

AGENDA ITEM# _____

To Amend the Chaves County New Mexico Zoning Ordinance No.7

MEET DATE: January 26, 2023

STAFF'S SUMMARY REPORT

ACTION REQUESTED:

To Amend Article I (General Statements) and Article XVIII (Special Use Permit) and incorporate Article XXIV (Wind Energy Conversion System) into the Chaves County New Mexico Zoning Ordinance No. 7

REQUESTED BY: Planning and Zoning Department

ITEM SUMMARY:

Amend Article I- General Statement

Reorganize informational items, update referral documents, establish the County Planning and Zoning Commission, and expand and clarify Staff's procedures and requirements for future amendments to the ordinance, zoning applications and public notifications.

Amend Article XVIII- Special Use Permits

Additional regulations and restrictions for considering a Special Use Permit.

Incorporate Article XXIV "Wind Energy Conversion System" Establish development standards for construction and operation of wind farms in Chaves County with the purpose of protecting the health, safety, and wellness of the citizens of Chaves County, NM.

PUBLIC PARTICIPATION AND RECOMMENDATION:

The Chaves County Planning and Zoning Commission accepted public participation at four separate regularly scheduled meetings from September 2022 to December 2022.

On December 6th, 2022 the Chaves County Planning and Zoning Commission recommended approval of the amendments to Articles I and XVIII and incorporation of Article XXIV "Wind Energy Conversion System".

ADVERTISEMENT:

A Notice of Public Hearing was advertised on January 8, 2023 in the Roswell Daily Record, being more than fifteen days prior to this public hearing.

ATTACHED ITEMS:

Amendment to Articles I and XVIII, and incorporate Article XIV to be the Chaves County Zoning Ordinance No.7 to be known as Revision #12 and

Corrections, additions, and removals made to Article I and XVIII.

SUMMARY BY: Louis Jaramillo, P & Z Director

**AN AMENDMENT TO THE CHAVES COUNTY, NEW MEXICO ZONING
ORDINANCE NO. 7 TO BE KNOWN AS REVISION NO. 12.
TO AMEND ARTICLES, I AND XVIII AND INCORPORATE ARTICLE XXIV
WIND ENERGY CONVERION SYSTEMS**

WHEREAS, the Chaves County Board of Commissioners finds it necessary to amend Articles I and XVIII of the Chaves County New Mexico Zoning Ordinance No. 7; and

WHEREAS, the Chaves County Board of Commissioners finds it necessary to protect the health, safety, and welfare of the public by enacting provisions regulating future wind farms in Chaves County with Article XXIV “Wind Energy Conversion Systems” to the Chaves County New Mexico Zoning Ordinance No. 7; and

WHEREAS, the Chaves County Planning and Zoning Commission have made a positive recommendation to the Chaves County Board of Commissioners, to amend Articles I and XVIII and incorporation Articles XXI into the Chaves County New Mexico Zoning Ordinance No. 7 after numerous public meetings; and

WHEREAS, the Chaves County Board of Commissioners has properly advertised this public hearing date no less than fifteen days prior to the effective date of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Chaves County Board of Commissioners that Articles I “General Statements” and Article XVIII “Special Use Permit “are hereby amended to read as follows; and

Article XXIV “Wind Energy Conversion System” shall be incorporated into of the Chaves County New Mexico Zoning Ordinance No. 7 and shall read as follows:

**CHAVES COUNTY NEW MEXICO
ZONING ORDINANCE NO. 7**

**ARTICLE I
GENERAL STATEMENTS**

Section 1 TITLE

This Ordinance shall be known as the "Chaves County, New Mexico Zoning Ordinance."

Section 2 ZONING AUTHORITY OF COUNTY

This Ordinance is enacted to establish and carry into effect several powers, duties, and privileges conferred upon the Chaves County Board of Commissioners, in, under, and by an Act of the New Mexico State Legislature, known as Sections 3-21-1 through 3-21-14, both inclusive, New Mexico Statutes Annotated, (1978) being laws 1965, ch. 300. together with acts amendatory thereof and supplementary thereto, including the designation the Chaves County Board of Commissioners as the Zoning Authority.

Section 3 PURPOSES

A. The purpose of this Ordinance is to promote health, safety, and the general welfare and to regulate and restrict the following:

1. height, number of stories and size of buildings and other structures;
2. percentage of a lot that may be occupied;
3. size of yards, courts, and other open space;
4. density of population; and
5. location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

B. The Zoning Authority shall:

1. Divide the territory under Chaves County jurisdiction into districts of such manner, shape, area, and form as is necessary to carry out the purposes of this Ordinance. Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation; and
2. Regulate or restrict the erection, construction, reconstruction, alteration, or use of buildings, structures, or land in each district. All such regulations shall be uniform for each class or kinds of buildings within each district, but regulation in one district may differ from regulation in another district; and
3. provide for the administration and interpretation of said regulations; and

4. provide, subject to the restrictions of Section 3-21-6 N.M.S.A., 1978, for the manner in which zoning regulations, restrictions, and boundaries of districts are:
 - a. determined, established, and enforced; and
 - b. amended, supplemented, or repealed.

C. Conformance to Comprehensive Plan

1. This Ordinance is in accordance with recommendations set forth in the latest Chaves County Comprehensive Master Plan and is designed to:
 - a. Lessen congestion in the streets or public ways;
 - b. Secure safety from fire, flood waters, panic, and other dangers;
 - c. Promote health and the general welfare;
 - d. Provide adequate light and air;
 - e. Prevent the overcrowding of land;
 - f. Avoid undue concentrations of population;
 - g. Facilitate adequate provision for transportation, water, sewerage, schools, parks, and other public requirements; and
 - h. Control and abate the unsightly use of buildings or land.
2. Reasonable consideration shall be given, among other things, to the character of the zoning areas and districts and their peculiar suitability for particular uses, and to conserving the value of buildings and land and encouraging the most appropriate use of land throughout the jurisdiction.

Section 4 JURISDICTION

- A. This Ordinance applies to all of the territory within Chaves County that is not within the jurisdiction of the following municipalities:
 1. The municipal limits of Roswell, New Mexico and extraterritorial limits of the Roswell-Chaves County Extraterritorial Zoning Ordinance as shown by the official maps;
 2. Municipal limits of Dexter, New Mexico, to change as the municipal limit changes;
 3. Municipal limits of Hagerman, New Mexico, to change as the municipal limit changes; and
 4. Municipal limits of Lake Arthur, New Mexico, to change as the municipal limit changes.

Section 5 ADMINISTRATION

A. Determination The provisions of the Chaves County, New Mexico Zoning Ordinance shall be determined by the Chaves County Planning and Zoning Commission and recommended for adoption by the Chaves County Board of Commissioners.

B. Planning and Zoning Commission

Per State Statute 4-57-1 and 3-21-7.B NMSA, the Chaves County Board of Commissioners shall establish a Planning Commission. The Planning Commission shall act as the Zoning Commission and shall be known as the Chaves County Planning and Zoning Commission.

1. The Chaves County Planning and Zoning Commission shall provide a recommendation to the Chaves County Board of Commissioners on applications for zone changes, variances, special use permits, amendments, supplement and all other planning and zoning matters as required by the Board.
2. The Chaves County Planning and Zoning Commission shall consist of five residents of Chaves County. Chaves County Planning and Zoning Commissioners shall be appointed by the Board Chaves County Commissioners for a term of six (6) years. Three Chaves County Planning and Zoning Commissioners shall begin their term in January following even-numbered years and two Chaves County Planning and Zoning Commissioners shall begin their term in January following odd-numbered years.
3. Chaves County Planning and Zoning Commissioners shall be appointed by a majority vote of all the members of the Chaves County Board of Commissioners. A Chaves County Planning and Zoning Commissioner may be removed at any time during their term of office by a majority vote of all the members of the Chaves County Board of Commissioners. Removal and/or appointments of Chaves County Planning and Zoning Commissioners shall be made by the Chaves County Board of Commissioners at a public meeting.
4. Chaves County Planning and Zoning Commissioners shall endeavor to attend all regular and special meetings. The Secretary of the Chaves County Planning and Zoning Commission shall provide the Chaves County Board of Commissioners with a yearly attendance report of all Chaves County Planning and Zoning Commissioners.
5. The Chaves County Planning and Zoning Commission shall elect a Chairperson, Vice Chairperson, and Secretary from its membership by a simple majority at the first regular meeting of the year.
6. The Chaves County Planning and Zoning Commission shall establish a monthly meeting date, time and place, by Resolution, at the first regular meeting of the year.

C. Official Zoning Map

1. The official Chaves County Zoning Maps, together with all explanatory matter thereon, are hereby adopted by reference and declared to be an official record and a part of these Zoning Regulations.
2. Said maps shall be identified as such by the signature of the Chairman of the Chaves County Board of Commissioners and attested by the County Clerk.
3. Whenever amendments or changes are made in zoning district boundaries, such amendments or changes shall be made promptly on the official Zoning Maps.

4. Regardless of the existence of purported copies of the official zoning maps, which may from time to time be made or published, the official zoning maps shall be that set located in the office of the County Clerk of Chaves County, New Mexico.
5. In the event that the official zoning maps become damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and amendments thereto, the Chaves County Board of Commissioners may, by resolution, adopt new official zoning maps which shall supersede the prior official zoning maps. The new official zoning maps may correct drafting or other errors or omissions in the prior official zoning maps, but no such corrections shall have the effect of amending the original Zoning Regulations or any subsequent amendments thereof.

D. Enforcement – Authority

If any building or structure is erected, constructed, reconstructed, altered, converted, or maintained; or any building, structure, or land is used in violation of this Ordinance, the Zoning Authority may institute any appropriate action or proceedings to:

1. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
2. Restrain, correct, or abate the violation;
3. Prevent the occupancy of such building, structure, or land; or
4. Prevent any illegal act, conduct, business, or use in or about such premises.

E. Enforcement – Jurisdiction

This Ordinance may be enforced by prosecution for violations in any court of competent jurisdiction of Chaves County.

F. Enforcement – Penalties

Any person(s), trust, company, firm or corporation violating any of the provisions of this Ordinance, after ten (10) days written notice of violation mailed to the last known address of the property owner, shall be punished by a fine not exceeding three hundred dollars (\$300) or imprisonment in the county jail not to exceed ninety (90) days or both such fine and imprisonment. [Each day's violation shall be a separate offense.]

G. Enforcement – Officers

It is the duty of the District Attorney, the Chaves County Sheriff's Department, the Chaves County Planning and Zoning Director and Code Enforcement Officer to:

1. Enforce the provisions of this Ordinance;
2. Diligently file a complaint or information alleging a violation if circumstances would indicate that action to a reasonably prudent person; and
3. Cooperate with the District Attorney or other prosecutors in all reasonable ways.

