

#974

224
P. 1560A-
1571A

TORRANCE COUNTY ORDINANCE NO. 93-14

AN ORDINANCE ESTABLISHING THE TORRANCE COUNTY ENVIRONMENTAL PLANNING & REVIEW PROCESS

WHEREAS, the Torrance County Comprehensive Land Use & Policy Plan sets forth the general declaration of the County's customs, culture, and economic stability, and specifies the legal framework for land and environmental planning and mandates that an Environmental Plan Ordinance be developed, and

WHEREAS, New Mexico statutes provide for counties to develop ordinances for controlling not only private fee property but also for regulating uses on federal lands,¹ and

WHEREAS, Torrance County has been granted by the state legislature "Home Rule" powers through the Home Rule Validation Act, which allows New Mexico counties to develop land use, resource management, and environmental planning resolutions and ordinances necessary to "secure the public health, safety, convenience, and welfare,"² and

WHEREAS, the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ),³ the Intergovernmental Cooperation Act, and Presidential Executive Order 12372 provide mechanisms for intergovernmental coordination and joint environmental planning, and

WHEREAS, NEPA and the CEQ regulations⁴ require assessment of the direct, indirect, and cumulative effects of federal agency decisions on the environment (including ecological, aesthetic, historic, cultural, economic, social, and health factors),⁵

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

That this revised Environmental Planning and Review Process Ordinance is hereby established and implemented to protect the natural resources of Torrance County for future generations as well as protect the economic and community (customs and cultures) stability for present and future generations.

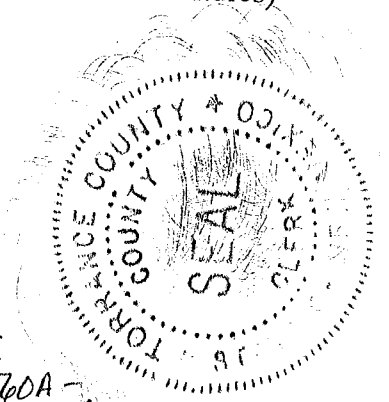
STATE OF NEW MEXICO

County of Torrance

I hereby certify that this instrument was filed for record on the 28 day of June A.D. 19 93 at 12:30 o'clock P M. and duly recorded in book 266 at page 1560A-1571A

Witness my hand and Seal of office

Carla Clayton
County Clerk, Torrance Co., N.M.
Nancy Adkins Deputy



14-37-2 NMSA 1978
24-37-13 NMSA 1978
340 CFR §1506.2.
440 CFR §1506.2.
540 CFR §1508.8.

Contents

	<u>Page</u>
<i>Section 1. Intent</i>	3
<i>Section 2. Environmental Policy</i>	3
<i>Section 3. Objectives</i>	3
<i>Section 4. Joint Planning</i>	4
A. Joint Environmental Planning.....	4
B. Joint Environmental Research.....	5
C. Joint Public Hearings	6
D. Joint Preparation of Environmental Assessment Documentation	6
<i>Section 5 Joint Impact Assessment</i>	6
A. Preliminary Review—Informal Letters	6
B. Initial Assessment Reports (IAR).....	6
C. Environmental Impact Reports (EIR).....	7
1. Purpose and Need for Action.....	8
2. Description of the Proposal	8
3. Affected Physical & Socioeconomic Environment.....	8
4. Management Objectives for the Affected Area	8
5. Desired Future Conditions for the Affected Area	8
6. Environmental Impacts.....	9
a. Assessment of Impacts on the Physical Environment	9
b. Assessment of Impact on the Social Environment.....	9
c. Assessment of Impacts on the Economic Environment	10
d. Assessment of Impacts on Private Property (Takings).....	10
e. Assessment of Cumulative Effects	10
7. Alternatives.....	11
8. Mitigation Plan	11
9. Public Involvement Requirements.....	11
10. Time Schedules for Completion of the Documentation	12
<i>Section 6. Implementation of the Environmental Planning & Review Process</i>	12
<i>Section 7. Severability</i>	12
<i>Section 8. Recording & Authentication</i>	13

environment and the customs, culture, property rights, and economic stability of Torrance County.

