board members, authority to issue bonds, and to construct projects.

13. N.M. Stat. Ann. §§ 73-18-1 et seq., Conservancy Districts in Cooperation with Federal Reclamation Projects, authorizes creation and administration of water conservancy districts.

14. N.M. Stat. Ann. §§ 74-2-1, et seq., Air Quality Control Act.

a. N.M. Stat. Ann. §§ 74-2-4, 74-2-5, 74-2-5.1, authorizes creation of local air quality regulatory authority to enforce air quality standards.

b. N.M. Stat. Ann. § 74-2-6 requires notice and public hearing for all regulations.

c. N.M. Stat. Ann. § 74-2-7, Air Quality Permits, requires public hearings on air quality permits.

d. N.M. Stat. Ann. § 74-2-8 permits local board or state agency to issue variance.

15. N.M. Stat. Ann. §§ 74-6-4 et seq., New Mexico Water Quality Control Act.

a. N.M. Stat. Ann. § 74-6-64 requires Commission to adopt regulations or water quality variances with public hearing.

b. N.M. Stat. Ann. § 74-6-5 requires Commission to notify local government of any application for or modification of a discharge permit.

c. N.M. Stat. Ann. § 74-6-6 requires public hearings for all regulations, standards, and permit applications.

16. N.M. Stat. Ann. §§ 76-7-5 Noxious Weed Control Districts authorizes a county to form district and provide for control of noxious weeds on land within the county.



## APPENDIX B

### Environmental Assessment Guidelines

This section specifies detailed methods to be followed in a coordinated way with federal and state agencies, to conduct physical, social, cultural, resource and economic impact analyses required by environmental laws. The "affected environment" shall include the "human environment", consisting of social, cultural, and economic factors. The assessment shall include "direct effects" and "indirect effects and their significance;" federal agencies are also required to consider these effects.<sup>14</sup>

In Luna County, environmental impact assessments shall be conducted in the following sequence to ensure that federal and state proposals and alternatives are formulated and evaluated against appropriate and realistic objectives. The human environmental affects in Luna County include: (1) the physical environment, (2) social and cultural fabric of communities, (3) the local economy and (4) property rights protection outlined below. The types and scope of analysis will depend on the criteria for coordinated assessment specified in the Ordinance, Section 5(c).

**1. Assessment of Impacts on the Physical Environment:** The environmental impact assessments shall include identification of any effects on the County's natural resource assets and environmental quality:

- a. Effects on range resources and management application.
- b. Effects on mineral resources.
- c. Effects on ground and surface water resources.
- d. Effects on private water rights, and other traditional/customary and common law resource laws and practices.
- e. Effects on environmental quality: air, water, energy, soils, etc.
- f. Effects on the integrated resource planning and management in which county private parties and/or public interests are involved.

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<sup>14</sup> 40 CFR 1502.16(a),(b),(c),(h), 1508.8; Federal Register vol 57, no. 182 (9/18/92), 11.31(b)

g. Effects on federal and state laws related to multiple use, sustained yield, and range resource management.

h. Effects on private and public investments and costs into public land resources.

i. Effects on the productive and enjoyable harmony between man and his environment. The plan must stimulate the health and welfare of man and support diversity and variety of individual choice in accordance with the NEPA mandate, and the free market system of resource allocation.

2. Assessment of Impact on the Social and Cultural Fabric: The assessment shall include identification of any effects on County customs, culture, social fabric, governance, schools, and other local programs.

a. Effects on family stability, symptoms of stress, anxiety, breakdown, and, the nature and frequency of anti social behavior (family turmoil, crime and substance abuse, etc.).

b. Effects on culture due to population loss or gain and identification of the effects on the rates and magnitude of population migration patterns.

c. Effects on shared norms and values to include scope and intensity of demonstrated support or opposition to the proposed action; religious and/or cultural orientations toward certain sites or resources; and attitudes toward economic stability and development.

d. Effects on the cultures of Luna County, specifying possible limitations and restrictions on cultural beliefs and customary land uses and practices; maintenance of community cohesion and kinships and friendship networks; and traditions of mutual trust and aid.

