

Ordinance #42

Rights-of-Way

AN ORDINANCE PERTAINING TO THE USE OF COUNTY RIGHTS-OF-WAY

SECTION I: GENERAL POLICY AND GOALS OF ORDINANCE:

Luna County (hereinafter "County") owns, maintains, or is responsible for various rights-of-way, including but not limited to, roadways and easements, within the unincorporated areas of the County. From time to time, utilities and other persons desire to occupy, use, construct or excavate within the County right-of-way.

The Board of County Commissioners has the statutory authority and responsibility to make such orders concerning County property, including rights-of-way, as it may deem appropriate. NMSA 1978, Section 4-38-13. In the absence of specific statutory provision to the contrary, the Board of County Commissioners represents the county and has the care of the county property and management of the interest of the county in all cases where no other provision is made by law. Section 4-38-18 NMSA 1978.

While regulated public utilities are authorized to place their pipes, poles, wires, cables, conduits, towers, piers, stations and other necessary fixtures, appliances and structures, upon or across any of the public roads, streets, alleys, highways and waters in the state, such use of County property is subject to the regulation of the county commissioners. Section 62-1-2 NMSA 1978. Additionally, non-regulated mutual domestic water associations and water and sanitation districts also require access to county right-of-way. The Board of County Commissioners wishes to foster the continued expansion of utility service throughout the unincorporated areas of the County. Where applicable, the County shall be compensated for the reasonable costs involved in the use of the right-of-way, for administrative expenses incurred in the processing of the necessary permits, as well as for the required monitoring of the progress of the work and protection of the public health, safety and welfare. Further, under Section 62-1-3, NMSA 1978, the Board of County Commissioners is authorized to impose reasonable charges for expenses incurred in the granting of such rights-of-way use.

Therefore, pursuant to the provisions of this Ordinance as set forth herein, the Board of County Commissioners will require parties requesting use of County rights-of-way to compensate the County for all of the County's reasonable costs incurred directly and indirectly in permitting the use thereof, including, but not limited to, the cost of mapping, managing, and coordinating the use of the right-of-way by the various parties, along with the administrative and general costs related to processing applications for use of the right-of-way and the enforcement of the terms of this Ordinance.

Further, the Board of County Commissioners will require all users of County rights-of-way to adequately indemnify, hold harmless and defend the County against all possible claims of loss or damage arising out of that use.

All uses of County rights-of-way must be coordinated to insure the maintenance of public health, safety and welfare pursuant to Section 4-37-1 NMSA 1978. It is a policy of the Board of County Commissioners to reduce the possibility of unnecessary duplication and economic waste in the use of County rights-of-way and to grant uses of its rights-of-way consistent with the best interest of the County and its inhabitants. Therefore, consistent with New Mexico law, the

County may deny any application for use of County rights-of-way that the Board of County Commissioners finds would interfere with an existing use of the rights-of-way by a third party. In addition, consistent with New Mexico law, the Board of County Commissioners may deny any application for use of County rights-of-way that the Board finds would or may duplicate the County's own planned or actual use, would negatively affect a County purpose or project, or may be harmful to the health, safety and welfare of the public.

[LEAVE IN OR DELEGATE TO PLANNING DEPARTMENT] The Board of County Commissioners shall by separate resolution establish and appoint a Utility Advisory Planning Council for the purpose of advising and assisting the Board with the creation of a County-wide utility plan for the orderly and coordinated growth and expansion of utilities within the County.

Nothing in this Ordinance shall be construed or interpreted to affect or to impair the jurisdiction of the New Mexico Public Utility Commission or other statutorily-created agency having jurisdiction over public or non-public entities or to affect or to impair a regulated public utility's rights and obligations under New Mexico Public Utility Act, Section 62-3-1 et seq, NMSA 1978, or any other state act.

The Board of County Commissioners adopts this Ordinance and establishes the administrative process pertaining to use of County rights-of-way, and the engineering and design standards applicable to facilities installed within the right-of-way and the fees to be paid therefor.

SECTION II: DEFINITIONS:

Actual and reasonable expenses:

All expenses directly or indirectly incurred by the County related to permitting the use of County rights-of-way by users, including but not limited to, the costs of mapping, managing and coordinating the use of the right-of-way by the users, along with the administrative and general costs related to the processing of application for use of the right-of-way, and the enforcement of the terms and conditions of this Ordinance, and any other costs or expenses reasonably associated with the maintenance of the right-of-way in a manner that protects the health, safety and welfare of the public.

Applicant:

Any user required to obtain a permit pursuant to the terms and conditions of this Ordinance.

County:

Luna County or the Board of Commissioners of Luna County.

Emergency:

Any situation necessitating excavation, use of, or entrance onto, the County right-of-way for the purpose of locating a problem area or to make repairs in a facility when circumstances are such that delay in correcting the problem or making the repair would present a substantial and real threat of injury, would harm the health, safety and welfare of the public, or would likely result in serious property loss or damage.

Excavation:

A hole, trench, ditch or depression in a right-of-way resulting from the removal or moving of the pavement, or dirt or other material, but excluding a substructure opening.

Facility:

Any pipe, pipeline, tube, main, service vent, vault, manhole, meter, regulator, valve, conduit, pole, line, cable, anchor, structure, or object of any kind, type, manner or character, whether listed herein or not, which is or may be lawfully constructed, left, placed or maintained upon, along, above, across, under or within the right-of-way; also referred to as an improvement.

Permit:

Permit issued by the County pursuant to the terms and conditions of this Ordinance which allow the use of County right-of-way by utilities and other persons.

Permittee:

An applicant whose permit request has been approved and who holds a valid permit.

Person; User:

Any individual, estate, trust, utility, receiver, association, subdivision of the state, cooperative, club, public or private corporation, company, firm, partnership, joint venture, syndicate, municipality or any other entity.

Public Place: Right of Way (ROW)

All property owned, or maintained, permitted or acquired by grant or prescription by the County, including but not limited to, streets, highways, alleys, planes, sidewalks, plazas, parks, easements, curbs, bar ditch and drainage ways, which constitute County right-of-way.

Right-of-way Administrator (RWA):

The individual designated by the County Manager to administer this Ordinance to include, but not limited to, the receipt, review, processing, approval or denial of permit applications, approval and denial of administrative variances and maintenance of County right-of-way records.