- To identify means to mitigate or eliminate adverse impacts to both the physical and socioeconomic environment.
- To prevent injury to both the physical and socioeconomic environment by requiring implementation of feasible alternatives or mitigation measures.
- To require intergovernmental coordination and joint planning in the environmental planning and review process in Torrance County.
- To encourage and enhance public education and participation in the environmental review process.
- To plan and manage natural resources consistent with environmental and community standards.

Section 4. Joint Planning

Torrance County's economy is dependent upon federal and state lands. It is therefore advantageous that state and federal agencies work closely together with Torrance County to *jointly* determine the benefits, impacts, and costs of resource plans and decisions. By pooling local, state, and federal resources, the general public will be better informed about resource decisions. Joint planning and coordination will also provide an unique opportunity to cooperatively develop realistic mitigation alternatives for redressing negative environmental, social, and economic impacts.

The procedures and guidelines of this Torrance County Environmental Planning and Review Process Ordinance shall be consistent with the requirements of federal and state laws and their implementing regulations. Furthermore, in the event that environmental assessment documentation is required by both the Torrance County Ordinance and NEPA, environmental impact assessment documentation shall be coordinated and jointly prepared by the County Commission and the federal agency.

The legal authority for this ordinance is derived from state and federal statutes as defined in the Torrance County Comprehensive Land Use & Policy Plan.⁷ The joint intergovernmental planning and coordination requirements of this ordinance are consistent with the requirements of NEPA CEQ regulations⁸ as follows:

- Joint Environmental Planning
- Joint Environmental Research
- Joint Public Hearings
- Joint Preparation of Environmental Documents

A. Joint Environmental Planning

Under the NEPA and CEQ requirements for coordinated resource project planning, the Torrance County Comprehensive Land Use and Policy Plan specifically requires that a coordinated planning and review process be established for all federal actions and plans within Torrance County.

⁷ Catron County Comprehensive Land Use & Policy Plan, Part II, Chapter 1, and Appendix 1.
⁸40 CFR §1506.2(b).

Upon invoking the joint impact assessment process, the County Commission shall, as it deems necessary, enter into a Memorandum of Agreement (MOA) for joint planning and preparation of joint impact assessment documents, including procedures for designating Torrance County as a joint lead agency in the federal environmental assessment process in accordance with CEQ regulations⁹. The MOAs shall be in full conformance with the requirement of this ordinance and NEPA.

All federal agencies shall notify the Torrance County Commission immediately upon initiation of any proposal or planning activity that may lead to a proposal affecting the human environment¹⁰ in Torrance County. At the first Commission meeting following notification, the County Commission shall make a formal decision as to whether to require joint planning and/or documentation in accordance with the impact assessment process detailed in this ordinance, and so notify the initiating agency(s).

In Torrance County, joint planning shall be conducted in the following sequence to ensure that all planning and proposals are formulated and/or evaluated against appropriate and realistic objectives:

1. Establish management objectives in terms of people values for the site impacted. These can, in part, be determined through review of federal, state, and county land plans. They may need to be refined and defined specific to the site impacted. This definition of objectives must include the commodity and amenity outputs or production thresholds needed to achieve the values the citizens of the County have determined to be important or necessary to their well being.
2. Design "Desired Future Conditions (DFC)" to best meet the above determined management objectives within the physical capabilities of the environment.
3. Evaluate all proposals against achieving the DFCs and management objectives established for the area.
4. Utilize an ecosystem management approach to evaluate any single proposal. That is, all uses, management objectives, and environmental capabilities will be considered.