H. Amendment, supplementation or repeal

1. **Initiation.** Petitions to amend, supplement, or repeal this Ordinance may be initiated by the Chaves County Board of Commissioners, the Chaves County Planning and Zoning Commission, or by a resident of Chaves County owning real property in Chaves County.
2. **Application.** Any application to amend, supplement, or repeal this Ordinance shall be made to the Chaves County Planning and Zoning Commission and Chaves County Board of Commissioners through the Planning and Zoning Department on forms prescribed, at least thirty (30) calendar days before a regular scheduled Planning and Zoning Commission meeting.
3. **Public Hearing.** This Ordinance may become effective, amended, supplemented, or repealed only after a recommendation from the Planning and Zoning Commission and a public hearing before the Chaves County Board of Commissioners at which all parties in interest and citizens shall have an opportunity to be heard. Notice of the date, time and place of the Chaves County Board of Commissioners' public hearing and a title and general summary of the proposed amendment, supplement, or repeal shall be published in the local newspaper and other County media services at least fifteen (15) days prior to the date of the hearing within the jurisdiction of the Chaves County Board of Commissioners.
4. **Requirements.** Proposed amendment, supplement, or repeal of this Ordinance shall require approval from a majority of all members of the Chaves County Board of Commissioners upon a roll call vote. (State Statute 4-37-6 NMSA).
5. Copies of the proposed amendments or supplements shall be made available in the Chaves County Planning and Zoning Department office during normal and regular business hours and on the Chaves County website. Copies may be acquired at a payment of reasonable charge.
6. Amendments to this Ordinance shall not take effect until at least thirty (30) days after being recorded in the Chaves County Clerk's Office, except when it is declared by the Chaves County Board of Commissioners that it is necessary for the public health, safety and welfare of the County that the changes take effect when it is recorded in the Chaves County Clerk's Office.

I. Zone Change, Special Use Permit & Variance

1. **Initiation.** Requests for a change in zoning regulation, a special use permit or a variance may be initiated by the Chaves County Board of Commissioners, the Chaves County Planning and Zoning Commission, or by an owner of real property in the area to be included in the application forms provided by the Planning and Zoning Department.
2. **Applications.** Applications shall be submitted to the Planning and Zoning Department at least thirty (30) calendar days before the regular scheduled Planning and Zoning Commission meeting. The Planning and Zoning Staff shall review the application and supporting documents prior to accepting them. If accepted, the Planning and Zoning Staff shall assign the application a case number. Application fees shall be due upon acceptance by the Planning and Zoning Staff.
3. **Notice.**
 - a. A notice stating the date, time and place of Planning and Zoning Commission's public meeting shall be mailed by regular mail, to property owners within six hundred (600) feet of the parcel of

land(s) described in the application, as shown by the records of the Chaves County Assessor, at least seven (7) days prior to the Planning and Zoning Commission meeting. Notice of the date, time and place of the meeting shall be published in the local newspaper and other County media services at least three (3) days prior to the meeting date.

b. A notice stating the date, time and place of the Chaves County Board of Commissioners' public hearing shall be mailed by certified mail return receipt to property owners within six hundred (600) feet of the parcel of land(s) described in the application, as shown by the records of the Chaves County Assessor, at least fifteen (15) days prior to the Board of Chaves County Commissioner's public hearing. Notice of the date, time and place of the public hearing shall be published in the local newspaper and other County media service, at least fifteen (15) days prior to the public hearing date.

4. **Protests.** If the owners of twenty percent (20%) or more of the area of the lots and land included in the area proposed to be changed by a zone change, a special use permit or a variance, or within one hundred (100) feet, excluding public right-of-way, of the area proposed to be changed by a zone change, a special use permit or a variance **protest in writing** the proposed zone change, special use permit or variance, then the proposed zone change, special use permit or variance shall not become effective unless the change is approve by a two-thirds ($\frac{2}{3}$) vote of all of the members of the Chaves County Board of Commissioners.
5. **Requirements.** The application shall include an accurate site plan showing location and dimensions of all existing and proposed improvements to the property and any related information required by the Planning and Zoning Director. The application shall be signed by a real property owner in the area included in the application unless initiated by the Chaves County Board of Commissioners or the Planning and Zoning Commission. A copy of the deed or contract to the property shall accompany the application
6. **Fees, Non-Returnable.** (Not applicable to Authorities or Commissions.) The Chaves County Board of Commissioners shall adopt by resolution a fee schedule, from time to time as necessary, setting forth the fees that shall apply to the Ordinance after receiving a recommendation on such change by the Planning and Zoning Commission. The fee schedule shall be attached as an appendix to the Ordinance. The Planning and Zoning Director shall assure that all applicants shall receive a copy of the most current fee as resolved by the Chaves County Board of Commissioners.
7. **Planning and Zoning Commission Reports.** A report of the results of the hearing before the Planning and Zoning Commission on all applications shall be forwarded to the Chaves County Board of Commissioners, along with their recommendation. The recommendation shall be either for approval, for conditional approval, or for disapproval. The report shall contain a brief summary of the reasoning behind the recommendations, and any conditions of approval.
8. **Chaves County Board of Commissioners' Action.** The Chaves County Board of Commissioners shall not take action on an application until the report and recommendation from the Planning and Zoning Commission has been received.

J. Appeals to the Chaves County Board of Commissioners– Grounds – Stay of Proceedings.

1. Any aggrieved persons affected by a decision of an administrative official or Code Enforcement Officer, in the enforcement of this Ordinance, may appeal the decision to the Chaves County Board of Commissioners within fifteen (15) days of the date of the decision. An appeal shall stay all proceedings in furtherance of the action appealed unless the administrative officer or Code

Enforcement Officer, from whom the appeal is taken, certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the administrative officer or Code Enforcement Officer from whom the appeal is taken and due cause shown.

2. When an appeal alleges that there is error in any order, requirement, decision, or determination by an administrative official or Code Enforcement Officer, in the enforcement of this Ordinance, the Chaves County Board of Commissioners by a majority vote of all its members may:
 - a. Reverse any order, requirement, decision, or determination of an administrative official or Code Enforcement Officer;
 - b. Decide in favor of the appellant; or
 - c. Make any change in any order, requirement, decision, or determination of an administrative official or Code Enforcement Officer.
3. Any person aggrieved by a decision of the Chaves County Board of Commissioners may file an appeal with the District Court pursuant to the provisions set forth in Section 39-1-1 NMSA 1978. Appeals shall be filed within thirty (30) days of the date of the decision.

K. Variances.

1. Every property owner within the jurisdiction of this Ordinance shall have the right to apply to the Chaves County Board of Commissioners for a variance from the Ordinance when the property owner can show an exceptional situation or condition relating to the property such that the strict enforcement of this Ordinance would constitute an unreasonable hardship upon the owner of such property due to exceptional topographic, soil or other surface or subsurface condition.
2. Prior to granting any variance from this Ordinance, the Chaves County Board of Commissioners shall hold a public hearing and shall determine that:
 - a. the granting of the variance will not be injurious to the public health, safety, and general welfare of the community;
 - b. the use or value of the area adjacent to the property will not be affected in a substantially adverse manner;
 - c. the need for the variance arises from some condition peculiar to the property involved and such condition is not due to the general conditions of the neighborhood and is not for monitor gains and/or to resolve a self-imposed hardship;
 - d. the strict application of the terms of this Ordinance from which the variance is sought would result in a peculiar, exceptional and undue hardship upon the owner of such property; and
 - e. that the granting of the variance would be within the spirit, intent, purpose, and general plan of this Ordinance.
3. Absent of showing extreme hardship or a complete loss of financial benefit in the property, the Chaves County Board of Commissioners shall not approve a request for a variance where the applicant purchased the property after the effective date of this Ordinance and the condition requiring for the variance was in existence at the time of the purchase.

Section 6 ORDINANCE ENFORCEMENT OFFICER

A. Duties

1. The Ordinance Enforcement Officer’s duties shall include, but not be limited to, seeing that the requirements of this Ordinance, regulations, master plans, land use plans, or land use permit systems are carried out and enforced.
2. The Ordinance Enforcement Officer who shall also be known and referred to as “Code Enforcement Officer”, shall maintain an office from which to supply the public with information about the various regulations, ordinances, etc.
3. Said Officer shall issue Land Use Permits, make inspections, and carry out other duties of the office as directed by the Chaves County Board of Commissioners. A copy of each permit issued shall be furnished to the Chaves County Tax Assessor.
4. Rules for carrying into effect the provisions of this Ordinance must be consistent with this Ordinance, and subject to review and approval of the Chaves County Board of Commissioners.

B. Authority

1. Said Officer, or authorized representatives, shall have the authority to enter upon the premises for the purposes of inspection, provided, however, that no building shall be entered without the consent of the owner or occupant or unless properly authorized.
2. In event any buildings or structure is erected, constructed, reconstructed, altered, converted, or maintained, or any buildings, structure, or land is used in violation of this Ordinance, said officer, in addition to other remedies, may, at the direction of the Chaves County Board of Commissioners, institute any appropriate action or proceedings to prevent such unlawful action to restrain, correct, or abate such violation; to prevent the occupation of such building, structure or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

Section 7 INTERPRETATIONS AND CONFLICTS

- A. The regulations of this Ordinance are held to include the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, abrogate, or annul any easement, covenant, or other agreement between parties or other valid ordinances. Where this Ordinance imposes a greater restriction than is imposed by other rules, regulations, easements, covenants, agreements, or ordinances, the provisions of this Ordinance control.
- B. If any other statute, regulation, or other local ordinance, resolution, or regulation adopted under authority of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 is applicable to the same premises, the provision shall govern which requires:
 1. the greater width or size of yards, courts, or other open spaces;
 2. the lower height of building or a less number of stories;
 3. the greater percentage of lot or land to be left unoccupied; or
 4. imposes other higher standards.

Section 8 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase, provision, or part or portion of any section, subsection, paragraph, sentence, clause, phrase, or provision of this Ordinance is, for any reason, held to be unconstitutional, invalid, or void, the remaining portions shall not be affected, since it is the express intent of the Chaves County Board of Commissioners to pass each section, subsection, paragraph, sentence, clause, phrase, or provision, and every part thereof, separately and independently of every other part.

DRAFT

**ARTICLE XVIII
SPECIAL USE PERMIT**

Section 1 SPECIAL USE PERMIT – RESTRICTIONS

A Special Use Permit shall be bound and limited to the parcel(s) of land described in the application and to the land owner stated in the application and as stated in the Certificate of Zoning issued by the Planning and Zoning Department. A Special Use Permit is nontransferable in location or ownership, with exemptions as permitted by the Board. So as not to misperceive, confuse and misapprehend prospective owners, a real estate contract shall be construed as a change in ownership and as such shall require a modification to the Special Use Permit.