Right-of-way Use Fee:

Fee paid by users of County rights-of-way pursuant to the terms and conditions of this Ordinance.

Right-of-way Use Agreement:

Agreement entered into between user and County for utility use of County rights-of-way.

Service Hook-up:

Any excavation, not exceeding the width of the affected County right-of-way, necessary to allow a single meter hook-up for a single property owner to tie into an existing utility line for the purpose of securing utility service, but does not include line extensions.

Substructure:

Any facility located below the surface of County right-of-way.

Substructure opening:

An opening into a lawfully permitted substructure, the top of which is required to be flush with the adjoining surface within County right-of-way, and which is constructed so as to permit frequent utilization, without requiring the removal of pavement, dirt, or other material, while maintaining the health, safety and welfare of the public.

Use:

Performance of work within and/or occupation of County right-of-way, including but not limited to, the excavation of materials, boring, maintenance and checking of substructures and substructure openings; and/or the use of the right-of-way to place any facility thereon or therein.

Users:

Person or entity actually utilizing the area of the right-of-way for the installation of facilities or other improvements including utilities whose primary function is the provision of certain services to the public or third parties, which services include but are not limited to, electrical, gas, water, wastewater and telecommunications services.

SECTION III:**RIGHT-OF-WAY USE PERMIT APPLICATIONS:
REQUIREMENTS, FEES, ISSUANCE/DENIAL AND
APPEAL**

- A. Any person or party wishing to obtain a permit from the County pursuant to this Ordinance must submit the following information to the RWA:
1. The name, telephone number, address and place of business of the applicant and his/her engineers and/or contractors;
 2. A detail drawing and written description of the location and dimensions of the proposed use of the County right-of-way, including a plan view and cross-section view of the proposed use, which are sufficient to indicate the placement of any facilities or to locate the work to be performed; (5 complete sets shall be submitted for review).
 3. The method by which the proposed use within the right-of-way will be accomplished, including an estimate of the amount of time required to complete any actual work to be performed within the right-of-way including backfilling and removal of all obstructions, materials and debris, and restoration of the surface. The applicant's authority to use the County ROW shall be limited to the purposes and work plan specifically authorized by the Permit;
 4. The purpose and function of any facility to be located within the ROW;
 5. All road crossings on paved roads shall be performed by boring rather than excavating, except where boring is not reasonably justified as determined

by the County. In situations where the applicant wishes to perform a road crossing by excavation in lieu of boring, the applicant shall provide written justification therefor to the RWA. Some examples of conditions where boring may not be justified are lack of adequate room in the County ROW to operate boring equipment; boring on gravel or dirt roads;

- B. In all cases where the work to be done in the County ROW is to be done by a utility, the utility must be the Applicant.
- C. The applicant shall be required to provide proof of adequate insurance in an amount satisfactory to the County indicating that the applicant has sufficient insurance to protect both the County and the applicant for any and all claims or damages arising out of bodily injury, including death, to any party including the applicant, and his/her employees and agents and the County employees and agents, and from claims for damaged property, which may arise out of, or result from, the applicant's use of County ROW. At a minimum the policy coverage and limits shall be those set forth in Section 41-4-9 NMSA 1978. To simplify this requirement, applicants that operate in the County may file with the RWA a copy of the Utility's master or applicable insurance policy which provides the above-delineated coverage. Such policies must be refilled yearly. The user is obligated to provide the County with notice of cancellation of its policy, if that event should occur.
The applicant must agree to defend, hold harmless, and indemnify the County and its officers, agents and employees, against all claims, losses and damages to persons or property on account of or resulting from the intentional or negligent conduct on the part of the permittee in the permittee's use of County right-of-way, or any work, duties, or obligations performed pursuant to the terms of this Ordinance and the duly issued permit.
- D. No permit shall be issued until written proof of adequate insurance has been provided by the applicant to the RWA. No permit shall be issued until the applicant signs indemnification agreements required by the County.
- E. Upon receipt of the application, and, except as specifically hereinafter set forth, the non-refundable application fee in the amount determined annually by the County Manager, the County will review the request. The RWA will verify the information provided in the application and will process the application pursuant to the terms and conditions of this Ordinance. The RWA will also determine whether the planned use impairs other existing users.
- F. The RWA will also review the work plan to determine whether the use of the right-of-way can be accomplished pursuant to the engineering and construction standards set forth in this Ordinance, and as may be amended and promulgated by the County in the future, and set forth in subsequent Ordinances or Resolutions.

- G. Except for unavoidable delays, within thirty (30) days of receipt of the completed application and non-refundable application fee, RightWA will notify the applicant by regular mail and/or by telephonic transmission of the acceptance or denial of the application. If the application has been approved, the applicant will be notified in writing of the terms and conditions of the permit, including the right-of-way usage fee. The permit will be valid only upon payment of all additional fees. Where the proposed project is expansive or complex, as determined by the RWA, additional processing may be required. In that event, the RWA will notify the applicant and will inform the applicant of the estimated additional time needed.
- H. Except as otherwise specifically provided-for in this Ordinance, the fees for which are hereinafter set forth, usage fees shall be based upon the lineal feet of right-of-way to be used by the applicant. Table A reflects the fees for trenching and all uses of the right-of-way placed below ground level.

REVIEW

TABLE A

WIDTH AND DEPTH	FEE PER LINEAL FOOT
12" by 36" to 24" by 48"	.10 per lineal foot
any greater width and depth	.15 per lineal foot

The charge per lineal foot for placement of facilities in the right-of-way above ground level shall be a minimum fee of \$150.00 for the first 90 lineal feet, and a fee of \$1.50 per lineal foot thereafter.

If, concurrent with the installation of a new utility line, service connections are being made to customers from that new line, there will be no additional fee to be paid for each hookup. The fees paid for the permit and lineal foot usage shall include those said service connections.

- I. No fee shall be required for work within the County right-of-way perform at the request of the County for a County project, unless it is a County utility related project where the County will be providing a utility service to customers who will pay fees and other charges to the County.
- J. Fees for service hook-ups shall be \$50.00 if no pavement cut will be necessary and \$100.00 if a pavement cut will be necessary to accomplish the utility connection. Service hook-ups do not require an additional application permit fee beyond the fees provided-for in this subsection J. However, a permit must be secured.