B. Joint Environmental Research

The Torrance County Commission hereby states its intent to take advantage of the Joint Environmental Research and Studies clause of NEPA¹¹ by entering into joint pilot research and studies with the federal agencies. The purpose of the joint pilot research and studies will be to develop a coordinated approach to resource management through:

1. Promoting understanding of "like values" or the customs and culture of Torrance County.
2. Identifying outputs/products requirements for improving resource conditions and trends, and for protecting the community and economic stability of the County.

⁹40 CFR §1506.2(c).
¹⁰As defined in 40 CFR §1508.14.
¹¹40 CFR §1506.2.b.2

3. Developing landscape descriptions for DFCs, including standards and monitoring methods.
4. Coordinating the development of resource management approaches for preferred management alternatives in the planning process.

C. Joint Public Hearings

Joint public hearings shall be conducted "...to the fullest extent possible" in accordance with NEPA requirements.¹²

D. Joint Preparation of Environmental Assessment Documentation

In accordance with NEPA requirements¹³ and Section 5 of this ordinance, federal agencies shall work jointly with Torrance County to conduct environmental impact analyses of the proposal and alternatives for both the physical and the socioeconomic environment.

Section 5. Joint Impact Assessment

This section provides the specific and detailed methods which shall be followed in a coordinated way to conduct intergovernmental joint environmental assessments. There shall be three classes of environmental assessment documentation which may be required by the Torrance County Commission: Informal Letters, Initial Assessment Reports, and Environmental Impact Reports.

A. Preliminary Review—Informal Letters

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

B. Initial Assessment Report (IAR)

An IAR shall be prepared at the request of the Torrance County Commission when there is an indication that an effect on the environment (physical, social, cultural, property rights, and/or economic factors) will result from proposed federal agency(s) actions. The IAR is similar to NEPA environmental assessment documentation.¹⁴

The IARs must be consistent with the Torrance County Comprehensive Land Use & Policy Plan. There is no standard format required, but the IARs should include the following information:

- Proposal description.

¹²40 CFR §1506.2.b.3

¹³40 USC §4331(B)(2)(4), §4332(C)(I)-(V) and (2) (G), 40 CFR §1502.14, and 40 CFR §1506.2(c).

¹⁴40 CFR §1501.3.

- Environmental setting.
- Local citizens values and management objectives.
- Production thresholds for the area(s) involved.
- Potential environmental impacts.
- Alternatives (if appropriate).
- Mitigation measures.
- Consistency of the proposal with the Torrance County Comprehensive Land Use & Policy Plan.

C. Environmental Impact Report (EIR)

Based on findings documented in an IAR, the Torrance County Commission shall make its determination whether to require a more formal and detailed EIR. The EIR is similar to the NEPA environmental impact statement documentation.¹⁵ The EIR shall be developed jointly by the federal agency(s) and by Torrance County, as a joint lead agency, as provided by NEPA CEQ regulations.¹⁶ The “affected environment”¹⁷ shall encompass the human environment as described in the NEPA CEQ regulations:

“Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment...When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”¹⁸

Since a portion of the land in Torrance County is federal land, and the County’s major industries—livestock, farming, and recreation—are tied to that land, then *all* “economic or social and natural or physical environmental effects” are interrelated.

The purpose of an EIR is to:

1. Identify the significant effects of a proposal on the environment (natural, social, cultural, property rights, and economic factors).
2. Identify reasonable alternatives to the proposal when there is a negative affect, especially on the health, safety, and livelihood (economic welfare) of County citizens.
3. Indicate the manner in which those significant effects can be mitigated or avoided.

The EIRs will assess cumulative impacts along with the “direct effects and their significance...(and) indirect effects and their significance” of proposed actions in accordance with NEPA CEQ regulations.¹⁹ Also, in accordance with NEPA requirements,²⁰ the EIRs shall consider all reasonable alternatives to the proposed action

¹⁵42 USC §4332(2)(C), 40 CFR §1508.11

¹⁶40 CFR §1506.2(b) and (c).