A. Granting Special Use Permits

1. The Board of Chaves County Commissioners shall consider the following conditions prior to granting a Special Use Permit in districts from which the proposed use is otherwise prohibited by this Ordinance.
 - a. The proposed use shall not create a public nuisance, such as but not limited to, noise, dust, smoke, direct glare, vibration or interference with WIFI and cellular data, for the surrounding neighbors and community.
 - b. The proposed use shall not adversely affect the market value of the adjacent properties in a negative manner.
 - c. The proposed use shall be compatible with the surrounding properties, roads and existing legal uses.
 - d. The proposed use shall be within the intent, purpose, and general plan of this Ordinance.
2. In permitting such uses the Board may impose, in addition to the regulations specified herein, such conditions as it deems necessary to protect the best interests of the surrounding neighborhood or the County as a whole. These conditions may include, but are not limited to, the following:
 - a. Increasing the required lot size, setback or yard dimensions;
 - b. Limiting the height of buildings or structures;
 - c. Controlling the number of access driveways and their location points;
 - d. Requiring the dedication of right-of-way or public use easements for future public roadway improvements;
 - e. Increasing or decreasing the number of required off-street parking and/or loading spaces as well as designating the location, screening, drainage, surfacing or other improvement of a parking area;
 - f. Limiting the number, size, height, shape, location and lighting of signs;

- g. Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;
 - h. Designating sites for and/or the size of open space or recreational areas;
 - i. Requiring site reclamation upon discontinuance of the use and/or expiration or revocation of the Special Use Permit;
 - j. Limiting hours and size of operation;
 - k. Controlling the siting of the use and/or structures on the property;
 - m. Requiring mitigation measures to effectively reduce the potential for land use conflicts with agricultural lands and adjacent residential lands, such as: landscape buffers, special setbacks, screening, and/or site design criteria using physical features, such as rock outcrops, ravines, and roads.
3. A Special Use Permit may be modified or amended by the Board at a public hearing for the following reasons:
 - a. Change in ownership
 - b. Change to the development plan, but not the permitted use.
 4. A Special Use Permit may be suspended or terminated by the Board, at a public hearing, if any one (1) of the following reasons:
 - a. One or more of the Conditions of Approval of the Special Use Permit have not been met;
 - b. The Special Use Permit was obtained by misrepresentation or fraud;
 - c. The use, for which the Special Use Permit was granted, has ceased or was suspended for twelve (12) or more consecutive calendar months;
 - d. The use, for which the Special Use Permit was granted, is found to be a public nuisance and/or detrimental to the health, safety and welfare of the neighbors, roads or surrounding community.
 - e. Change in property ownership or site location.

B. Use Regulations

A Special Use Permit may be allowed for the following uses:

1. Electric substations, gas regulator stations, well and water pumping stations in any district, provided that in any residential district or commercial district the site shall be developed and maintained in conformance with the general character and appearance of the district.
2. Nursery schools, day nursery, child care center, pre-kindergarten, and other special and similar private schools in an Industrial District as an accessory or function for employees, provided that adequate safety from loud noises and other industrial dangers are supplied and there is at least 100 square feet of open play for each child enrolled. Such play area shall be screened with a suitable wall, fence, or evergreen shrub.

3. Radio or television transmitter antenna (commercial), provided it shall be at least 100 feet from any public right-of-way or road.
4. Hospitals and clinics.
5. Private clubs or lodges, excepting those of which the chief activity is a service customarily a business activity within a Zone B, Type 3 District, only.
6. State licensed or state operated family or group care residences for homeless or abused children, the mentally ill, the criminal offender, or alcohol or drug abusers, that function as a transition from institution to community, serving twenty (20) or fewer persons.
7. Renewable energy facilities, such as but not limited to, wind, solar, hydrology and organic.
8. A temporary second residential dwelling unit or Recreational Vehicle, on one lot or parcel of land for the care of an immediate family member.
9. Trucking companies in the Agriculture-Residential District.
10. Workforce Camps in the Agriculture-Residential District
11. Recreational Vehicle Parks in the Agriculture-Residential District.
12. Any public building erected and used by any department of the City, County, State, or Federal Government.
13. Cemetery;
14. Community buildings or recreation fields.
15. Airport or landing fields.
16. Temporary commercial amusements or recreational developments.
17. Industrial uses excluded from the Industrial Districts, to locate in the "Industrial Districts."
18. Parking lots adjacent to, across the street from, with exemption to State Roads and Highways or across the alley from the Commercial districts or a Business District.

**ARTICLE XXIV
WIND ENERGY CONVERSION SYSTEMS**

Section 1. APPLICABILITY.

This Article shall govern WIND ENERGY CONVERSION SYSTEMS (WECS) or parts thereof located within the boundaries of Chaves County, excluding any land within the limits of any incorporated municipality and within the Roswell-Chaves County Extraterritorial Zoning area, (Section 4-37-2 N.M.S.A. 1978).

Section 2. PURPOSE AND INTENT.

The Board of Chaves County Commissioners (Board) finds that wind energy is an abundant, energy resource and that its conversion to electricity may reduce dependence on nonrenewable energy resources. The Board of Chaves County Commissioners also recognizes that utility-scale WECS may pose concerns to the health, safety, public welfare, character and environment of the County and its inhabitants. This Article establishes a comprehensive WECS application and permitting process, and is intended to minimize negative impacts of WECS, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and general welfare of the residents of Chaves County.

Section 3. FINDINGS.

All forms of development, including WECS, have the potential to negatively impact Chaves County resources and the environment through the introduction of contaminants and surface disturbance, which can lead to habitat degradation, fragmentation, and loss as well as degraded qualities of air, soil, and water. This Article is designed to allow for the responsible development of WECS to effectively utilize the County's wind resources and, significantly contribute to the rural economies of the County, while ensuring the minimum possible impact on the environment and fulfilling the Board's interest of protecting the health and welfare of County residents.

The Board hereby finds, declares, and determines that this Article:

- A. Promotes the health, safety, and welfare of the County, its residents, and its environment by regulating potentially adverse impacts and effects resulting from the placement, transportation, construction, and operation of WECS; and
- B. Protects traditional communities and lifestyles, as defined in the latest Chaves County Comprehensive Master Plan; and
- C. Protects community rights to Night Sky and Open Views
- D. Prevents the occurrence of adverse effects and impacts resulting from the abandonment of WECS, or portions thereof within the County; and
- E. Protects the rights of property owners; and
- F. Protects the ecosystem of the County, which is of significant value to the citizens of the County and State; and
- G. Allows for the responsible and economically feasible development of WECS resources; and
- H. Protects the County's historic, cultural, archaeological, water and other natural resources; and
- I. Attains the foregoing objectives while also promoting the efficient and appropriate development of the

WECS industry in the County.

Section 4. NO STATE OR FEDERAL PRE-EMPTION.

This Article is supplementary to, and does not replace any applicable federal or state statutes, including but not limited to, the:

- Water Quality Act, N.M.S.A. 1978, §§ 74-6-1 *et seq.*;
- Solid Waste Act, N.M.S.A. 1978, §§ 74-9-1 *et seq.*;
- Rangeland Protection Act, N.M.S.A. 1978, §§ 76-7B-1 *et seq.*;
- New Mexico Night Sky Protection Act, 74-12-1 through 74-12-11
- New Mexico Public Health Act, N.M.S.A. 1978 §§ 24-1-1 *et seq.*;
- Wildlife Conservation Act, N.M.S.A. 1978, §§ 17-2-37 *et seq.*;
- Cultural Properties Act, N.M.S.A. 1978, §§ 18-6-1 *et seq.*;
- National Historic Preservation Act, 54 U.S.C.A §§ 300101 *et seq.*;
- Prehistoric and Historic Sites Preservation Act, N.M.S.A. 1978, §§18-8-1 *et seq.*;
- Cultural Properties Protection Act, N.M.S.A. 1978, §§ 18-6A-1 *et seq.*;
- Archaeological Resources Protection Act, 16 U.S.C.A. §§ 470aa *et seq.*;
- Energy Policy Act, 42 U.S.C.A. §§ 6201 *et seq.*;
- Endangered Species Act, 16 U.S.C.A. §§ 1531 *et seq.*;
- Migratory Bird Treaty Act, 16 U.S.C.A. §§ 703 *et seq.*;
- Environmental Protection Act, 42 U.S.C.A. §§ 4321 *et seq.*;
- Bald and Golden Eagle Protection Act, 16 U.S.C.A. §§ 668 *et seq.*;
- Environmental Improvisent Act, N.M.S.A. 1978, §§ 74-1-1 *et seq.*;
- Air Quality Control Act, N.M.S.A. 1978, §§ 74-2-1 *et seq.*;
- Hazardous Waste Act, N.M.S.A. 1978, §§ 74-41 *et seq.*;
- Ground Water Protection Act, N.M.S.A. 1978, §§ 74-6B-1 *et seq.*; and
- Endangered Plants Act, N.M.S.A. 1978, §§ 75-6-1 *et seq.*

Section 5. SPECIAL USE PERMIT REQUIRED.

- A. No person shall begin the Major Construction Activities or operation of a WECS without first being issued a Special Use Permit for a WECS Site by the Board, at a public hearing. A person may undertake Minor Construction Activities so long as such person meets with the County to discuss such Minor Construction Activities, receives approval of the Minor Construction Activities from the County and enters into a Road Repair Agreement with the County.
- B. Construction permits as required by New Mexico Construction Industries Division or AHJ may be required for certain phases of the construction and will be determined by the jurisdiction's Certified Building Official, at time of Special Use Permit issuance.
- C. The Permittee or Applicant shall provide documentation of all commercial water resources, permitted by the New Mexico Office of the State Engineers or others, necessary for the construction, safe operation and maintenance of the WECS as part of their Special Use Permit application.
- D. Special Use Permit applications shall conform with the standards set forth in Section I of Article I of this Ordinance.

Section 6. DEFINITIONS.

For purposes of this Article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

Advertising-the activity of producing advertisements for commercial product or services.

Affected Landowner - the Person who owns the land upon which a portion of the WECS may or shall be located on.

Aircraft Detection Lighting Systems – a certified FAA system that utilizes surveillance radar to activate the obstruction lighting system when aircraft are detected within a defined perimeter of the wind project and deactivates the obstruction lighting system when all aircraft have departed the perimeter.

Applicant - the Person who applies for a WECS Site Permit pursuant to this Ordinance.

Board - the Board of Chaves County Commissioners.

Collection Lines - WECS electrical lines transmitting electricity from the Commercial Wind Turbines, generally having a voltage of sixty-nine (69) kilovolts (kV) or less and WECS communications lines transmitting voice and/or data from the Commercial Wind Turbines; both of which are generally located underground unless site-specific conditions warrant above ground design.

Commercial Wind Turbine - a Wind Turbine with a total height greater than 75 feet and a name plate capacity of greater than 100 kW.

Construction - any clearing of land, excavation, construction of transportation and access routes to the WECS site, including any road work associated with the construction of the WECS.

County - the County of Chaves, NM.

FAA - the Federal Aviation Administration.

Feeder Lines - overhead WECS electrical lines, transmitting electricity with a voltage greater than sixty-nine (69) kV and less than two-hundred thirty (230) kV.

Haul Roads - the roads that will be used during the construction, operation, and maintenance of the WECS to deliver heavy equipment, including but not limited to, tower components, concrete, rotors, turbines, nacelle assemblies, and transformers.