e. Effects on cultural values of land stewardship and community environmental values and aesthetics related to historical/cultural sites, natural resource vistas, river ways, and landscapes). Effects on resource degradation and investments on private land uses and historical and cultural sites.

f. Effects on social organization to include community cohesion (degree of unity and cooperation); community stability (ability to absorb and manage change); and source and focus of leadership.

g. Effects on land use patterns to include existing land uses and

interactions, access and transportation impacts, compatibility of proposed changes with present uses of site and commensurate and adjacent lands; and religious and cultural uses of land resources.

h. Effects on civil rights and implications to any and all the variables listed above; barriers to equal access; and due process and even handedness.

i. Effects on local governance (e.g., effects on the County's ability to protect the health, safety, and social and cultural well-being of its citizens and to protect private property rights); effects on local leadership and environmental values for resource protection and development, and effects on the County's ability to finance public programs such as bonding capacity.

j. Effects on revenue (taxes, fees, etc.) loss to local governments.

k. Effects of local government and school employment loss and income.

l. Effects on the loss of delivery of government and school programs.

m. Effects on emergency services (law enforcement, fire and ambulance services).

n. Effects on the County's infrastructure transportation; environmental service (landfills, waste, and water supplies and quality); as well as County financed infrastructure services to public land agencies.

o. Limiting effects and long term consequences on future community well-being, stability of governance, and the education of children.

**3. Assessment of Impacts on the Local Economy:** The environmental impact assessments shall identify any effects on the County's economy, customs, services, and businesses:

a. Effects on private investment backed expectations.

b. Effects on the economic value of private water rights.

c. Effects on direct, indirect, and cumulative employment.

d. Effects on the percentage of unemployment and the per capita income.

e. Effects on the resource based industries including tourism, crop,

cattle, timber and mining, specifying unit cost effects (e.g., economic value of visitor days, livestock, and crop yield).

f. Effects on local businesses directly and indirectly related to the resource decisions or plans.

g. Effects on housing, real estate values, and residential energy needs.

h. Effects on opportunities for business expansions and markets.

i. Limiting effects and long term consequences to future community well-being, stability, and expansion, specifying impacts on servicing debts (lending).

4. Assessment of Impacts on Private Property (Takings): The environmental impact assessments shall include identification of any effects on property rights and protectable interests (permits, leases, licenses, preference rights, etc.) in the County. The environmental assessment shall evaluate the impacts on property rights. In addition, the Luna County Commission may require the following tests or criterion 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 on customary uses and cultural values related to natural resource use and protection.
- Basic rules of fairness and due process procedures. Civil rights impacts should also be considered. Compensation (money or in-kind) shall be for the impacts that adversely effect one or more of the above by replacing or providing substitute resources or economic values of equal monetary value.

5. Cumulative Effects Analysis: The cumulative effects of planning decisions shall be analyzed to ensure that there are no significant cumulative, long-term effects on the County's economy, customs, services, or businesses.

## APPENDIX C

EVALUATION OF ALTERNATIVES AND MITIGATION PLANNING

1. **Evaluation of Alternatives:** Significant environmental effects of the alternatives must be identified, along with the mitigation measures. According to federal regulations, "Agencies shall rigorously explore and objectively evaluate all reasonable alternatives [and] devote substantial treatment to each alternative in detail".<sup>15</sup>

a. For actions which involve unresolved conflicts, all reasonable alternatives must be considered including "no action". The alternatives should be done to the fullest extent possible to find other ways to meet the identified need or achieve the identified need or achieve the identified purpose while eliminating harmful impacts on the human environment.<sup>16</sup>

b. The focus shall be on alternatives capable of eliminating or reducing the proposed action's significant effects on the human environment. It must identify the superior alternative and explain why alternatives other than the proposed action/decision were rejected.<sup>17</sup>

c. The evaluation of alternatives must be governed by the "rule of reason". An environmental document must describe a reasonable range of alternatives to the proposed action/decision, or to the proposed location of the proposal, which could feasibly attain the basic objectives of the proposed decision/action, and evaluate the comparative merits of the alternatives (see Figure 2).<sup>18</sup>

d. The range of alternatives must include those that offer substantial advantages to the human environment over the proposed action and may be feasibly accomplished in a successful manner

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<sup>15</sup> 40 CFR 1502.14

<sup>16</sup> 40 CFR 1502.1

<sup>17</sup> 40 CFR 1502.14(a)

<sup>18</sup> Shipley Associates, Agency Implementation Procedures, Bountiful, UT.