¹⁷40 CFR §1502.15.

¹⁸40 CFR §1508.14.

¹⁹40 CFR §1508.7 and §1508.8.

²⁰40 CFR §1502.14

with the goal of finding the alternative with the least adverse environmental impacts in relation to its benefits.

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.

The contents of the EIRs shall be as follows:

Cover Sheet.

Summary of Environmental Impacts.

Table of Contents.

- 1. Purpose and Need for the Action.**
- 2. Description of the Proposal.**
- 3. Affected Physical & Socioeconomic Environment.**
- 4. Management Objectives for the Affected Area.**
- 5. Desired Future Conditions for the Affected Area.**
- 6. Environmental Impacts.**
 - a. Assessment of Impacts on the Physical Environment.
 - b. Assessment of Impacts on the Social Environment (culture, governance, schools).
 - c. Assessment of Impacts on the Economic Environment (industries and customs).
 - d. Assessment of Impacts on Private Property Rights (takings).
 - e. Assessment of Impacts of Cumulative Effects.
- 7. Alternatives.**
- 8. Mitigation Plans.**
- 9. Public Involvement Requirements.**
- 10. Time Schedules for Completion of the Environmental Impact Report.**

Appendices

1. Purpose and Need for Action: A brief statement of the underlying purpose and need which has brought about the proposal and the alternatives.

2. Description of the Proposal: A summary description of the proposal. Where EIRs are required for allotment management plans, the proposal and alternatives will be grazing management concepts and application of best management practices, and not specific technical management plans.

3. Affected Physical & Socioeconomic Environment: The environmental setting, both physical and socioeconomic, which will be affected or created by the proposed alternatives .

4. Management Objectives for the Affected Area: The management objectives for the planning process which take into account people values, socioeconomic needs, and production thresholds necessary for realization of the values important to people of the county. These management objectives and production levels will then become the goals and evaluation criteria against which all proposals and alternatives shall be evaluated.

The management objectives shall be drawn from reviews of the Torrance County Comprehensive Land Use and Policy Plan and various federal and state land management plans. Since most of these land plans are programmatic and broad in scope, the management objectives may have to be refined specific to the affected area or site.

5. Desired Future Conditions for the Area: A description of the vegetative mosaic or landscape that best accomplishes the desired management objectives, within the physical capabilities of the natural resources. Since different landscape descriptions will produce different levels of outputs, Torrance County must be involved in designing

landscape descriptions to best preserve the customs, culture, and economic stability of County citizens when choices have to be made between conflicting management objectives through public involvement. Limitations and/or special preferences for best management practices and management tools to use in achieving the landscape description will also be identified in this section.

6. Environmental Impacts: A concise description showing the affects of the proposal on both the physical and socioeconomic environment, including current and desired future conditions of the area.

a. **Assessment of Impacts on the Physical Environment:** A description of any effects on the County's natural resource assets and environmental quality to include effects on:

- 1) Forest and timber resources.
- 2) Range resources.
- 3) Dry land crops.
- 4) Watershed resources.
- 5) Private surface and ground water rights and irrigated cropland.
- 6) Environmental quality: air, water (including surface and ground water), energy, soils, etc.).
- 7) Integrated resource planning and management in which county private parties and/or public interests are involved.
- 8) Multiple use, sustained yield, and range resource laws.
- 9) Private investments and costs into public land resources.
- 10) 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.²¹

b. **Assessment of Impacts on the Social Environment:** A description of any effects on Torrance County's culture, governance, schools, and other local programs including effects on:

- 1) The culture of Torrance County due to population loss.
- 2) The culture of Torrance County from possible limitations and restrictions on cultural beliefs and practices, and maintenance of cultural and community cohesion and kinships.
- 3) Cultural and community aesthetics, including historical sites, natural resource vistas, river ways, and landscapes.
- 4) The County's ability to protect the health, safety, and social and cultural well-being of its citizens.
- 5) The County's ability to promote environmental values and resource protection and development.
- 6) The County's ability to finance public programs and services through bonding, lending, and other financing mechanisms.
- 7) Local governments (e.g., villages, towns, and county) and schools from identified tax revenue losses.
- 8) Local emergency medical services, law enforcement, fire protection, and nuisance abatement.
- 9) The local government infrastructure, including transportation, community water systems, (including those provided through irrigation and reclamation districts), and landfill services.