Height - when referring to a Wind Turbine, the distance measured from ground level to the highest tip of the blade when in a fully vertical position.

High-Voltage Transmission Line - any electrical line designed for or capable of operation at an nominal voltage of two hundred thirty kilovolts (230kV) or more.

MET Tower - a meteorological tower used for the measurement of wind speed.

Major Construction Activities - construction beyond Minor Construction Activities, including but not limited the clearing of significant quantities of land, excavation throughout the entire WECS site, the pouring of structural grade concrete, foundation work that involves rebar, construction of transportation and access routes to the WECS site, including any road work associated with the construction of the WECS, but does not include Minor Construction Activities.

Minor Construction Activities - construction activities at the WECS project site that may be undertaken for the purpose of preserving eligibility for certain benefits such as Production Tax Credits, to include activities such as blading or constructing small quantities of access roads within the WECS project site or excavating of 20% of the planned Turbine foundations and pouring of associated "mud mats," but does not include Major Construction Activities.

Permittee - the person to whom a WECS Site Permit is issued or transferred pursuant to this Article.

Person - an individual, partnership, limited liability company, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other legal entity, public or private, however organized.

Planning Department - the Chaves County Planning and Zoning Department.

Private Wind Turbine - a Wind Turbine with a height of less than seventy-five (75) feet, capable of generating 100kW or less, and used primarily for on-site consumption of power.

Qualified Assignee - (a) an affiliate of the Permittee, (b) any person or entities (i) having a networth of at least five million (\$5,000,000) dollars including the net worth of any such entity's parent or parents, and (ii) having experience of its own, or through an affiliate, developing, constructing, owning or managing at least two hundred (200) MW of wind energy generation facilities, or (c) a lender who has engaged a manager or other party meeting the qualifications of (b)(i) and (b)(ii) above.

Road Superintendent - the Road Superintendent for Chaves County.

Wind Energy Conversion Systems (WECS) - an electricity generating facility consisting of one or more Commercial Wind Turbines under common ownership, operation, or control, and includes related on-site structures such as substations, MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customers(s), but does not include the High-Voltage Transmission Line(s) (electrical lines of 230 kV or greater) used for the transmission and distribution of the generated electricity or Private Wind Turbines.

Wind Turbine - a power generating device that converts wind energy into electricity, which may be comprised of a tower, generator, nacelle assembly, rotor, pad mount transformer, switchgear, base, and pad.

WECS Owner - is a person who owns a controlling interest in the WECS or the WECS development project.

WECS Site Permit - is a permit issued by the Board upon compliance with standards of this Article.

Section 7. MITIGATION MEASURES.

The following mitigation measures shall be implemented within the WECS project footprint to the extent it is reasonably practicable for the Permittee or WECS Owner to do so and as long as such measures are not otherwise negotiated, addressed or waived in a private land use agreement and including any agreements with the State of New Mexico.

- A. Site Clearance.** The Permittee shall use reasonable efforts to limit the amount of ground disturbance and clearing to the amount necessary to assure suitable access for construction, safe operation and maintenance of the WECS.
- B. Topsoil Protection.** The Permittee shall use standard construction practices to protect and segregate top soil from subsoil in cultivated lands during construction of the WECS.
- C. Compaction.** Except where otherwise required by the engineering design of the WECS system, the Permittee shall use standard construction practices to minimize the amount of compaction within the WECS footprint during all phases of the WECS's life.
- D. Livestock Protection.** The Permittee shall take reasonable precautions to protect livestock during all phases of the WECS's life.
- E. Fences and Cattle Guards.** The Permittee shall promptly replace or repair all fences, cattle guards, and gates removed or damaged during all phases of the WECS's life.
- F. Use of Public Roads:**
 - 1. Prior to commencement of Major or Minor Construction Activities the Applicant or WECS Owner shall identify all state and county public roads within the County to be used to transport equipment, parts, or materials for construction, operation or maintenance of the WECS.
 - 2. The Applicant and the County shall enter into a Road Use Agreement.

3. The Road Superintendent, or a qualified third-party engineer reasonably acceptable to both the County and the Applicant and, if necessary paid for by the Applicant, shall document the condition of the identified roads prior to construction. The Road Superintendent or third-party engineer shall document road conditions again thirty (30) days after the construction is complete.
 4. The Applicant or WECS Owner shall demonstrate, to the satisfaction of the County that it has the financial resources sufficient to comply with paragraph (5), below, and the County may require the Applicant to post a bond or other security in order to ensure such compliance.
 5. Any road damage caused by the Applicant, WECS Owner, or their contractors shall be promptly repaired at the Applicant's expense in accordance with the Road Use Agreement.
- G. WECS Access Roads:** Construction of turbine access roads shall be reasonably minimized. Access roads shall be low profile roads, so that equipment can cross them and shall be covered with gravel or similar material approved by the Road Superintendent. Caliche at a depth consistent with standard construction practices shall be installed at Permittee's expense upon any newly constructed WECS access roads. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so that runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
- H. Private Roads.** The Permittee shall promptly repair private roads or lanes damaged when moving equipment or materials or when accessing the site, unless otherwise negotiated with the Affected Landowner.
- I. Control of Dust.** The Permittee shall utilize standard construction practices to control dust.

Section 8. SETBACK REQUIREMENTS.

WECS site shall meet the following minimum setback distance requirements:

- A.** Distance from existing residential dwelling units. being seven (7) or more dwelling units within a one square mile area and outside the Affected Landowner's property, shall be no less than ten (10) miles, measured from the perimeter boundary lines of the WECS.
- B.** Distance from residential subdivisions shall be no less than ten (10) miles, measured from the perimeter boundary lines of the subdivision. Shall not be permitted within residential subdivisions.
- C.** Distance from a municipality shall be no less than ten (10) miles, measure from the perimeter boundary lines of the municipality.
- D.** Distance from an existing residential dwelling unit that is not within a subdivision, municipality or in an area with a population density as previously described in "A" and outside the Affected Landowner's property shall be no less than one (1) mile.
- E.** Distance from Affected Landowner's residence, business, or other buildings shall be no less than one thousand (1,000) feet, unless waived or a different setback is agreed in writing by the Affected Landowner.
- F.** Distance from any property line of the WECS project site shall be one thousand (1,000) feet or one and one half (1.5) times the height of the Wind Turbines, whichever is greater, unless a wind easement or waiver of setback has been obtained from the adjoining property

owner(s). No setback from internal property lines of an Affected Landowner shall apply.

- G. Distance from any public road or other public ROW shall be no less than one thousand (1,000) feet or one and one half (1.5) times the height of the Wind Turbines, whichever is greater.
- H. Unless otherwise stated in this Section, the distances required shall be measured from the center of the tower of a Wind Turbine.

Section 9. LINES, INTERFERENCE, AND FOOTPRINT.

- A. **Electromagnetic Interference.** The Permittee shall not operate the WECS so as to cause microwaves, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other Federal law.
- B. **Footprint Minimization.** The Permittee shall in its design and construction of the WECS make reasonable efforts to minimize the amount of land that is impacted by the WECS while giving due regard to industry and manufacturer standards for Wind Turbine spacing and optimization of energy production. Permittee will also make reasonable efforts to locate associated WECS facilities such as electrical/electronic boxes, transformers and communication systems near the Wind Turbine towers or inside the towers as appropriate or as otherwise agreed with the Affected Landowner.
- C. **Electrical Cables.** The Permittee shall place Collection Lines located on private property underground, unless such treatment is not commercially reasonable. Collection Lines may be placed above ground when conditions warrant, due to subsurface or topographical conditions. Permittee shall also use commercially reasonable efforts to locate Collection Lines within or immediately adjacent to the land necessary for WECS access roads unless otherwise negotiated with the Affected Landowner. This paragraph does not apply to Feeder Lines.
- D. **Feeder Lines.** The Permittee may place Feeder Lines on public rights-of-way if a public right-of-way exists. If no public right-of-way exists, the Permittee may place Feeder Lines on private property. When placing Feeder Lines on private property, the Permittee shall place the Feeder Lines in accordance with the easement negotiated with the Affected Landowner.

Section 10. DECOMMISSION/RESTORATION/ABANDONMENT.

- A. **Decommissioning Plan.** As part of their Special Use Permit application for WECS, the Permittee shall submit to the Planning Department a decommissioning plan describing the manner in which the Permittee anticipates decommissioning the WECS in accordance with the requirements of paragraph (B) below.
- B. **Disposition.** The Permittee shall submit a plan describing the intended disposition of the WECS at the end of its useful life and shall provide either (i) excerpted language from any agreement with the Affected Landowner regarding equipment removal upon termination of that agreement to the extent permitted by confidentiality restrictions; or (ii) certification that the Permittee has provided or agreed to such equipment removal provisions. In the event that there is no agreement with the Affected Landowner to post a surety bond or other financial security to secure Permittee's restoration obligations to the Affected Landowner, Permittee plan shall also include provisions requiring Permittee at a time ten (10) years after the commencement of commercial operations of the WECS, to post a surety bond or other financial security reasonably acceptable to the County, in favor of the Affected Landowner(s) not otherwise covered by a separate agreement, in accordance with industry standards, in an amount sufficient to fund the decommissioning plan and to remove all improvements installed by

Permittee and to restore the land in accordance with this Article and any agreements with the Affected Landowner(s) for which security is not otherwise required to be posted. The amount of the security instrument shall be conclusively determined at Permittee's cost by a duly qualified and independent third party mutually acceptable to Permittee and the County and familiar with WECS and shall consider, among other things, scrap or reuse value and inflationary and cost escalation to the date of estimated removal. The value of the security instrument shall be reviewed and updated on or before every fifth (5th) anniversary of the initial posting of the surety bond or other financial security. In the event that Permittee does not fully perform the decommissioning plan, including all removal and reclamation of the land, within two (2) years of the cessation of commercial operations or abandonment of the WECS, whichever may come first, the proceeds of the security instrument necessary for the performance of the decommissioning plan shall be paid to the County and/or the Affected Landowner to be used exclusively for the performance of the decommissioning plan, the costs of recovering such funds, and any other cost of the reclamation of the affected lands. Failure to generate electricity in commercial quantities for a period of one year shall be considered to constitute cessation of commercial operations unless the Permittee can show good cause for such failure, such as force majeure, or unresolved technical issues or other similar circumstances outside of Permittee's control and can present a good faith plan to resume commercial operations within a time reasonably acceptable to the County.

C. Site Restoration. Upon termination of the WECS Site, upon abandonment of the WECS, or upon the voluntary permanent cessation of commercial operations of the WECS, the Permittee shall dismantle and remove from the WECS site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and any other ancillary equipment or improvements to a depth of three (3) feet below grade unless otherwise agreed with the Affected Landowner. To the extent reasonably possible the Permittee shall restore and reclaim the WECS site to its pre-WECS topography and topsoil quality. All access roads shall be removed unless written approval is given by the Affected Landowner requesting that one or more roads, or portions thereof, remain. Any agreement with an Affected Landowner for removal to a lesser depth or for no removal at all shall be recorded with the County Clerk's Office and shall show the locations of all such foundations. All such agreements between the Permittees and the Affected Landowner shall be submitted to the Planning Department prior to completion of restoration activities. The WECS site shall be restored in accordance with the requirements of this condition within eighteen months after termination of the WECS Site Permit, abandonment of the WECS, or the voluntary permanent cessation of commercial operations, whichever comes first.