### Screening Alternatives for Feasibility

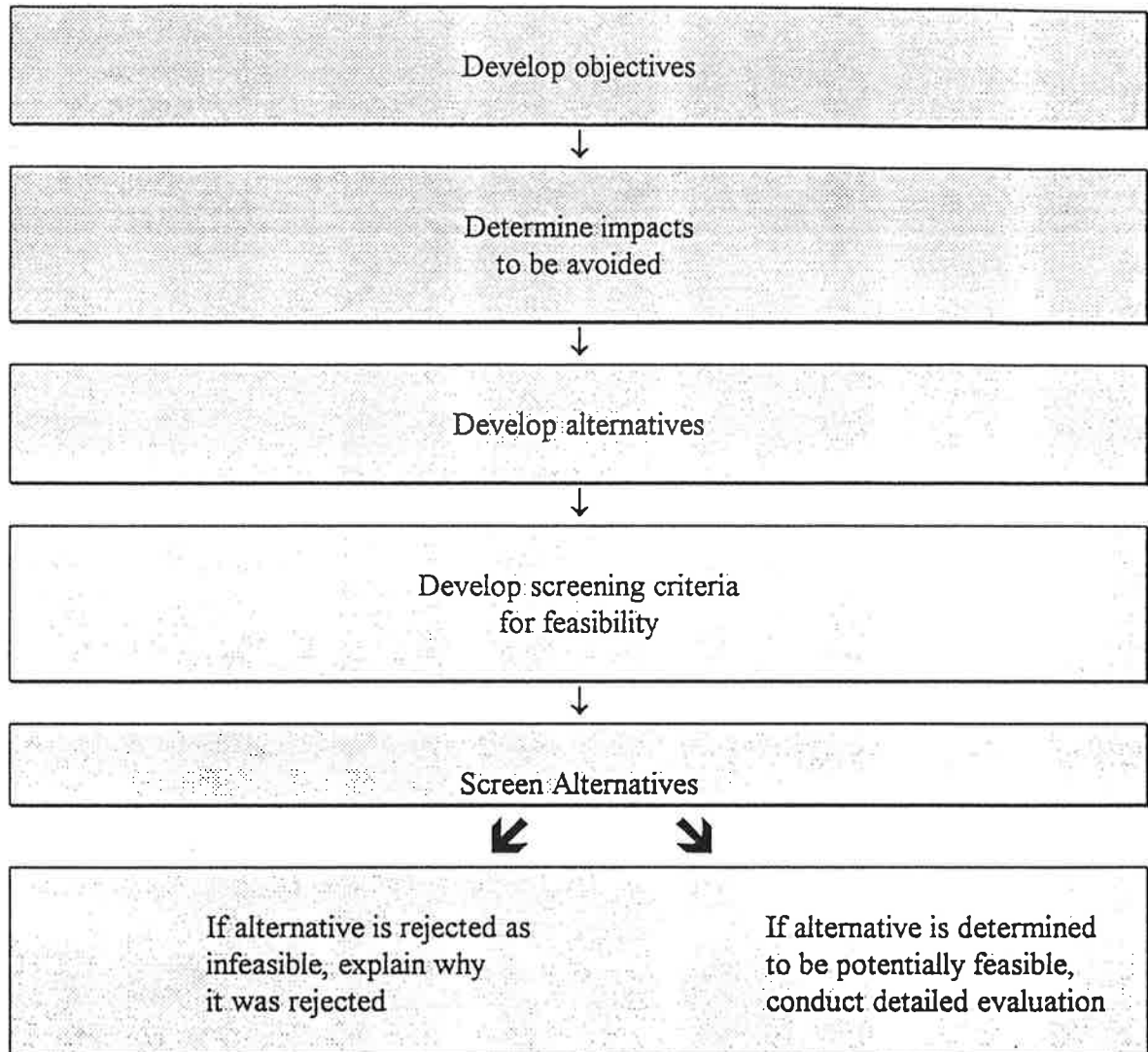


Figure 2

considering economic, social, physical and technical factors. Alternatives may not be rejected merely because they are beyond the agency's authority.