²¹42 USC 4321.

- 10) Local community well-being, stability of governance, and the education of children from cumulative and long-term impacts.
- c. **Assessment of Impacts on the Economic Environment:** A description of any effects on the County's economy, customs, services, and businesses, to include effects on:
- 1) Private investment backed expectations.
 - 2) The economic value of private water rights and real property.
 - 3) Direct, indirect, and cumulative employment.
 - 4) The base industries of farming, cattle, and agribusiness—specifying unit cost effects (e.g., economic value of AUMs, MMBFs, etc.).
 - 5) Local businesses directly and indirectly related to the resource decisions or plans.
 - 6) Housing, real estate values, and residential energy needs.
 - 7) Thresholds for business demand and markets.
 - 8) Local community well-being, stability, and ability to maintain current and future debt service by long-term and cumulative impacts.
- d. **Assessment of Impacts on Private Property (Takings):** A description of any effects on property rights and protectable interests in the County. In addition to the requirements above, there shall be an evaluation of the impacts on property rights, using the Presidential Executive Order No. 12630, entitled "Government Actions and Interference with Constitutionally Protected Property Rights," and the Attorney General's guidelines entitled "Evaluation of Risks and Avoidance of Unanticipated Takings." In addition, the Torrance County Comprehensive Land Use & Policy Plan mandates that the following tests or criterion be used in assessing possible taking of private property rights:
- 1) Whether the proposal constitutes an actual physical intrusion or actual taking of private property.
 - 2) Potential for loss of economic value or investment backed expectation.
 - 3) Related effects on custom and culture.
 - 4) Whether the agency action conforms to constitutionally protected property rights and commonly accepted notions of fairness and due process.
- e. **Assessment of Cumulative Effects:** An analysis of the effects of planning decisions to ensure that there are no cumulative, long-term effects on the County's economy, customs, culture, services, and businesses.
- Because the monitoring and maintenance efforts of federal agencies are inadequate to effectively measure the cumulative and long-term effects of their proposals, these impacts remain unmeasured in any sense that will permit remedial action. This is especially true for the impacts on multiple uses of natural resources and economic stability. To provide a necessary tool for addressing these issues, Torrance County shall develop and make available local economic studies containing unit cost and other indices for the purpose of measuring economic impacts.
- One of the primary reasons for enacting the procedures contained in this ordinance and the commitment of county resources for the development of accurate data is to assist federal agencies to systematically identify both present and cumulative impacts associated with their actions and to develop effective and feasible mitigation measures and alternatives so that these adverse impacts may be eliminated or substantially reduced or compensated.

7. Alternatives: A description of the environmental impacts of the proposal and the reasonable alternatives in comparative form which will provide a clear basis for choice among the options by the decision makers and the public (in accordance with NEPA CEQ regulations).²² This section will:

- a. Provide an objective evaluation of all reasonable alternatives and a discussion of why any alternatives were eliminated.
- b. Provide a detailed description of each alternative, including the proposal, so that reviewers may evaluate their comparative merits.
- c. Include reasonable alternatives not within the jurisdiction of the lead agency.
- d. Include the alternative of no action.
- e. Identify the preferred alternative or alternatives.
- f. Include appropriate mitigation measures not already included in the mitigation plan.