- K. A maintenance/repair permit must be obtained by any utility or person for any maintenance or repair work to be done on their lines or facilities where excavation will be required into the County right-of-way to perform the maintenance or repair. The fee for said permit shall be \$100.00. Such maintenance/repair excavations may be subject to the provisions, reviews, inspection and testing provisions of this Ordinance. If the maintenance/repair excavation is to exceed 250 feet, then full permit fee schedule per lineal foot provided for Section III . H. above shall apply in lieu of the \$100.00. A maintenance/repair permit shall not require any fee beyond that set forth in this subsection K. However, a permit must be secured. System rehabilitation is not considered maintenance/repair.
- L. Where a utility or other person wishes to replace or exchange a water, sewer, electric or other utility meter, a permit from the County will not be required if the following applies:
1. The meter is above-ground, and there will be no impact on the County right-of-way.
 2. The meter is underground and encapsulated in a manhole, but there will be no further impact on the County right-of-way.
 3. The meter is underground, but will involve minimal ground disturbance, as determined by the Right-of-Way Administrator.
 4. If the meter is underground and will involve substantial trenching or ground disturbance, as determined by the RWA, a maintenance/repair permit as provided for in subsection K above is required.

If a permit is not required, it is still incumbent upon the utility to meet all other applicable standards and to inform the RWA of such work within 24 hours prior to work commencement.

- M. A user involved in a project which is being funded by state or federal agencies may apply for a permit without the advance payment of fees upon a showing that the permit is a condition of approval and/or receipt of the public funding. In such a case, payment of the fees due the County will be deferred until the public funds are available for the project.
- N. An applicant may appeal the denial of a permit to the Board of County Commissioners pursuant to the procedures set forth in Section XV: Appeals, of this Ordinance.

SECTION IV:

CONDITIONS OF USE OF COUNTY RIGHT OF WAY

- A. Except as otherwise provided in this ordinance, no user may commence any use of County ROW until a permit for such use is first obtained from the County. Ordinarily, permits shall be valid for 90 days. However, if a longer period of time is necessary, the Permittee may submit a written request for additional time justifying the additional requested time.
- B. A permit shall be required for any use of County ROW, including but not limited to excavation within the right-of-way, boring of any substructure opening, aerial use of County right-of-way, or placement of any facility within County right-of-way.
- C. It shall be unlawful for any person or party to use County right-of-way without first securing a permit from the County and complying fully with all the provisions of this Ordinance, and any related regulations that may be adopted by the County.
- D. All construction and road restoration shall be in accordance with the Luna County Standard Specifications for Road Construction in effect at the time of application. The County may promulgate and adopt such further additional rules and regulations as may be required to fully implement this Ordinance. Copies of such rules and regulations shall be available to applicants at the County Planner's office.
- E. The user shall be required to correct substandard work or work performed with defective materials and/or workmanship, as directed by the RWA. The user must restore the street sub-base, base and surface to its original condition upon completion of the work within the ROW. Upon failure of the user to begin repairs within 24 hours after written notice by the County and to complete the required work within a reasonable time, as determined by the County, the County shall cause such work to be done and the cost thereof charged to the user. In addition, the County may declare the user to be in default of the terms of the Permit, and suspend the permit.
- F. The user must take appropriate measures to maintain safe and adequate passage of vehicle and pedestrian traffic as required by the County while performing any work within the ROW.
- G. In the event the user causes damage to existing facilities located within the ROW, the user must notify the RWA the owner of the damaged facility immediately, and take immediate steps to arrange for the repair of the damage. The user is responsible for the cost of repairs. Further, the County may declare the user to be in default of the terms of the permit and may suspend the permit.
- H. The user is responsible for the proper installation of any diversion or ponding

devices necessary for protection of property and structures, and shall be responsible for repair or payment of damages caused to property or structures by the user's failure to properly provide such devices.

- I. Prior to making any excavation or paving cut, the user shall adequately barricade the area to be excavated and shall adequately provide light devices at night in compliance with the Manual on Uniform Traffic Control Devices (MUTCD). Barricading and lighting shall be maintained by the user until all work has been finished, including the replacement of paving.
- J. After completing excavation within the right-of-way, the user shall install all facilities at least 36 inches below the road surface, or deeper, if required, to meet requirements of other regulatory agencies. All parallel and lateral depths shall be a minimum of 36 inches beneath ground surface.
- K. Ditches paralleling county roads that exceed three hundred fifty feet (350) in length shall not be left open for more than seventy-two (72) hours, unless for good cause shown the RWA permits a longer period of time.
- L. All materials excavated must be piled and maintained so as not to endanger the public health, safety and welfare. In order to expedite flow of traffic and to minimize air pollution from dirt and dust, the user shall use appropriate methods including watering the excavation material. The user shall remove all rubbish, excess earth, rock and other debris resulting from excavation work immediately upon completion of backfilling as required by this Ordinance. If the user fails to do the required work, the County may cause the work to be performed and to charge the cost of the work to the user.
- M. Unless specifically exempted in writing, any person who trenches or excavates within the right-of-way for any purpose is required to backfill the trench or excavation as follows:
 - 1. All trenches and ditches will be backfilled and compacted.
 - 2. In all trenches and excavations, the material used in backfilling must consist of the original material or other similar material, in a finely-divided form free from large lumps, large stones, rocks, pieces of old concrete, or asphalt pavement or large or wet gummy masses, and must be placed and compacted to the top of the trench or excavation. Compaction shall be in conformance with specifications of AASHTO, T-180 (American Association of State Highway and Transportation Officials) to 95% maximum density.
 - 3. Backfill and compaction inspections shall be made by the user. The County

reserves the right to perform additional inspections and/or testing at its own cost. In the event the compacted backfill fails to meet the density requirements of this Ordinance, or otherwise fails to comply as evidenced by settlement of the trench or excavation, the County will notify the user in writing and the user will correct the defect within 72 hours. The user is responsible for the cost of all tests. If user fails to correct the situation, the County may order the work performed to meet the required density specified herein. The County may also order the replacement of all pavement destroyed or damaged as a result of the backfill failure settlement. The costs incurred by the County shall be paid by the user.

- A. Testing shall be conducted by the user on every lift up to and per 250 lineal feet thereafter of material disturbed. Lifts shall be 12 inches to 18 inches in depth and/or of sufficient depth to obtain required density.
- B. Prior to any testing of compacted backfill, the user shall inform the County within 24 hours of the scheduled testing.
- C. All testing certificates shall contain the following minimum information: date, location, percentage compaction, permit number and other information applicable to the task. Testing certificates shall be furnished to the County within five (5) working days of completion of the testing.
- D. Testing shall be accomplished by a certified independent testing laboratory.