D. Abandonment of Commercial Wind Turbines. The Permittee shall advise the Planning Department of any Commercial Wind Turbines that are abandoned prior to termination of operation of the WECS. Chaves County may require the permittees to decommission any abandoned Commercial Wind Turbines as described in (B) and (C) above.

Section 11. VISUAL APPEARANCE, LIGHTING AND POWER LINES.

The Permittee shall use measures to reduce the visual impact of wind turbines to the extent possible, utilizing the following:

A. Commercial Wind Turbines shall be mounted on industry standard towers and painted an industry standard color (approved during permitting process) to minimize visual impact on the surrounding area. Permittee shall submit to the Planning Department a licensed engineer's signed statement or acknowledgment confirming that the construction and installation of the WECS is consistent with industry standards prior to the WECS commencing commercial operations.

- B.** The design of the WECS buildings and related structures shall, to the extent commercially reasonable, use materials, colors, textures, screening and landscaping that will blend the WECS's components with the natural setting and then existing environment. No advertisement upon buildings or fences.
- C.** WECS shall not be artificially lighted, except to the extent required by the FAA or other applicable authority or otherwise necessary for the reasonable safety and security thereof. Aircraft Detection Lighting Systems, certified by the FAA, shall be required when artificial light is required. At no time will lighting systems remain “on” if no aircraft are located in the area.
- D.** Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer of the WECS.
- E.** Collection Lines shall be placed underground within the interior of each parcel at a depth designed to accommodate the existing agricultural land use to the maximum extent practicable. Collection Lines may be placed overhead adjacent to County roadways, near substations or points of interconnection to the electric grid or in other areas as necessary.
- F.** Right of way use fees are required, as per Ordinance #44, when Chaves County Rights of Way are used by WECS.

Section 12. NOISE.

Noise level of the WECS shall not exceed fifty-five (55) dBA, including constructive interference effects, as measured at existing residences, businesses, and public buildings outside the boundaries of the Affected Landowner's property.

Section 13. SAFETY.

- A.** All WECS wiring shall comply with all applicable safety and stray voltage standards.
- B.** Commercial Wind Turbines shall not be climbable on the exterior.
- C.** All access openings or doors to Commercial Wind Turbines and electrical equipment shall be locked.
- D.** Permittee shall submit to the Planning Department a plan describing the type and location of emergency or other safety-related signage to be installed within the WECS site.
- E.** Clearance Height from Ground Surface. The minimum height clearance of the blade tips, measured from the ground surface to the lowest point of the blade tip when a blade is in fully vertical position, shall be twenty-five (25) feet.
- F.** The Permittee shall submit a copy of the WECS site plan described in Section 20 (A)(3) of this Article to the local fire department prior to commencing commercial operations.
- G.** Upon request by the local fire department the Permittee shall cooperate with the relevant agency to develop any emergency response plan for the WECS, including any training or providing of local fire departments with the necessary information to mitigate Wind Turbine fires, and/or any other type of potential fires or emergencies that may arise during the operation of a WECS.
- H.** Nothing in this section shall alleviate the need to comply with any and all other applicable local and state fire or safety laws and regulations.

- I. The Permittee shall maintain a current general liability insurance policy covering bodily injury and property damage with limits of at least one (\$1) million dollars per occurrence and two (\$2) million dollars in the aggregate and shall provide proof of said insurance to the County.

Section 14. MAINTENANCE.

All wind turbines and associated building shall be kept in good working order. Towers to be repainted at fifteen (15) year intervals, or immediately if they become stained or discolored by fire, leakage of fluids, graffiti, weather or other events.

Section 15. PERMIT EXPIRATION.

Except to the extent specified in this Article, a Special Use Permit for a WECS Site shall not expire or become void, except when the property is sold by the Affected Landowner. Also, a Special Use Permit for a WECS Site shall become void if no substantial construction has been completed within three (3) years of approval by the Board. The Board may grant an extension to the original Special Use Permit for a WECS Site of an additional three (3) years, upon written request from the Permittee and upon a showing of good cause for such failure as determined by the Board.

Section 16. TRANSFER OF PERMIT.

A Permittee shall have the right to assign or transfer the use of the WECS Site to any Qualified Assignee acquiring the WECS project, provided, however, that the Qualified Assignee to whom the WECS Site is assigned or transferred has agreed in writing to assume all of the Permittee's responsibilities under the WECS Site. Prior to the assignment or transfer of a WECS Site, the Permittee shall give notice of the assignment or transfer to the Planning Director along with sufficient documentation to satisfy the County that the assignee or transferee is a Qualified Assignee. The assignment or transfer of a WECS Site shall be approved by the Board prior to such assignment or transfer.

Section 17. VARIANCES.

Where, in the case of a particular proposed application, it can be shown that strict compliance with the requirements of this Article would result in a substantial or unreasonable hardship to the Permittee because of exceptional topographic, soil or other surface or subsurface conditions, or that strict compliance with this Article would result in inhibiting the achievement of the objectives of this Article, the Board may recommend modification or waiver of the standards, or be willing to examine the variation request on a case-by-case basis. No variance shall be granted simply because the Permittee disagrees with or does not wish to meet the goals and objectives of this Article. Also, no variance shall be granted contrary to the mandatory requirements of federal or state law. Requests for variances shall be submitted per Article I, Section 5.I of this Ordinance.

Section 18. FAILURE TO ACT.

If the Board does not act upon a Special Use Permit for a WECS Site application within forty-five (45) days of the County's determination that the application is complete, the Permittee shall give the Board written notice of its failure to act. If the Board fails to approve or reject the application within thirty (30) days after that notice, the Board shall, upon demand by the Permittee, issue a statement stating that the Special Use Permit for a WECS Site has been approved. Approval will be

conditioned on the subsequent receipt of required information as outlined in Section 20 below that may not be available at the time the application is submitted.

Section 19. PERMIT APPLICATION PROCEDURES.

- A.** An application for a Special Use Permit -WECS Site Permit must be submitted to the Planning Department on the form prescribed by the Planning Department. An application for approval of a WECS Site Permit must include text and maps sufficient to show that the proposed WECS will comply with the required standards in this Article and the laws of the State of New Mexico. If the Planning Department determines that the application is incomplete, the Applicant may be required to submit additional information. The Planning Department will give notice to the Applicant when the application is determined to be complete. Requests for Special Use Permit shall be submitted per Article I, Section 5.I of this Ordinance.
- B.** No Major Construction Activities associated with a WECS may commence until a Special Use Permit WECS Site Permithas been issued by the Board.
- C.** Application Fee. See Special Use Permit Fee of Appendix A- of this Ordinance.
- D.** The County may ask the Permittee to enter into a Cost Reimbursement Agreement to cover any out of pocket expenses incurred by the County to review any materials associated with the WECS Permit application process or any WECS Permit variance requests or to ensure compliance with this Article, including but not limited to the reasonable costs of consultant and expert evaluation and consultation with the County. Such Agreement may include the requirement for an advancement of funds for such uses.

Section 20. REQUIRED INFORMATION FOR PERMIT APPLICATION.

- A.** The following shall be submitted with an application for a Special Use Permit WECS Site Permit:
 - 1. Boundaries of the site proposed for the WECS and associated facilities located in the County on a preliminary survey or map as appropriate.
 - 2. Map of currently occupied residential structures, businesses, and public buildings on the proposed site and within ten (10) mile radius of the site boundary.
 - 3. Site plan showing the general layout of the WECS (including the location of any planned Collection Lines, Feeder Lines, and transmission lines), associated access roads located in the County, depicting lands under agreement with Affected Landowners, and showing the required setbacks from property lines, existing structures, utility lines, and public street rights-of-way. Permittee must give notice to the Planning Department of any
 - (a) changes to the location of Wind Turbines that are greater than one-hundred (100) feet,
 - (b) changes to the location of roads or aboveground collection lines (if applicable) that are greater than one-thousand two-hundred (1,200) feet,
 - 4. Changes in the location of any above ground feeder lines (if applicable) that are greater than one-thousand (1,000) feet, or changes in the location of any substations, operations buildings, or other above-ground structures that are greater than eight-hundred (800) feet. Such notice shall confirm that such changes do not result in any

noncompliance with this Article. Any changes in location that are no longer in compliance with this Article will require a variance. Any changes in location that are greater than the distances set forth above, but still in compliance with this Article will not require a variance but may require an amendment to the WECS Site Permit depending on the circumstances of the location change.

5. Location of other WECS within ten (10) mile radius of the proposed WECS site that are being developed by the Applicant or that the Applicant is aware of through publicly available information.
 6. A schedule for the proposed start and completion dates of construction of the WECS.
 7. Copies of letters notifying local Military Installations (White Sands Missile Range; Holloman, Kirtland, and Cannon Air Force Bases) that a WECS Site Permit has been applied for with Chaves County and, to the extent Permittee is not prohibited by confidentiality agreements, any applicable permits or approvals the Applicant has received from or related to any locally affected Military Installations.
 8. A copy of any Determinations of No Hazard issued by the Federal Aviation Administration for the WECS located in the County.
 9. Proof the Permittee has the general liability insurance required under this Article. If the Special Use Permit-WECS Site Permit is approved, Permittee shall provide proof of insurance to the Planning Department annually.
 10. Manufacturer description of the WECS Wind Turbines planned to be installed in the County, including but not limited to, model number, nameplate, hub height, and blade length.
 11. Copies of any crossing agreements entered into by the Permittee. Redacted versions of crossing agreements are acceptable, if confidentiality provisions in the crossing agreements would otherwise be breached.
 12. Copies of the Memoranda of Agreements with Affected Landowners filed in the County records.
- B.** The following materials shall be submitted to the Board within thirty (30) days after receipt by the Applicant. These materials shall be a condition subsequent of any approved WECS Site Permit.
1. Copies of building permits associated with the WECS construction within the County.
 2. As-built surveys within thirty (30) days from the date the WECS commences commercial operations.
 3. To the extent not previously provided in copies of building permits, a copy of the signed engineering plans for the WECS.

Section 21. PENALTIES.

Any person who violates any of the provisions of this Article shall be punished by a fine of up to three hundred (\$300) dollars and/or imprisonment of no more than ninety (90) days, or both. Each day this Article is violated shall be considered a separate offense. In addition, the County may suspend or revoke a WECS Siting Permit if the Permittee violates any of the provisions of this Article or fails to fulfill any conditions subsequent to any approved WECS Siting Permit.