e. The preferred alternative(s) shall be identified and include appropriate mitigation measures not already included in the proposed action or alternatives<sup>19</sup>

**2. Mitigation Planning: Mitigation resolves resource conflicts and reduces the severity of impacts on the Human Environment.** For every significant impact identified in the report, agencies must identify and discuss mitigation measures (see Figures 3, 4, 5 and 6):

a. Whether the effects has been avoided or substantially lessened, and

b. Significant side effects of implementing a mitigation measure,

c. Mitigation measures shall be detailed and provide realistic alternatives<sup>20</sup>,

d. Luna County Commission discourages federal and state agencies from approving projects with significant adverse impacts on the human environment when feasible alternatives and/or can substantially eliminate or lessen the impacts,

e. Provide effective mitigation measures that are feasible (Figure 7 & 8),

f. All mitigation must be legally enforceable, not just tenuous assurances not within the authority of lead agency or other relevant agencies to enforce<sup>21</sup>,

g. The environmental document must specifically explain how the conditions would mitigate the impact and the effectiveness of the

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<sup>19</sup> 40 CFR 1502.14(f), 1502.16(h)

<sup>20</sup> 40 CFR 1502.14(a), (b), (c)

<sup>21</sup> Louisiana v. Lee, 758F. 2d (5th Circ. 1985).

measure, as applied and enforced<sup>22</sup>,

h. Rather than simply listing mitigation, the environmental document must detail and explain the effectiveness of the measures in terms of the resulting impacts<sup>23</sup>,

i. Provide a **Mitigation Monitoring** process which is based on specific objectives and performance standards to ensure implementation of mitigation measures during action implementation. See figures 9 and 10 for mitigation requirements and for the objectives of monitoring, and

j. State and federal agencies should provide feedback to the County Commission about the adequacy of the mitigation and monitoring process (see Figure 11).

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<sup>22</sup> The Steamboaters v. Federal Energy Regulatory Commission, 759 F.2d 1382 (9th Cir. 1985).

<sup>23</sup> Northwest Indian Cemetery Protective Association v. Peterson, 795 F. 2d 288 (9th Cir. 1986).



### Adequacy of Mitigation Measures

Adequate ✓	Inadequate ✗	Potentially Adequate ?
<ul style="list-style-type: none"> <li>● Avoid for</li> <li>● Minimize</li> <li>● Reduce over time</li> <li>● Compensate</li> </ul>	<ul style="list-style-type: none"> <li>● Consult with</li> <li>● Submit for review</li> <li>● Coordinate with</li> <li>● Study further</li> <li>● Encourage</li> <li>● Strive to</li> </ul>	<ul style="list-style-type: none"> <li>● Provide funding</li> <li>● Monitor</li> <li>● Comply with existing regulations or ordinances</li> </ul>

Figure 3

### Treatments of Alternatives in an EIR

◆ Describe project objective	◆ Include alternative locations
◆ Select a reasonable range of alternatives that meet objective	◆ Focus on avoidance or reduction of impacts
◆ Identify preferred alternative impacts of	◆ Identify environmental alternatives
◆ Evaluate the No-Project action alternative	◆ Explain why alternatives have been rejected
◆ Identify environmentally superior alternative	

Figure 4

### Requirements for Mitigation Measure Discussion in EIRs

- ◆ Identify mitigation measures for each significant impact
- ◆ Distinguish measures proposed by project proponents from other measures that could reduce impacts
- ◆ Identify who is responsible for mitigation
- ◆ If several measures are available, discuss each and basis for selecting
- ◆ Discuss significant side effects of mitigation measures
- ◆ Special limits