N. The Standard Utility Requirements are as follows:

- 1. Water lines shall be installed within the right-of-way parallel to the edge of pavement/roadway on the east or north side of the right-of-way outside the paved/roadway area at a minimum of 3 feet beyond the edge of the pavement/roadway.
- 2. Gas lines shall be installed within the right-of-way parallel to the edge of pavement/roadway on the west or south side of the right-of-way outside the paved/roadway area at a minimum of 3 feet beyond the edge of pavement/roadway.
- 3. Sewer lines shall be located within easements on the west or south side of the right-of-way on newly platted subdivisions or along the centerline of the right-of-way on existing roadways if an easement does not exist.

4. Water lines and gas lines shall in all cases be separated from sewer lines by a minimum of 10 feet and all other underground lines (including other existing water and gas lines by a minimum of 5 feet.)
5. Each sewer, water and gas line shall in all cases be placed in its own separate trench.
6. The utility separations as specified above shall also cover back lot easements or other easements as required. Easements shall be wide enough to allow for utility separations as specified above with all utilities being at least 5 feet inside the edge of the easement.
7. Where used, fire hydrants shall be located no closer than 18 inches from the right-of-way boundary within the right-of-way and as far as possible from the edge of pavement/roadway.
8. Where used, fire hydrants located on roadways where no curb and gutter exist shall be protected by 4" metal pipe bollards placed to allow full function of the hydrant.
9. All valves and manholes shall have a concrete collar placed at finish grade if located within a paved surface and no less than 12" below the surface if located in an area where no paving exists.
10. Water, sewer and gas mains shall be marked with tracing/warning tape installed above the pipe, 15 inches below the top of the trench in case of gas and water, and 12 inches below the top of the trench in the case of sewer.
11. The tracing tape to be buried over all lines throughout their entire lengths shall have the following specifications:
 - a. Tape shall be 3 inches wide and shall consist of one layer of metalized foil laminated between two layers of inert plastic film.
 - b. Laminated bonding that can be separated by hand is not acceptable.
 - c. Tape shall be a minimum of 5 mils thick with a minimum tensile strength of 84 lbs. per 3-inch wide strip.
 - d. Tape shall be imprinted with a continuous warning message repeated a minimum of every 30 inches as follows:
Yellow colored tape: Caution Gas Line Buried Below
Blue colored tape: Caution Water Line Buried Below
Green colored tape: Caution Sewer Line Buried Below
 - e. Tape shall be inductively locatable and conductively traceable using

standard pipe and cable locating device for a minimum of 8 years after direct burial.

- f. Test results showing a minimum of 8 years life and full compliance of these specifications and a sample of the tape may be required to be furnished to the RWA.
- 12. Replacement of pavement, when necessary, shall follow the backfill by not more than three days or not more than 1000 lineal feet.
 - 13. Gas lines shall at all times be separated from any other parallel underground line by a minimum of 10 feet and shall in all cases be placed in their own separate trench. When crossing other underground lines, there shall be a minimum clearance of 18 inches between the gas line and the line being crossed. The minimum specified gas line depth (cover) shall in all cases be maintained.
 - 14. Thrust, anchorage, support and encasement:
 - a. At points where the vertical or horizontal hydraulic thrust exceeds the resisting capacity of a single pipe joint and at cast-iron fitting and valves, place concrete anchor blocks, thrust blocks, concrete supports, or concrete encasement in a manner that will counteract the thrust or transfer the thrust from the pipe or fitting to ground which will not yield.
 - b. Place concrete in a manner that will leave rubber ring joints free to permit minor deflection, except where extended encasement is called for. Before placing concrete encasement, wrap PVC pipe with a layer of building felt or with polyethylene wrap to prevent bond and the possible transmission of cracks from the encasement to the pipe.
 - c. When the ground is soft and cannot be compacted to resist the trust from the pipe or fitting to unyielding ground, an increase in the amount of concrete, or the bearing area, shall be made. Do not weaken the supporting soil by permitting water in the trench.
 - d. Use concrete of minimum of 3,000 psi compressive strength design for anchor and thrust blocks and encasement, and where reinforcement is shown, use deformed billet steel, conforming to ASTM, A 615, Grade 40.

15. General

The physical components of all proposed installations shall conform to the regulations of the various regulatory bodies and/or industry codes. All vertical and lateral clearances shall conform to the National Electrical Safety Code and other pertinent codes.

The protection of the public and the handling of traffic during the construction of the facility are the responsibility of the permit applicant. At least one (1) lane must be kept open to traffic at all times. Barricades, flagmen, signs and flares shall be provided as necessary.

- e. Aerial Facilities, Parallel. The proposed installation of aerial facilities parallel to a County roadway shall be located one (1) foot within right-of-way line, wherever practical. Minor variations will be processed on an individual basis. In no case shall parallel facilities be permitted within access control lines at any controlled access location.
- f. Aerial Facilities, Crossing. The proposed installation of aerial utility facilities crossing a County roadway should cross the roadway at an angle of 90 degrees, wherever practical. Poles, anchors and other appurtenances shall be located at, near or outside upon the foreslopes, shoulders or roadway surface, and all vertical clearances shall conform to the relevant codes. Minor variations will be processed on an individual basis. In no case shall anchors, poles or other surface components or aerial crossings be permitted within access control lines at any controlled access location.
- g. Buried Facilities, Parallel. The proposed installation of buried utility facilities parallel to a County roadway should be located two (2) feet within the right-of-way line, wherever practical. Minor variations will be processed on an individual basis. In no case shall parallel facilities be permitted within access control lines at any controlled access location. All buried facilities shall be installed at a depth of thirty-six (36) inches or more from surface to top of the facility unless otherwise requested by the County. All trenches and ditches will be backfilled and compacted by the permit applicant. All excavations outside the foreslopes shall be compacted to a density equal to the surrounding undisturbed soil. Any excavation within the toe of the foreslope shall be compacted to ninety-five percent (95%) of maximum dry density, as determined by the Standard Compaction Test, AASHTO Method T-99 or equivalent. Parallel ditches in excess of 350 feet in length shall not remain open over twenty-four (24) hours. Wherever possible, any excavation on or

near traveled way should not remain open overnight.