Section 22. NOTICE AND OPPORTUNITY TO CURE

Prior to any remedies being sought or exercised by the County for any default or alleged default by Permittee of any of the provisions of this Article, the County shall first deliver to Permittee a written notice specifying the default and indicating the curative action needed and Permittee shall have a period of fifteen (15) business days after such notice to cure any default that can be cured by the payment of money and a period of thirty (30) business days to cure any other default hereunder; provided, however, so long as Permittee has commenced curative actions within such thirty (30) business day period and thereafter diligently pursues such curative action, such thirty (30) business day period shall be extended for such period of time as may be necessary for Permittee to cure the default. Permittee shall provide County with its proper notice address for this purpose and for any notices delivered under Section 23 below.

Section 23. NOTICES.

Except as expressly set forth to the contrary in this Article, all notices, requests or deliverables under this Article must be in writing and must be delivered to the County Manager or Permittee, as applicable, in person, by courier or certified mail, return receipt requested, or by facsimile or other electronic transmission. A notice, request or deliverable given under this Article is effective on receipt by the County Manager or Permittee, as applicable; provided, however, that a facsimile or other electronic transmission that is transmitted after the normal business hours of the recipient shall be deemed effective on the next business day. All notices, requests and deliverables to be sent to the County Manager or Permittee, as applicable, must be sent to or made at the addresses separately provided.

PASSED, APPROVED, ADOPTED AND SIGNED this _____ day of January, 2023.

BOARD OF CHAVES COUNTY COMMISSIONERS:

Jeff Bilberry, Member

T. Calder Ezzell Jr, Member

ATTEST:

Dara Dana, Member

Richard C. Taylor, Member

Cindy Fuller
County Clerk

Michael J. Perry, Member

**AMENDMENTS MADE
TO ARTICLE I AND
ARTICLE XVIII**

**CHAVES COUNTY NEW MEXICO
ZONING ORDINANCE NO. 7**

**ARTICLE I
GENERAL STATEMENTS**

Section 1 TITLE

This Ordinance shall be ~~known as~~ ~~called~~ the "Chaves County, New Mexico Zoning Ordinance."

Section 2 ZONING AUTHORITY OF COUNTY

~~Section 3-21-1, N.M.S.A., 1978, designates the County of Chaves as a Zoning Authority and sets forth its authority.~~ This Ordinance is enacted to establish and carry into effect several powers, duties, and privileges conferred upon the Chaves County Board of Commissioners, in, under, and by an Act of the New Mexico State Legislature, known as Sections 3-21-1 through 3-21-14, both inclusive, New Mexico Statutes Annotated, (1978) being laws 1965, ch. 300. together with acts amendatory thereof and supplementary thereto, including the designation the Chaves County Board of Commissioners as the Zoning Authority.

Section 3 PURPOSES

A. Purpose The purpose of this Ordinance is to promote health, safety, ~~morals~~, and the general welfare and to regulate and restrict the following:

1. height, number of stories and size of buildings and other structures;
2. percentage of a lot that may be occupied;
3. size of yards, courts, and other open space;
4. density of population; and
5. location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

B. For Said Purposes Shall **The Zoning Authority shall:**

1. Divide the territory under Chaves County jurisdiction into districts of such manner, shape, area, and form as is necessary to carry out the purposes of **this Ordinance**. Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation; **and**
2. Regulate or restrict the erection, construction, reconstruction, alteration, or use of buildings, structures, or land in each district. All such regulations shall be uniform for each class or kinds of buildings within each district, but regulation in one district may differ from regulation in another district; **and**

3. provide for the administration and interpretation of said regulations; and
4. provide, subject to the restrictions of Section 3-21-6 N.M.S.A., 1978, for the manner in which zoning regulations, restrictions, and boundaries of districts are:
 - a. determined, established, and enforced; and
 - b. amended, supplemented, or repealed.

C. Conformance to Comprehensive Plan

1. This Ordinance is in accordance with recommendations ~~set forth in~~ ~~of the latest~~ Chaves County ~~1973~~ Comprehensive ~~Master Plan Land-Use Planning and Zoning Report and the Chaves County 1984 Land Use Policies Plan, an update thereto,~~ and is designed to:
 - a. Lessen congestion in the streets or public ways;
 - b. Secure safety from fire, flood waters, panic, and other dangers;
 - c. Promote health and the general welfare;
 - d. Provide adequate light and air;
 - e. Prevent the overcrowding of land;
 - f. Avoid undue concentrations of population;
 - g. Facilitate adequate provision for transportation, water, sewerage, schools, parks, and other public requirements; and
 - h. Control and abate the unsightly use of buildings or land.
2. Reasonable consideration shall be given, among other things, to the character of the zoning areas and districts and their peculiar suitability for particular uses, and to conserving the value of buildings and land and encouraging the most appropriate use of land throughout the jurisdiction.

Section 4 JURISDICTION

- A. This Ordinance applies to all of the territory within Chaves County that is not within the ~~Zoning~~ jurisdiction of the following municipalities:
 1. The municipal limits of Roswell, New Mexico and extraterritorial limits of the Roswell-Chaves County Extraterritorial Zoning Ordinance as shown by the official maps ~~thereof, which shall change only by Joint Powers Agreement between the Chaves County Board of Commissioners and the Roswell City Council;~~
 2. Municipal limits of Dexter, New Mexico, to change as the municipal limit changes;
 3. Municipal limits of Hagerman, New Mexico, to change as the municipal limit changes; and
 4. Municipal limits of Lake Arthur, New Mexico, to change as the municipal limit changes.

**Section 5 ~~ADMINISTRATION ZONING ORDINANCE MODE OF DETERMINATION,~~
~~ESTABLISHMENT, OFFICIAL ZONING MAP, ENFORCEMENT,~~
~~AMENDMENT, SUPPLEMENTATION, REPEAL OR APPEAL~~**

A. Determination

The provisions of the Chaves County, New Mexico Zoning Ordinance shall be determined by the Chaves County Planning and Zoning Commission and recommended for adoption by the Chaves County Board of Commissioners.

Establishment

~~This Ordinance is enacted to establish and carry into effect the several powers, duties, and privileges conferred upon Chaves County, in, under, and by an Act of the New Mexico State Legislature, known as Sections 3-21-1 through 3-21-14, both inclusive, New Mexico Statutes Annotated, (1978) being laws 1965, ch. 300, together with acts amendatory thereof and supplementary thereto, including the designation of the County as a Zoning Authority.~~

B. Planning and Zoning Commission

Per State Statute 4-57-1 and 3-21-7.B NMSA, the Chaves County Board of Commissioners shall establish a Planning Commission. The Planning Commission shall act as the Zoning Commission and shall be known as the Chaves County Planning and Zoning Commission.

1. The Chaves County Planning and Zoning Commission shall provide a recommendation to the Chaves County Board of Commissioners on applications for zone changes, variances, special use permits, amendments, supplement and all other planning and zoning matters as required by the Board.
2. The Chaves County Planning and Zoning Commission shall consist of five residents of Chaves County. Chaves County Planning and Zoning Commissioners shall be appointed by the Board Chaves County Commissioners for a term of six (6) years. Three Chaves County Planning and Zoning Commissioners shall begin their term in January following even-numbered years and two Chaves County Planning and Zoning Commissioners shall begin their term in January following odd-numbered years.
3. Chaves County Planning and Zoning Commissioners shall be appointed by a majority vote of all the members of the Chaves County Board of Commissioners. A Chaves County Planning and Zoning Commissioner may be removed at any time during their term of office by a majority vote of all the members of the Chaves County Board of Commissioners. Removal and/or appointments of Chaves County Planning and Zoning Commissioners shall be made by the Chaves County Board of Commissioners at a public meeting.
4. Chaves County Planning and Zoning Commissioners shall endeavor to attend all regular and special meetings. The Secretary of the Chaves County Planning and Zoning Commission shall provide the Chaves County Board of Commissioners with a yearly attendance report of all Chaves County Planning and Zoning Commissioners.

5. The Chaves County Planning and Zoning Commission shall elect a Chairperson, Vice Chairperson, and Secretary from its membership by a simple majority at the first regular meeting of the year.
6. The Chaves County Planning and Zoning Commission shall establish a monthly meeting date, time and place, by Resolution, at the first regular meeting of the year.

C. Official Zoning Map

1. The official Chaves County Zoning Maps, together with all explanatory matter thereon, are hereby adopted by reference and declared to be an official record and a part of these Zoning Regulations.
2. Said maps shall be identified as such by the signature of the Chairman of the Chaves County Board of Commissioners and attested by the County Clerk.
3. Whenever amendments or changes are made in zoning district boundaries, such amendments or changes shall be made promptly on the official Zoning Maps.
4. Regardless of the existence of purported copies of the official zoning maps, which may from time to time be made or published, the official zoning maps shall be that set located in the office of the County Clerk of Chaves County, New Mexico. ~~and which shall be the final authority as to the current zoning status of all lands and buildings in the area of jurisdiction.~~
5. In the event that the official zoning maps become damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and amendments thereto, the **Chaves County Board of Commissioners** may, by resolution, adopt new official zoning maps which shall supersede the prior official zoning maps. The new official zoning maps may correct drafting or other errors or omissions in the prior official zoning maps, but no such corrections shall have the effect of amending the original Zoning Regulations or any subsequent amendments thereof.

D. Enforcement – Authority

- ~~1. This Ordinance shall be enforced by the Chaves County Board of Commissioners as the Zoning Authority.~~
2. ~~In addition,~~ If any building or structure is erected, constructed, reconstructed, altered, converted, or maintained; or any building, structure, or land is used in violation of ~~Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation~~ or this Ordinance, the Zoning Authority may institute any appropriate action or proceedings to:
 1. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
 2. Restrain, correct, or abate the violation;
 3. Prevent the occupancy of such building, structure, or land; or
 4. Prevent any illegal act, conduct, business, or use in or about such premises.

- ~~3. This Ordinance together with the official zoning maps shall be filed in the office of the County Clerk and shall be available for examination by any citizen.~~

E. Enforcement – Jurisdiction

This Ordinance may be enforced by prosecution for violations in any court of competent jurisdiction of Chaves County.

F. Enforcement – Penalties

Any person(s), trust, company, firm or corporation violating any of the provisions of this Ordinance, after ten (10) days written notice of violation mailed to the last known address of the property owner, shall be punished by a fine not exceeding three hundred dollars (\$300) or imprisonment in the county jail not to exceed ninety (90) days or both such fine and imprisonment. [Each day's violation shall be a separate offense.]

G. Enforcement – Officers

It is the duty of the District Attorney, the Chaves County Sheriff's Department, Deputy Sheriffs, Constable, and other Chaves County law enforcement officers, including the Chaves County Planning and Zoning Director and Code Enforcement Officer to:

1. Enforce the provisions of this Ordinance;
2. Diligently file a complaint or information alleging a violation if circumstances would indicate that action to a reasonably prudent person; and
3. Cooperate with the District Attorney or other prosecutors in all reasonable ways.