Figure 5

### What is a Mitigation Measure

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>◆ <b>Avoid</b> the impact altogether by not taking certain action or parts of an action</li> </ul>            | <ul style="list-style-type: none"> <li>◆ <b>Reduce</b> or eliminate the impact over time by preservation and maintenance during the life of the action</li> </ul> |
| <ul style="list-style-type: none"> <li>◆ <b>Minimize</b> impacts by limiting the degree or magnitude of the action and its implementation</li> </ul> | <ul style="list-style-type: none"> <li>◆ <b>Compensate</b> for the impact by replacing or providing substitute resources or environments</li> </ul>               |
| <ul style="list-style-type: none"> <li>◆ <b>Rectify</b> the impact by repairing, rehabilitating, or restoring the affected environment</li> </ul>    |   |

Figure 6

### Drafting Effective Mitigation Measures

- ◆ **WHY:** State the objective of the mitigation measure and why it is recommended
- ◆ **WHAT:** Explain the specifics of the mitigation measure and how it will be designed and implemented
  - Identify measurable performance standards by which the success of the mitigation can be determined
  - Provide for contingent mitigation if monitoring reveals that the existing standards are not satisfied
- ◆ **WHO:** Identify the agency, organization, or individual responsible for implementing the measure
- ◆ **WHERE:** Identify the specific location of the mitigation measure
- ◆ **WHEN:** Develop a schedule for implementation

Figure 7

### Feasibility of Mitigation Measures

- |                         |   |
|-------------------------|---|
| ◆ Legal authority       | ◆ Social and political feasibility      |
| ◆ Technical Feasibility | ◆ Timing mitigation to project buildout |
| ◆ Economic feasibility  |   |

Figure 8

### Mitigation Monitoring

Applies	Requires	Provides	Authorizes
<ul style="list-style-type: none"> <li>When an agency adopts a finding of no significant impact</li> <li>when an agency makes findings after an EIR or EIS</li> </ul>	<ul style="list-style-type: none"> <li>adoption of a reporting or monitoring program</li> </ul> <p><i>for</i></p> <ul style="list-style-type: none"> <li>Changes in the project adopted or made conditions of approval</li> </ul> <p><i>to</i></p> <ul style="list-style-type: none"> <li>mitigate or avoid significant effects</li> </ul>	<ul style="list-style-type: none"> <li>that agencies with jurisdiction (territorial or subject) may be required to prepare monitoring programs</li> </ul> <p><i>if</i></p> <ul style="list-style-type: none"> <li>their recommended mitigation measures are adopted by the Lead Agency</li> </ul>	<ul style="list-style-type: none"> <li>levying fees to pay for</li> </ul>

Figure 9

### Objectives of Environmental Monitoring

◆	To ensure implementation of mitigation measures during project implementation
◆	To provide feedback to agency staff and decision makers about the effectiveness of their actions
◆	To provide learning opportunities for improving mitigation measures on future projects
◆	To identify the need for enforcement action before irreversible environmental damage occurs

Figure 10



### Recommended Features of a Monitoring or Reporting Program

#### JURISDICTION-WIDE COMPONENT

- |  |  |
|--|--|
| ◆ Designate program manager                          | ◆ Establish enforcement procedures and penalties         |
| ◆ Assign interdepartmental responsibilities          | ◆ Develop conflict resolution provisions                 |
| ◆ Develop cooperative agreements with other agencies | ◆ Design reporting forms                                 |
| ◆ Identify role of private applicants                | ◆ Prepare periodic monitoring reports to decision makers |
| ◆ When appropriate establish fee structure           |  |

#### PROJECT-SPECIFIC COMPONENT

- |   |   |
|---|---|
| ◆ Adopt specific mitigation performance standards | ◆ Establish specific reporting requirements |
| ◆ Prepare master mitigation checklist             | • Field visit verification reports          |
| ◆ Identify project-specific monitoring activities | • Applicant compliance report               |
| • Assign responsibility                           |   |
| • Develop Schedule                                |   |

Figure 11

## APPENDIX D

### PUBLIC INVOLVEMENT GUIDELINES

During the preparation of an analysis for a decision document or amendment to a proposed project or agency plan, when deemed appropriate, Luna County and the federal and state agencies shall provide opportunities for the involvement of Luna County citizens, local governments, schools, utility companies, civic and other community groups, and all economic segments with Luna County, through public hearings and other means Luna the County Commission deems appropriate.