- h. Buried Facilities, Crossing. The proposed installation of buried facilities crossing a County roadway should cross the roadway at an angle of 90 degrees, wherever practical. Surface components of a proposed buried crossing shall be within twenty-one (21) feet of the right-of-way line. All buried facility crossings shall be installed at a depth of thirty-six (36) inches or more from the low point of the roadway to the top of the facility. Minor variations will be processed on an individual basis. In no case shall surface components of buried crossings be permitted within the access control lines at any controlled access locations.

Wherever possible, installation of buried facilities crossing a County roadway shall be performed by boring or jacking under the roadway. Installation by open cut on the roadway will be permitted only where boring or jacking is not feasible. The permit applicant shall be responsible for surface restoration on open cut installations in a manner satisfactory to the Road Superintendent or his designate.

All proposed buried carrier pipes crossing a County roadway shall be constructed of steel, cast iron or reinforced concrete pipe and/or shall be encased in metal pipe. Each question of encasement shall be considered on an individual basis. For all controlled access locations, the encasement shall extend completely across the access control lines. For other locations, the encasement shall extend from toe of slope to toe of slope.

The permit applicant shall be responsible for the backfill and compaction of all excavations, and shall be responsible for the safety of the traveling public. All excavations outside the roadway foreslopes shall be compacted to a density equal to the surrounding undisturbed soil. All excavations within the toe of the foreslope shall be compacted to ninety-five percent (95%) of maximum dry density, as determined by a Standard Compaction Test, AASHTO Method T-99 or equivalent.

Where the roadway surface is disturbed or damaged in any way and the party making the installation is not equipped to repair or maintain this damage, the County Road Department shall repair the damage at a unit cost of \$5.00 per square yard. The minimum charge for these repairs shall be \$20.00 for each location. This billing will be made by the Department, based on measurements derived by Road Department personnel. If the user elects to repair such roadway surface damage, it will be performed to the express approval of the County Road Department Superintendent.

O. TRAFFIC ACCESS AND SAFETY measures shall include:

1. The user shall conduct and schedule its work at all times so that a minimum of obstruction to traffic and other inconveniences to the public occurs. The testing, purging, transfer of service, chlorination of lines, backfill of each section of line or other related actions shall follow the installation within reasonable time.
2. Where any pipeline routes cross secondary streets, the excavation shall be backfilled to provide a roadway prior to the end of the work day. Construction by open excavation across major roadways and roads shall be carried and completed to approximately the roadway centerline and the trench backfilled prior to excavation across the remaining roadway section so that traffic will not be interrupted.
3. The user shall provide and set barricades and flashing lights along all open excavation and at points where the construction operation creates hazards to the public. Spacing of barricades and lights shall be adequate to insure the public a warning of the hazard, and shall be in compliance with the directions of the Manual on Uniform Traffic Control Devices and all other county, state and federal regulations. Flares and/or lights shall be kept burning from sunset to sunup. Barricades shall be painted and fitted with reflective paint and reflectors, respectively, to increase visibility, in compliance with requirements of the MUTCD.
4. Wire utilities shall be placed no farther than 5 feet from the edge of the right-of-way on the east and/or north side of the center line of the right-of-way.
5. It shall be the responsibility of the applicant to properly conduct a construction survey and to determine the limits of the Luna County ROW prior to any excavation.

- P. The County may make any and all inspections and random tests as it deems necessary to enforce the terms and conditions of this Ordinance. Acceptance or approval of ditching, excavation, backfilling and restoration of surface by the County does not prevent the County from asserting claims against the user for incomplete or defective workmanship or materials. The presence or absence of a representative of the County during the performance of the work does not relieve the user of its responsibilities hereunder.

An applicant or user, as the case may be, shall have the right to appeal an adverse decision of the RWA on any matter. All such appeals shall be made in writing to the County Manager or his/her designee no later than ten (10) days after receipt of written notice to the applicant, user or other person of an adverse decision and must be accompanied by a non-refundable appeal fee of \$50.00. Appeals shall be heard at a public meeting of the Board of County commissioners within forty-five (45) days of filing of a written appeal and shall be informal in nature. A final decision of the Board of County Commissioners shall be made in writing within ten (10) days of the hearing.

SECTION XV: EFFECTIVE DATE OF ORDINANCE AND GEOGRAPHICAL SCOPE

This Ordinance shall be effective thirty (30) days after its adoption and enactment by the Board of County Commissioners and the filing of the signed original Ordinance with the County Clerk. It shall be effective within the geographical limits of Luna County outside the boundaries of all incorporated municipalities.

SECTION XVI: SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provision of the Ordinance are severable.

SECTION XVII: AGRICULTURAL AND INDIVIDUAL USE EXEMPTION

The payment of fees for agricultural uses of County right-of-way shall be waived. However, these agricultural uses of County right-of-way shall comply with all the terms and provisions of this Ordinance, including but not limited to compliance with permit application process and technical standards.

Uses of County right-of-way by individuals for such purposes as drive-ways, curb cuts, sidewalks, and other similar non-commercial improvements, are exempt from all of the requirements of this Ordinance. However, such uses are not exempted from all other relevant County ordinances and resolutions.

SECTION XVIII: GRANDFATHER CLAUSE

The provision of this Ordinance shall not apply to the present use of County right-of-way by a utility or other person where such use was lawfully in place prior to the effective date of this

shall be paid by the user violating this Ordinance.

SECTION VIII: EMERGENCY USE OF RIGHT-OF-WAY

In the event of any emergency which threatens the health, safety or welfare of the public, use of the County ROW may be commenced without first obtaining the permit, provided that the user making the emergency use files an application for a permit, as required by this Ordinance, the date of commencement of the emergency use.

SECTION IX: VARIANCES

A. Administrative

The County RWA, upon written request, shall have the authority to grant administrative variances from the technical standards provided for in this Ordinance upon a demonstrated showing that a strict application of the established technical standards are impractical or not feasible because of:

1. Insufficient room within the County right-of-way to meet standards;
or
2. Adherence to the standards would be incompatible with the nature or placement of facilities presently existing in the County right-of-way to be used; or
3. Adherence to standards is not reasonably-justified based on other factors to include, but not limited to, extent of proposed project, physical conditions of the County ROW or physical hardship; and that the variation in standards proposed by the user will not result in an inferior work project.