H. Amendment, supplementation or repeal

1. **Initiation.** Petitions to amend, supplement, or repeal this Ordinance may be initiated by the Chaves County Board of Commissioners, the Chaves County Planning and Zoning Commission, or by a resident of Chaves County owning real property in Chaves County. ~~owner in the area to be included in the proposed amendment.~~
2. **Application.** Any application to amend, supplement, or repeal this Ordinance ~~for change to the text or maps of the Chaves County Planning and Zoning Ordinance~~ shall be made to the Chaves County Planning and Zoning Commission and Chaves County Board of Commissioners through the Planning and Zoning Department ~~Ordinance Administration Officer~~, on forms prescribed, at least thirty (30) ~~seven (7)~~ calendar days before a regular scheduled Planning and Zoning Commission meeting. ~~at which plans for a public hearing will be made.~~
3. **Public Hearing.** This Ordinance may become effective, amended, supplemented, or repealed only after a recommendation from the Planning and Zoning Commission and a public hearing before the Chaves County Board of Commissioners at which all parties in interest and citizens shall have an opportunity to be heard. Notice of the date, time and place of the Chaves County Board of Commissioners' public hearing and a title and general summary of the proposed amendment, supplement, or repeal shall be published in the local newspaper and

other County media services at least fifteen (15) days prior to the date of the hearing within the jurisdiction of the Chaves County Board of Commissioners. ~~Zoning Authority.~~

4. **Requirements.** Proposed amendment, supplement, or repeal of this Ordinance shall require approval from a majority of all members of the Chaves County Board of Commissioners upon a roll call vote. (State Statue 4-37-6 NMSA).
5. Copies of the proposed amendments or supplements shall be made available in the Chaves County Planning and Zoning Department office during normal and regular business hours and on the Chaves County website. Copies may be acquired at a payment of reasonable charge.
6. Amendments to this Ordinance shall not take effect until at least thirty (30) days after being recorded in the Chaves County Clerk's Office, except when it is declared by the Chaves County Board of Commissioners that it is necessary for the public health, safety and welfare of the County that the changes take effect when it is recorded in the Chaves County Clerk's Office.

I. Zone Change, Special Use Permit & Variance

1. **Initiation.** Requests for a change in zoning regulation, a special use permit or a variance may be initiated by the Chaves County Board of Commissioners, the Chaves County Planning and Zoning Commission, or by an owner of real property in the area to be included in the application forms provided by the Planning and Zoning Department.
2. **Applications.** Applications shall be submitted to the Planning and Zoning Department at least thirty (30) calendar days before the regular scheduled Planning and Zoning Commission meeting. The Planning and Zoning Staff shall review the application and supporting documents prior to accepting them. If accepted, the Planning and Zoning Staff shall assign the application a case number. Application fees shall be due upon acceptance by the Planning and Zoning Staff.
3. **Notice.** ~~Whenever a change in zoning is proposed for an area of one block or less~~
 - a. A notice stating the date, time and place of Planning and Zoning Commission's public meeting shall be mailed by regular mail, to property owners within six hundred (600) feet of the parcel of land(s) described in the application, as shown by the records of the Chaves County Assessor, at least seven (7) days prior to the Planning and Zoning Commission meeting. Notice of the date, time and place of the meeting shall be published in the local newspaper and other County media services at least three (3) days prior to the meeting date.
 - b. A notice stating the date, time and place of the Chaves County Board of Commissioners' public hearing shall be mailed by certified mail return receipt ~~requested~~, to ~~the~~ property owners within six hundred (600) feet of the parcel of land(s) described in the application, as shown by the records of the Chaves County Assessor, at least fifteen (15) days prior to the Board of Chaves County Commissioner's public hearing. Notice of the date, time and place of the public hearing shall be published in the local newspaper and other County media service, at least fifteen (15) days prior to the public hearing date. ~~of lots or land within the area proposed to be changed by a zoning regulation, and within one hundred~~

~~(100) feet, excluding public right of way, of the area proposed to be changed by zoning ordinance.~~

- 4. Protests.** If the owners of twenty percent (20%) or more of the area of the lots and land included in the area proposed to be changed by **a zone change, a special use permit or a variance** ~~a zoning ordinance~~, or within one hundred (100) feet, excluding public right-of-way, of the area proposed to be changed by **a zone change, a special use permit or a variance** ~~a zoning ordinance~~ **protest in writing** the proposed **zone change, special use permit or variance** ~~in the zoning ordinance~~, then the proposed **zone change, special use permit or variance** ~~in zoning~~ shall not become effective unless the change is approved by a two-thirds ($\frac{2}{3}$) vote of all of the members of the Chaves County Board of Commissioners.
 - 5. Requirements.** ~~Where applicable,~~ The application ~~to amend, supplement, or repeal~~ shall include an accurate site plan showing location and dimensions of all existing and proposed improvements to the property and any related information required by the **Planning and Zoning Director** ~~Ordinance Administration Officer~~. The application shall be signed by a real property owner in the area included in the application unless initiated by the Chaves County Board of Commissioners or the Planning and Zoning Commission. A copy of the deed or contract to the property shall accompany the application. ~~If additional real property is included other than that owned by the applicant, a petition in favor of amendment signed by real property owners representing seventy five percent (75%) of the land area included in the application shall accompany the application. Following the date established for public hearing on any proposed amendment, the Planning and Zoning Commission may refuse to accept another application for the same amendment for a period of one year.~~
 - 6. Fees, Non-Returnable.** (Not applicable to Authorities or Commissions.) The Chaves County Board of Commissioners shall adopt by resolution a fee schedule, from time to time as necessary, setting forth the fees that shall apply to the ~~Chaves County New Mexico Zoning Ordinance~~ after receiving a recommendation on such change by the Planning and Zoning Commission. The fee schedule shall be attached as an appendix to the ~~Chaves County New Mexico Zoning Ordinance~~. The **Planning and Zoning Director** ~~Chaves County Enforcement Officer~~ shall assure that all applicants ~~requesting a change, to the Ordinance~~ shall receive a copy of the most current fee as resolved by the Chaves County Board of Commissioners.
 - 7. Planning and Zoning Commission Reports.** A report of the results of the hearing before the Planning and Zoning Commission on all applications ~~to amend, supplement or repeal~~ shall be forwarded to the Chaves County Board of Commissioners, along with their recommendation. The recommendation shall be either for approval, for conditional approval, or for disapproval. ~~and~~ The report shall contain a brief summary of the reasoning behind the recommendations, and any conditions of approval.
 - 8. Chaves County Board of Commissioners' Action.** The Chaves County Board of Commissioners shall not take action on ~~an the~~ application ~~to amend, supplement, or repeal~~, until the report and recommendation from the Planning and Zoning Commission has been received.
- J. Appeals to the Chaves County Board of Commissioners **Zoning Authority** – Grounds – Stay of Proceedings.**
- ~~a. The zoning authority shall provide by resolution the procedure to be followed in considering appeals allowed by this section.~~

1. Any aggrieved persons ~~or any officer, department, board, or bureau of the zoning authority~~ affected by a decision of an administrative official **or Code Enforcement Officer**, ~~commission, or committee~~ in the enforcement of ~~Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or this Ordinance, resolution, rule, or regulation adopted pursuant to these sections~~ may appeal **the decision** to the **Chaves County Board of Commissioners zoning authority** **within fifteen (15) days of the date of the decision**. An appeal shall stay all proceedings in furtherance of the action appealed unless the **administrative officer Ordinance or Code Enforcement Officer**, ~~commission, or committee~~ from whom the appeal is taken, certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the **administrative officer or Code Enforcement Officer official**, ~~commission, or committee~~ from whom the appeal is taken and due cause shown.

2. When an appeal alleges that there is error in any order, requirement, decision, or determination by an administrative official **or Code Enforcement Officer**, ~~commission, or committee~~ in the enforcement of ~~Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or any this Ordinance, resolution, rule, or regulation adopted pursuant to these sections~~, the Chaves County Board of Commissioners by a **majority two-thirds** ~~two-thirds~~ vote of all its members may:
 - ~~authorize, in appropriate cases and subject to appropriate conditions and safeguards, a special exceptions to the terms of the zoning ordinance or resolution;~~
 - ~~which are not contrary to the public interest;~~
 - ~~where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and~~
 - ~~so that the spirit of the zoning ordinance is observed, and substantial justice done; or~~

~~In conformity with Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation;~~

 - (1) reverse any order, requirement, decision, or determination of an administrative official **or Code Enforcement Officer** ~~commission, or committee~~;
 - (2) decide in favor of the appellant; or
 - (3) make any change in any order, requirement, decision, or determination of an administrative official **or Code Enforcement Officer** ~~commission, or committee~~.

3. Any person aggrieved by a decision of the Chaves County Board of Commissioners may file an appeal with the District Court pursuant to the provisions set forth in Section 39-1-1 NMSA 1978. Appeals shall be filed within thirty (30) days of the date of the decision.

K. Variances.

1. Every property owner within the jurisdiction of ~~this Chaves County, New Mexico Zoning Ordinance~~ shall have the right to apply to the Chaves County Board of Commissioners for a variance from the ~~Chaves County, New Mexico Zoning Ordinance~~ when the property owner can show an exceptional situation or condition relating to the property such that the strict enforcement of ~~this zoning Ordinance~~ would constitute an unreasonable hardship upon the owner of such property **due to exceptional topographic, soil or other surface or subsurface condition**.

2. Prior to granting any variance from this ~~Chaves County, New Mexico Zoning~~ Ordinance, the Chaves County Board of Commissioners shall hold a public ~~hearing meeting~~ and shall determine that:
 - a. the granting of the variance will not be injurious to the public health, safety, ~~morals~~, and general welfare of the community;
 - b. the use or value of the area adjacent to the property ~~included in the variance~~ will not be affected in a substantially adverse manner;
 - c. the need for the variance arises from some condition peculiar to the property involved and such condition is not due to the general conditions of the neighborhood ~~and is not for monitor gains and/or to resolve a self-imposed hardship~~;
 - d. the strict application of the terms of this Ordinance from which the variance is sought would result in a peculiar, ~~and~~ exceptional and undue hardship upon the owner of such property; and
 - e. that the granting of the variance would be within the spirit, intent, purpose, and general plan of this ~~Chaves County, New Mexico Zoning~~ Ordinance.
3. Absent of showing extreme hardship or a complete loss of ~~any~~ financial benefit in the property, the Chaves County Board of Commissioners shall not approve a request for a variance where the applicant purchased the property after the effective date of this ~~Chaves County, New Mexico Zoning~~ Ordinance and the condition requiring ~~for~~ the variance was in existence at the time of the purchase.