8. Mitigation Plan: A mitigation plan which will provide detailed and realistic alternatives in accordance with NEPA.²³ It is the policy of the Torrance County Commission that federal agencies shall not approve proposals if there are feasible alternatives or mitigation measures available which would, if implemented, reduce or eliminate significant impacts to both the physical and socioeconomic environment. The mitigation plan shall:

- a. Identify each impact which the mitigation measures is intended to address.
- b. Identify the party or agency responsible for the implementation and monitoring of the proposed mitigation measure.
- c. Specify the following for each mitigation alternative (in accordance with NEPA CEQ regulations):²⁴
 - 1) How impacts may be avoided altogether by not taking certain actions.
 - 2) How impacts may be minimized by limiting the degree or magnitude of the proposed action.
 - 3) How impacts may be rectified through repair, rehabilitation, or restoration of the affected environment.
 - 4) How impacts may be reduced or eliminated over time through preservation and maintenance actions during the life of the action.
 - 5) How the agency could compensate for the impact by providing substitute resources of equal economic value.
- d. Specify, for each mitigation measure, its:
 - 1) Legal authority.
 - 2) Technical feasibility.
 - 3) Fiscal and economic feasibility.
 - 4) Social, cultural, and political feasibility.

²²40 CFR §1502.14

²³40 CFR §1508.20.

²⁴40 CFR §1508.20.

- e. Provide a mitigation monitoring plan, which is based on specific objectives and performance standards, to ensure implementation of mitigation measures during the life of the proposal.
- f. Provide feedback to the County Commission from the mitigation monitoring process.

9. Public Involvement Requirements: During the preparation of an analysis for a decision document, or amendment to a proposal, Torrance County and the federal agencies shall jointly provide opportunities for the involvement of Torrance County citizens, local governments, schools, utility companies, civic or other community groups, and all economic segments within Torrance County. This shall be done through public hearings and other means the Torrance County Commission deems appropriate. The joint public involvement program shall have the following elements:²⁵

- a. Federal agencies shall coordinate *joint* public involvement planning, programs, and processes with the Torrance County Commission, pursuant to this section of the Torrance County Environmental Planning and Review Process Ordinance, and in accordance with the Council on Environmental Quality regulations.²⁶
- b. The public involvement program shall include objectives to:
 - 1) Identify the management objectives, affected parties, and opportunities of the proposed action.
 - 2) Apprise land owners of regulations and decisions that may affect their property rights.
 - 3) Provide public opportunities to evaluate alternatives and to participate in choosing the preferred alternative.
 - 4) Create an atmosphere in which conflicting demands for resources and uses can be resolved without destabilizing community economic, social, and/or cultural fabrics.

10. Time Schedules for Completion of the EIR: Estimated time schedules shall be developed for all phases of the EIR. The time schedules shall be developed early in the process for each phase of the assessment, including issuance of a final decision.

Section 6. Implementation of the Environmental Planning & Review Process

In addition to the procedures contained in this ordinance, the Torrance County Commission shall:

- 1. Adopt such administrative rules and oversight guidelines deemed necessary to carry out this ordinance.
- 2. Establish an oversight committee or other organization to assure that the intent and purposes of the procedures established by this ordinance are maintained.

²⁵40 CFR §1506.6.

²⁶40 CFR §1506.2(b)(3).

- 3. Develop such environmental and resource related cooperative agreements, memorandums of understanding, joint policy statements, and joint letters of intent with appropriate state and federal agencies, so that the goals and objectives of this ordinance and the Torrance County Comprehensive Land Use & Policy Plan may be carried out.

Section 7. Severability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or circumstances is declared invalid or unconstitutional by the decision of a court of competent jurisdiction, the remainder of this ordinance shall be severed therefrom and shall remain in full force and effect.

Section 8. Recording & 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 21 day of June, 1993.

Bill Williams
Bill Williams, Chairman

Bill Carter
Bill Carter, Member

Roy B. Spencer
Roy Spencer, Member



Carla Clayton
Carla Clayton, County Clerk