B. Appeals from Variance Denials – pursuant to Section XV: Appeals, of this Ordinance.

C. There will be no waiver of the required fees.

SECTION X: UNAUTHORIZED USE; FEES

Except as provided for in Section VII of this Ordinance, if a user commences use of a County ROW or work within the right-of-way for which a permit would be required, the user shall be obligated to pay the treble the amount of application and lineal fee(s) assessed under this Ordinance. The payment of treble fees shall not relieve any such user from complying with all of

the requirements of this Ordinance, including the filing of an application for use of the ROW and County review for approval or denial.

In the alternative, the County, in its sole discretion, may require the unauthorized user to remove the facilities unlawfully placed in the right-of-way.

SECTION XI: CONFLICT PROVISION

In the event the terms and/or the conditions of this Ordinance conflict with those found in any other County or local Ordinance, or state or federal statute or regulation, the more stringent terms and/or conditions shall apply.

SECTION XII: SUSPENSION OF PERMIT

The County reserves the right to suspend a permit for non-compliance by the user with the technical standards of this Ordinance or the terms of the permit. Immediate suspension of the permit may occur in circumstances where the County determines that a dangerous condition has been created by the user's non-compliance with the terms of this Ordinance or the permit, which condition would threaten the health, safety or welfare of the public.

In situations where the user's non-compliance with the terms of this Ordinance or the permit does not create an immediate threat to the health, safety or welfare of the public, the County will notify the user in writing of the non-compliance, and will allow the user five (5) days to comply. In the event the user fails to comply and fails to cease work, the County may seek injunctive relief to prevent the continued unauthorized use of its right-of-way.

A permit once suspended may be reinstated by the County upon showing of compliance by the user, along with payment of a reinstatement fee in the amount of \$200.00.

User may appeal suspensions of permits to the Board of County Commissioners which appeal will be considered at a public hearing of the Board pursuant to the procedures set forth in Section XV of this Ordinance.

SECTION XIII: TIME EXTENSIONS FOR PERMIT

Upon written application to the RWA, and for good cause shown, or upon the Administrator's own initiative, the user may be granted an extension of time in writing for which the permit will be valid in order to allow the user more time to complete the permitted project.

SECTION XIV: APPEALS

- Q. User shall have available the original or a photocopy of the permit on site at all times during construction.
- R. User is required to notify the RWA to advise of the commencement date of construction at least twenty-four (24) hours prior to commencement. In addition, user is required to notify the Administrator within twenty-four (24) hours of completion of construction to arrange for a final County inspection. Within thirty (30) days of completion of construction, user shall furnish the County a complete set of vellum as-built drawings, with the permit number on the drawings.

SECTION V: RELOCATION OF FACILITIES

In the event changes are made in the County ROW that necessitate relocation of any existing facility, the affected user upon receipt of written notice from the County shall contact the RWA to coordinate relocation of its facilities. Relocation of the facilities shall be completed by the user within a reasonable time, usually 60 days. The expense of the relocation shall be borne by the requesting party, unless the relocation is necessary as the result of a County use of the ROW area; in that case, the user shall pay all of the relocation costs.

SECTION VI: ALTERNATIVE TO PERMIT PROCESS: RIGHT OF WAY USE AGREEMENT

As an alternative to complying with all of the permit procedures set forth herein, a user may enter into an agreement with the Board of County Commissioners for the purpose of coordinating the users use of County right-of-way in various locations. This Agreement would eliminate the requirement for payment of ROW fees for each distinct and separate pipe, or location, of use of County right-of-way. However, the user shall comply with all other requirements for use of County right-of-way set forth herein, including making application for a permit.

Except where there is a need for specificity based on the type of facility involved, the terms and conditions of the ROW Agreement, including fees therefor, and standards will be common for all. The terms of a Right-of-Way Agreement shall not exceed twenty-five years.

SECTION VII: VIOLATION OF ORDINANCE

Pursuant to Section 4-37-3 NMSA, a violation of this Ordinance is punishable by a fine of not more than \$300.00 or imprisonment for not more than 90 days or both, per violation. In addition, the County may pursue other legal and equitable remedies allowed by law, including injunctive relief, in cases of unauthorized use of County right-of-way by any user. In the alternative, where applicable, the County may resort to its enforcement authority under Section X or XIII of this Ordinance. All costs of litigation incurred by the County to enforce this Ordinance

Ordinance. That prior use will be governed by the terms and conditions of any prior right-of-way or franchise agreement executed by the parties. However, any expansion or modification of that prior use shall be governed by the terms and conditions of this Ordinance.

SECTION XIX: NOTICES

All notices required to be delivered to the County pursuant to this Ordinance shall be sent, certified mail, to the following:

County Manager
Luna County
P.O. Drawer 551
Deming, New Mexico 88031

County Right-of-Way Administrator
Luna County Road Department
P.O. Drawer 551
Deming, New Mexico 88031

SECTION XX: AMENDMENT CLAUSE

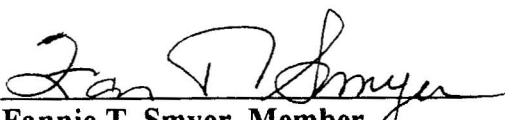
This Ordinance may be amended, as needed.

Done in Deming, New Mexico this 29th day of June, 2000.

Luna County Board of Commissioners:


Dennis Armijo, Chairman

ATTEST:


Fannie T. Smyer, Member


Natalie Pacheco, County Clerk


Marilyn S. Offut, Member

LUNA COUNTY ROAD DEPARTMENT

Instructions for ROW Permits

PROCEDURE

1. Any installation of facilities on County ROW or revision of existing facilities thereon, will require prior approval of a utility permit. No construction will be performed on County rights-of-way before the utility has received an executed permit from the department.
2. All utility permit applications shall consist of two (2) executed copies of the permit form, signed as an individual owner or by authorized officers of companies or municipalities.
3. All utility permit applications shall be submitted to the Luna County Road Superintendent in charge of the area of the proposed installation:

Luna County Road Department
Martin Miller, Road Superintendent
P. O. Drawer 551
Deming, NM 88031

4. Each copy of any permit application shall be accompanied by a sketch, preferably 8.5" x 11" in size, showing complete proposed installation details. This sketch shall show highway number, highway stationing, all right-of-way and access control lines any other pertinent data required to indicate exact physical location of the proposed installation. For proposed aerial installations, the sketch shall show complete dimensions of the proposed facility including vertical clearances above roadways, all poles, anchors and other appurtenances shall be referenced to the right-of-way or the project centerline. For proposed subsurface installations, the sketch shall include a profile clearly indicating depth of cover, method and length of encasement, all physical dimensions.
5. The Applicant shall notify the Road Superintendent, in writing, upon completion of the installation. This notification and all other correspondence shall state the permit number assigned by the County. All installations are subject to inspection by designated County personnel.