Federal (in accordance with NEPA regulations<sup>24</sup>) and state agencies, when deemed appropriate, shall coordinate joint public involvement planning, programs, and processes with the Luna County Commission, pursuant to this section of the Luna County Environmental Planning and Review Ordinance. The public involvement program shall include objectives to:

- 1) Identify the major issues, affected parties (financial interests and/or risks), and opportunities of the proposed action.
- 2) Appraise property rights owners of regulations and decisions that may affect their property rights.
- 3) Provide public opportunities to evaluate alternative plans and to participate in choosing the preferred alternative for the purpose of improving the quality of the human environment as defined in this Ordinance.
- 4) Create an atmosphere in which conflicting demands for resources and uses can be resolved without de-stabilizing community economic, social, and/or cultural fabric.

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<sup>24</sup> 40 CFR 1506.2(b)(3)

## APPENDIX E

### ANALYSIS & DECISION DOCUMENTATION

Three classes of environmental assessment reports may be used: Informal letters, Initial Assessment Report, and Environmental Impact Reports (EIR). Each of the three formats are described below:

#### 1. Informal Letters

Informal letters shall be used to document discussions of possible impacts, and for decisions of proposals categorically excluded from NEPA assessments, and for planning activities establishing or refining management objectives, future desired conditions, or identifying or rejecting future management needs or proposals. The activities appropriate to Informal Letters are usually those preceding formal proposals or projects requiring NEPA assessment.

#### 2. Initial Assessment Reports (IAR)

Initial Assessment Reports (IAR) IARs shall be prepared at the request of the Luna County Commission when there is an indication that there may be a negative effect on the environment (physical, social/cultural, property rights, and economic factors). The IAR is similar to NEPA Environmental Assessment (EA) planning and documentation<sup>25</sup>. There is no standard format required, but the IARs should include the following information:

- Project description
- Environmental setting
- Local citizens values and management objectives
- Production thresholds for the area(s) involved
- Potential environmental impacts
- Mitigation measures
- Decision Implementation and Monitoring

3. Environmental Impact Reports (EIR) Based on IAR findings, the Luna County Commission shall make its determination whether to prepare a more formal and detailed EIR. The EIR is similar to NEPA

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<sup>25</sup> 40 CFR 1501.3, 1508.9 & 10

Environmental Impact Statement (EIS) planning and documentation<sup>26</sup>. According to NEPA requirements, the EIR shall consider all reasonable alternatives to the proposed action with the goal of finding the alternatives with the least adverse environmental impacts in relation to its benefits.

The purpose of an EIR is to identify the significant effects of a project on the environment (natural, social, cultural, property rights, and economic factors), identify alternatives to the project when there is a negative affect, especially on the health, safety, and livelihood (economic well-being) of County citizens, and to indicate the manner in which those significant effects can be mitigated or avoided. Information developed in individual EIRs shall be incorporated into a database which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports. See Figure 12 for required contents of Luna County Environmental Impact Report.

The contents of the EIRs shall be as follows:

- Table of Contents
- A. Summary
- B. Project Description
- C. Environmental Setting
- D. Management Objectives (as described above).
- E. Future Desired Conditions.
- F. Environmental Impacts
  - 1. Assessment of Impacts on the Physical Environment
  - 2. Assessment of Impacts on the Social/Cultural Fabric.
  - 3. Assessment of Impacts on the Economy.
  - 4. Assessment of Impacts on Private Property Rights
  - 5. Cumulative Effects Analysis.
- H. Mitigation Plans
- G. Alternatives
- I. Public Involvement Requirements.
- J. Target Time Frames.
- K. Implementing and Monitoring the Decision

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<sup>26</sup> 40 CFR 1501.4, 1508.10 & 11



### Required Contents of a Final EIR

◆ Draft EIR	◆ Response to Comments
◆ Copies of comments received during public	• Must contain a good-faith, well-reasoned, written answer
◆ List of persons and entities	◆ Mitigation plan

Figure 12