Section 6 ORDINANCE ENFORCEMENT OFFICER

A. Establishment and Organization

- ~~1. The position of the Ordinance Enforcement Officer was established by the Chaves County Board of Commissioners on March 14, 1978 by Resolution No. 66-29.~~
- ~~2. The Ordinance Enforcement Officer shall be appointed by and serve at the pleasure of the Chaves County Board of Commissioners.~~

A. Duties

1. The Ordinance Enforcement Officer's duties shall include, but not be limited to, seeing that the requirements of this ~~Chaves County~~ Ordinance, regulations, master plans, land use plans, or land use permit systems are carried out and enforced.
2. The Ordinance Enforcement Officer who shall also be known and referred to as "~~Code Enforcement Ordinance~~ Officer", shall maintain an office from which to supply the public with information about the various regulations, ordinances, etc.
3. Said Officer shall issue Land Use Permits, make inspections, and carry out other duties of the office as directed by the Chaves County Board of Commissioners. A copy of each permit issued shall be furnished to the Chaves County Tax Assessor.

~~4. On matters requiring the action of the Planning and Zoning Commission, where they are required to review specific findings before taking action on the application or proposal, said Officer shall notify the applicant of the result of the findings and the date, time and place of the hearing at least five (5) days in advance of the hearing date. The applicant shall be advised of the result of the hearing.~~

4. Rules for carrying into effect the provisions of this Ordinance must be consistent with this Ordinance, and subject to review and approval of the Chaves County Board of Commissioners.

B. Authority

1. Said Officer, or authorized representatives, shall have the authority to enter upon the premises for the purposes of inspection, provided, however, that no building shall be entered without the consent of the owner or occupant or unless properly authorized.

2. In event any buildings or structure is erected, constructed, reconstructed, altered, converted, or maintained, or any buildings, structure, or land is used in violation of this Ordinance, said officer, in addition to other remedies, may, at the direction of the Chaves County Board of Commissioners, institute any appropriate action or proceedings to prevent such unlawful action to restrain, correct, or abate such violation; to prevent the occupation of such building, structure or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

~~3. Before acting on any request, the Ordinance Enforcement Officer, or Chaves County Planning and Zoning Commission may request an opinion from any person or agency concerned with the proposed request to determine if the request conforms with the Zoning Ordinance. The requested opinions may also include comments on other factors which bear on the public interest.~~

Section 7 INTERPRETATIONS AND CONFLICTS

A. The regulations of this Ordinance are held to include the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, abrogate, or annul any easement, covenant, or other agreement between parties or other valid ordinances. Where this Ordinance imposes a greater restriction than is imposed by other rules, regulations, easements, covenants, agreements, or ordinances, the provisions of this Ordinance control.

B. If any other statute, regulation, or other local ordinance, resolution, or regulation adopted under authority of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 is applicable to the same premises, the provision shall govern which requires:

1. the greater width or size of yards, courts, or other open spaces;
2. the lower height of building or a less number of stories;
3. the greater percentage of lot or land to be left unoccupied; or
4. imposes other higher standards.

Section 8 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase, provision, or part or portion of any section, subsection, paragraph, sentence, clause, phrase, or provision of this Ordinance is, for any reason, held to be unconstitutional, invalid, or void, the remaining portions shall not be affected, since it is the express intent of the **Chaves County Board of Commissioners** to pass each section, subsection, paragraph, sentence, clause, phrase, or provision, and every part thereof, separately and independently of every other part.

**ARTICLE XVIII
SPECIAL USE PERMIT**

Section 1 SPECIAL USE PERMIT – RESTRICTIONS

A Special Use Permit shall be bound and limited to the parcel(s) of land described in the application and to the land owner stated in the application and as stated in the Certificate of Zoning issued by the Planning and Zoning Department. A Special Use Permit is nontransferable in location or ownership, with exemptions as permitted by the Board. So as not to misperceive, confuse and misapprehend prospective owners, a real estate contract shall be construed as a change in ownership and as such shall require a modification to the Special Use Permit. ~~The regulations set forth in this Article or set forth elsewhere in this Ordinance when referred to in this Article, are Special Use Permit Regulations.~~

A. Granting Special Use Permits

1. The Board ~~of Chaves County Commissioners~~ ~~may~~ shall considered the following conditions prior to granting a Special Use Permit in districts from which the proposed use is ~~are~~ otherwise prohibited by this Ordinance. ~~Zoning Code and shall impose appropriate conditions and safeguards, including a specified period of time for the Special Use Permit to protect the general plan to conserve and protect the property values in the neighborhood.~~
 - a. The proposed use shall not create a public nuisance, such as but not limited to, noise, dust, smoke, direct glare, vibration or interference with WIFI and cellular data for the surrounding neighbors and community.
 - b. The proposed use shall not adversely affect the market value of the adjacent properties in a negative manner.
 - c. The proposed use shall be compatible with the surrounding properties, roads and existing legal uses.
 - d. The proposed use shall be within the intent, purpose, and general plan of this Ordinance.

2. In permitting such uses the Board may impose, in addition to the regulations specified herein, such conditions as it deems necessary to protect the best interests of the surrounding neighborhood or the County as a whole. These conditions may include, but are not limited to, the following:
 - a. Increasing the required lot size, setback or yard dimensions;
 - b. Limiting the height of buildings or structures;
 - c. Controlling the number of access driveways and their location points;
 - d. Requiring the dedication of right-of-way or public use easements for future public roadway improvements;

- e. Increasing or decreasing the number of required off-street parking and/or loading spaces as well as designating the location, screening, drainage, surfacing or other improvement of a parking area;
 - f. Limiting the number, size, height, shape, location and lighting of signs;
 - g. Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;
 - h. Designating sites for and/or the size of open space or recreational areas;
 - i. Requiring site reclamation upon discontinuance of the use and/or expiration or revocation of the Special Use Permit;
 - j. Limiting hours and size of operation;
 - k. Controlling the siting of the use and/or structures on the property;
 - m. Requiring mitigation measures to effectively reduce the potential for land use conflicts with agricultural lands and adjacent residential lands, such as: landscape buffers, special setbacks, screening, and/or site design criteria using physical features, such as rock outcrops, ravines, and roads.
3. A Special Use Permit may be modified or amended by the Board at a public hearing for the following reasons:
- a. Change in ownership
 - b. Change to the development plan, but not the permitted use.
4. A Special Use Permit may be suspended or terminated by the Board, at a public hearing, if any one (1) of the following reasons:
- a. One or more of the Conditions of Approval of the Special Use Permit have not been met;
 - b. The Special Use Permit was obtained by misrepresentation or fraud;
 - c. The use, for which the Special Use Permit was granted, has ceased or was suspended for twelve (12) or more consecutive calendar months;
 - d. The use, for which the Special Use Permit was granted, is found to be a public nuisance and/or detrimental to the health, safety and welfare of the neighbors, roads or surrounding community.
 - e. Change in property ownership or site location.

B. Use Regulations A Special Use Permit may be allowed for the following uses only:

1. Electric substations, gas regulator stations, well and water pumping stations in any district, provided that in any residential district or commercial district the site shall be developed and maintained in conformance with the general character and appearance of the district. Such

~~development shall include landscaping and suitable screening in the form of a wall or solid fence and compact evergreen shrub.~~

2. Nursery schools, day nursery, child care center, pre-kindergarten, and other special and similar private schools in an Industrial District as an accessory or function for employees, provided that adequate safety from loud noises and other industrial dangers are supplied and there is at least 100 square feet of open play for each child enrolled. Such play area shall be screened with a suitable wall, fence, or evergreen shrub.
3. Radio or television transmitter antenna (commercial), provided it shall be at least 100 feet from any public ~~right-of-way or road.~~ way.
4. Hospitals and clinics.
5. Private clubs or lodges, excepting those of which the chief activity is a service customarily a business activity within a Zone B, Type 3 District, only.
6. State licensed or state operated family or group care residences for homeless or abused children, the mentally ill ~~or retarded~~, the criminal offender, or alcohol or drug abusers, that function as a transition from institution to community, serving twenty (20) or fewer persons.
7. Renewable energy facilities, such as but not limited to, wind, solar, hydrology and organic.
8. A temporary second residential dwelling unit, including a Recreational Vehicle, on one lot or parcel of land for the care of an immediate family member.
9. Trucking companies in the Agriculture-Residential District.
10. Workforce Camps in the Agriculture-Residential District
11. Recreational Vehicle Parks in the Agriculture-Residential District.

Section 2 SUPPLEMENTAL REGULATIONS

~~A. The Board of Chaves County Commissioners may, by special use permit, after a public hearing and subject to protective restrictions that it deems necessary, authorize the location of any of the following buildings or uses in any district from which they are prohibited by this Ordinance.~~

12. Any public building erected and used by any department of the City, County, State, or Federal Government.

~~Hospitals, clinics, and institutions, except institutions for criminals and those for persons that are insane or have contagious diseases; provided, however, that such buildings may occupy not over twenty five percent (25%) of the total area of the lot and will not have any serious and depreciating effect upon the value of the surrounding property; and provided further that the building shall be setback from all yard lines a distance of not less than two (2) feet for each foot of building height.~~

13. Cemetery;
14. Community buildings or recreation fields.

15. Airport or landing fields.

~~Greenhouses, provided that such structure shall not be less than one hundred (100) feet from all property lines.~~

16 Temporary commercial amusements or recreational developments.

~~Extraction of gravel, sand, or similar other raw materials, provided that a satisfactory guarantee be posted with the Chaves County Planning and Zoning Commission, assuring that the land be left in such a condition that all faces, slopes, edges, or spoil piles have a maximum two and one-half (2½) foot horizontal to one (1) foot vertical.~~

17. Industrial uses excluded from the Industrial Districts, to locate in the "Industrial Districts."

18. Parking lots adjacent to, across the street from, with exemption to State Roads and Highways., or across the alley from the Commercial districts or a Business District.

~~Before issuance of any special permit for any of the above buildings or uses, the Board of Chaves County Commissioners shall refer the proposed application to the Planning and Zoning Commission, which commission shall be given sixty (60) days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood traffic conditions, public utility facilities, and other matters pertaining to the general welfare. No action shall be taken upon the application for the proposed building or use above referred to until and unless the report to the Chaves County Planning and Zoning Commission has been filed. Provided, however, that if no report is received from the Chaves County Planning and Zoning Commission within sixty (60) days, it shall be assumed that approval of the application has been given by said Commission.~~

~~**B.**—The Board of Chaves County Commissioners may grant a special permit for drilling of expected oil or gas wells in districts from which these uses are otherwise prohibited by this Zoning Code by a special process. Application for a special permit for drilling expected oil or gas wells will be made to the Ordinance Enforcement Officer, who may deny or grant the special permit and impose appropriate conditions and safeguards, including a specified period of time for the special use permit to protect the general plan to conserve and protect the values in the neighborhood.~~

~~**1.**—Notice of the application and its approval of such conditions of approval shall be published within five (5) days of such approval. Notice of the granting of the special use shall be mailed by certified mail, return receipt requested to the owners as shown by the records of the County Assessor, of lots or land within one hundred (100) feet, excluding public right of way, of the are affected by the special permit.~~

~~**2.**—Any aggrieved persons or any officer, department, board, or bureau of the zoning authority affected by the decision of approval, disapproval, or any conditions required, of the ordinance Enforcement Officer may appeal to the zoning authority. The appeal procedure will be in accordance with Article 1, Section 5.H.9.~~