POLICY

1. General

The physical components of all proposed installations shall conform to the regulations of the various regulatory bodies and/or industry codes. All vertical and lateral clearances shall conform to the National Electrical Safety Code and other pertinent codes.

The protection of the public and the handling of traffic during the construction of the

facility are the responsibility of the permit applicant. At least one (1) lane must be kept open to traffic at all times. Barricades, flagmen, signs and flares shall be provided as necessary.

2. Aerial Facilities, Parallel

The proposed installation of aerial facilities parallel to a County roadway shall be located one (1) foot within right-of-way line, wherever practical. Minor variations will be processed on an individual basis. In no case shall parallel facilities be permitted within access control lines at any controlled access location.

3. Aerial Facilities, Crossing

The proposed installation of aerial utility facilities crossing a County roadway should cross the roadway at an angle of 90 degrees, wherever practical. Poles, anchors and other appurtenances shall be located at, near or outside upon the foreslopes, shoulders or roadway surface, and all vertical clearances shall conform to the relevant codes. Minor variations will be processed on an individual basis. In no case shall anchors, poles or other surface components or aerial crossings be permitted within access control lines at any controlled access location.

4. Buried Facilities, Parallel

The proposed installation of buried utility facilities parallel to a County roadway should be located two (2) feet within the right-of-way line, wherever practical. Minor variations will be processed on an individual basis. In no case shall parallel facilities be permitted within access control lines at any controlled access location. All buried facilities shall be installed at a depth of thirty-six (36) inches or more from surface to top of the facility unless otherwise requested by the County. All trenches and ditches will be backfilled and compacted by the permit applicant. All excavations outside the foreslopes shall be compacted to a density equal to the surrounding undisturbed soil. Any excavation within the toe of the foreslope shall be compacted to ninety-five percent (95%) of maximum dry density, as determined by the Standard Compaction Test, AASHTO Method T-99 or equivalent. Parallel ditches in excess of 350 feet in length shall not remain open over twenty-four (24) hours. Wherever possible, any excavation on or near traveled way should not remain open overnight.

5. Buried Facilities, Crossing

The proposed installation of buried facilities crossing a County roadway should cross the roadway at an angle of 90 degrees, wherever practical. Surface components of a proposed buried crossing shall be within twenty-one (21) feet of the right-of-way line. All buried facility crossings shall be installed at a depth of thirty-six (36) inches or more from the low point of the roadway to the top of the facility. Minor variations will be processed on an individual basis. In no case shall surface components of buried crossings be

permitted within the access control lines at any controlled access locations.

Wherever possible, installation of buried facilities crossing a County roadway shall be performed by boring or jacking under the roadway. Installation by open cut on the roadway will be permitted only where boring or jacking is not feasible. The permit applicant shall be responsible for surface restoration on open cut installations in a manner satisfactory to the Road Superintendent or his designate.

All proposed buried carrier pipes crossing a County roadway shall be constructed of steel, cast iron or reinforced concrete pipe and/or shall be encased in metal pipe. Each question of encasement shall be considered on an individual basis. For all controlled access locations, the encasement shall extend completely across the access control lines. For other locations, the encasement shall extend from toe of slope to toe of slope.

The permit applicant shall be responsible for the backfill and compaction of all excavations, and shall be responsible for the safety of the traveling public. All excavations outside the roadway foreslopes shall be compacted to a density equal to the surrounding undisturbed soil. All excavations within the toe of the foreslope shall be compacted to ninety-five percent (95%) of maximum dry density, as determined by a Standard Compaction Test, AASHTO Method T-99 or equivalent.

Where the roadway surface is disturbed or damaged in any way and the party making the installation is not equipped to repair or maintain this damage, the County Road Department shall repair the damage at a unit cost of \$5.00 per square yard. The minimum charge for these repairs shall be \$20.00 for each location. This billing will be made by the Department, based on measurements derived by Road Department personnel. If the user elects to repair such roadway surface damage, it will be performed to the express approval of the County Road Department Superintendent.

R/W # _____
JOB # _____

APPLICATION FOR PERMIT TO THE USE OF COUNTY RIGHT-OF-WAY
BY UTILITIES AND OTHER PERSONS

TO: Luna County Road Department
P. O. Drawer 551
Deming, NM 88031

Permit No. _____

_____ New Installation
_____ Renewal Permit
_____ Relocation
_____ Remain in Place

Approximate state date: _____

1. The undersigned _____
Address: _____
herein makes application to use highway rights-of-way to install:
Size and type of facility: _____
in the following location: N.M. Project No. _____
S.R. No. _____, Road Station _____ to Road Station _____
_____ County, Section _____, Twsp _____ Range _____
2. For the purpose of this application "within" shall be construed as meaning "on, over, under, across or along."
 - a. "Engineer" shall be construed as meaning the Road Superintendent of Luna County Road Department or his representative.
 - b. "Application" shall be construed as meaning, the individual, firm, corporation, association, governmental, subdivision, or other organization making application, or the successors of any of the above.
 - c. "Facility" shall be construed as meaning, but not limited to publicly, privately, cooperatively, municipally or governmentally owned facility for any pipe, pipeline, tube, main, service vent, vault, manhole, meter, regulator, valve, conduit, pole, line, cable, anchor, structure, or object of any kind, type, manner or character, whether listed herein or not, which is or may be lawfully constructed, left, placed or maintained upon, along, above, across, under or within the right-of-way; also referred to as an improvement.
 - d. If application is for a parallel installation, justification as to why a private right-of-way may not be utilized must be furnished.
3. Applicant proposes to relocate, install to leave facility _____ feet within the

_____ right-of-way line. The proposed installation shall be:
Crossing _____ or Parallel _____
Subsurface _____ or Overhead _____
Boring _____, Pushing _____, Trenching _____, or Pavement Cut _____

- a. If applicant requests installation by pavement cut, complete justification therefore shall be submitted by attachment.
 - b. Where application for pavement cut is justified, the application may be held in abeyance pending receipt of cash bond in an amount to be fixed by the Engineer.
4. Upon receipt of the application, the non-refundable application fee in the amount of \$_____, the County will review the request. The application will be reviewed to determine if it is consistent with the terms and conditions and will not impact upon or impair other permitted uses or planned projects and is not detrimental to the health, safety and welfare to the public.
 5. There is attached hereto a to scale drawing showing the location of existing and/or proposed installation referenced to roadway and right-of-way, right-of-way lines, any access control lines, distance of proposed installation above or below grade, highway stationing, identification of materials to be used and any other pertinent data. If application is for parallel installation, nature of adjacent land use shall be shown. Proposed installation on or in bridges or other structures or for the installation of any structures, will require detailed structural drawings.
 6. Applicant desires this permit to be in affect for 25 years. Permit will not be issued for a period of longer than 25 years, must be renewed upon expiration and the burden of timely renewal is on the Applicant. The Applicant shall formally notify the Engineer of actual commencement and completion of construction of the installation. The Applicant shall also formally notify the Engineer of removal or abandonment of the facility, or relinquishment of the permit.
 7. The signing of the application by the Engineer and returning it to the Applicant shall validate this application as a permit. The granting of this permit shall not be construed as granting any easement or property right.
 8. Servicing of facilities will not be permitted within the access control lines on any controlled access project. Should an emergency occur, the Applicant shall notify the Engineer and shall provide such flagmen, flashers, warning or other safety devices as required by the Engineer. All routine maintenance shall be performed from outside any access control lines.
 9. The relocation or installation of facilities within public right-of-way shall be in strict conformance with all provisions of this application and related drawings; and no departure therefrom may be made without the written consent of the Engineer and is authorized by

the ordinance. All facilities shall be so placed that they will not interfere with nor endanger any roadway features nor other existing facilities. All construction of facilities shall be subject to the inspection and approval of the Engineer. All such work shall be performed so that danger, inconvenience and delay to the traveling public will be held to a minimum. Traffic control during the installation is the responsibility of the Applicant and must be approved by the Engineer.

10. The Applicant shall restore the public right-of-way, and all bridges or other structures thereon or adjacent thereto which have been altered or affected by facility installation performed hereunder, in accordance with sound construction practices and County Ordinance No. _____, and shall cause the work to be done in a workmanlike manner. If any damage is caused to the highway right-of-way or to any bridge, structure or improvement thereon or adjacent thereto by reason of the installation, maintenance, alteration or removal of such facilities or other appurtenances, the Applicant will reimburse the County the full amount thereof promptly upon demand by the County. All such facilities located within the right-of-way shall at all times, be kept in such repair so as not to damage the highway, inconvenience or endanger the traveling public and shall be kept free from advertisement, posters and the like.
11. The Applicant will at all times indemnify and save harmless the County from any and all claims of every kind of character caused by or incident to the installation, alteration, removal or condition of these facilities in the right of way and will promptly reimburse the County for any and all expenses incurred by the County in defendants any such claim.
12. Each copy of the application must be signed by the Applicant as an individual owner or by any official designated to execute such documents.

This document is hereby subject to all provisions herein and to the following special provisions, changes or amendments:

Applicant: _____

By: _____

Title: _____

Approval of this permit is hereby given this _____ day of _____, 2000

LUNA COUNTY ROAD DEPARTMENT

By _____

TO ALL RIGHT-OF-WAY PERMIT APPLICANTS

1. All work performed on Luna County Road Department rights-of-way is required to be performed in accordance to the manual on United Traffic Control Devices (MUTCD)/
2. Many of the users working under permits from the Right-of-Way Administrator (RWA) are properly signing and controlling traffic at or near the area affected by the ongoing operations.
3. In some instances, we are observing inappropriate usage of traffic control devices. A user's own policy does not supersede the MUTCD when work is on Luna County Road ROW. All ongoing work must be in accordance with the MUTCD. Failure to comply shall be cause for suspension of work or cancellation of permit should individual conditions warrant.
4. Beginning on _____, _____, all applications for permits to perform work on Luna County ROW are to include the following information:
 - A. Proposed Traffic Control Plan
 - B. Responsible person for contact
 - C. Anticipated duration of work
 - D. Designate any work that is to necessitate night time implementation of traffic control devices.
5. Signs, such as "Flagman Ahead" or flagperson symbol, are often in place during the hours of darkness. Motorists are becoming complacent to all traffic signing as a result of such practices. All traffic control devices are to be placed prior to the beginning of any work within the ROW, and are to be removed when the placement is no longer necessary.
6. For utility work, road construction and/or road work legends are inappropriate for utility work. "Utility Work Ahead" or "Utility Work _____ ft." (Or ½, 1 mile) as approved are suggested wordings for advance and initial warning device legends.
7. Interpretation of the MUTCD as related to work within Luna County ROW shall be made by the Luna County Road Superintendent.

MINIMUM ACCEPTABLE TRAFFIC CONTROL PLAN

The following is the minimum acceptable traffic control plans work within the Luna County Road Department right-of-way:

1. Channelization devices are required any time normal use of the right-of-way is affected.
2. No open trenches or pits overnight.
3. No equipment or materials to be stored within thirty-six (36) feet of the shoulder (solid white stripe).
4. Utility construction signs to be located at ½ mile, 1500 feet and 1000 feet from construction zone.
5. End of construction signs to be located at 500 feet from the construction zone.
6. Work zone to be only the length of work that can be reasonably expected to be accomplished in one day.
7. "Shoulder Work – 500 feet" with advisory "right" or "left" plate required for all work within thirty-six (36) feet of shoulder.
8. Channelization devices are required for all work within thirty-six (36) feet of right-of-way.
9. Minimum cone height of twenty-eight (28) inches.
10. Sign supports are to be of type approved by the Luna County Road Department.
11. All traffic control devices to be in accordance to the Manual on Uniform Traffic Control Devices and current Luna County Road Department standards.
12. Access must be maintained at all times to adjacent property owners.
13. All work within City limits are to be in accordance to the City's requirements.
14. No work of any kind other than placement of traffic control devices is to begin prior to the proper placement of the appropriate traffic control devices.

Please incorporate these requirements into your traffic control plans and submit them to the Luna County Road Department Office for acceptance. This traffic control plan is to be a sketch or drawing that can be easily understood and enforced by the utility owner's representative.