



# **DOÑA ANA COUNTY**

## **EROSION CONTROL REGULATIONS**

**Ordinance No. 194-2000**  
**Effective January 19, 2001**

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**DOÑA ANA COUNTY ORDINANCE No. 194-2000  
EROSION CONTROL REGULATIONS**

**ARTICLE 1. GENERAL PROVISIONS**

**Section 1.1. Authority and Purpose.** The Board of Commissioners of Doña Ana County is authorized by statute, in particular NMSA 1978, § 4-37-4, to enact ordinances to protect and promote the health, safety, and general welfare of the residents of the unincorporated areas of Doña Ana County. The purpose of this Ordinance is to protect and maintain the natural environment and to reduce the negative health effects caused by the creation of fugitive dust, more specifically "PM10", which refers to a size of particulate matter within dust that has been identified by the scientific and medical communities and by the federal Environmental Protection Agency ("EPA") as a significant health risk in high concentrations in the air. This Ordinance is enacted consistent with the goals and policies of the Comprehensive Plans for Doña Ana County and for the Las Cruces Extraterritorial Zone, and as a part of New Mexico Environment Department's Natural Events Action Plan (NEAP) for Doña Ana County and the State of New Mexico. This Ordinance shall accomplish the requirements of these documents by preventing, limiting, or mitigating the effects of activities which create fugitive dust (which includes PM10's), or have a tendency to make land more vulnerable to natural erosion forces that create fugitive dust. The objective of the Ordinance is to ensure that all surface disturbance activities use erosion control measures to mitigate visible fugitive dust on an ongoing basis for the protection of health and safety of the residents of Doña Ana County. The Ordinance also attempts to ensure that when natural events do occur, such as fugitive dust creation through high winds, the contribution of human generated dust is limited in its negative health and safety impacts. Emissions that are regulated by federal or State law to require filtering or similar treatment prior to release into the air are not considered "fugitive", and are not regulated by this Ordinance.

**Section 1.2. Applicability.** Under the conditions outlined below, the provisions of this Ordinance shall apply to any human activity, operation and/or practices, or any condition caused by human activity, which generates dust, causes water erosion, or makes the land more vulnerable to erosion by natural erosion forces. In the development of County land for public purposes, County policies shall be consistent with the purposes of this Ordinance, and shall be conducted so as to minimize the creation or aggravation of erosive forces.

**Section 1.3. Interpretation and Conflict.** Where this Ordinance imposes greater restrictions than those imposed by other rules, regulations, agreements, or County Ordinances or Resolutions, the provisions of this Ordinance shall be prevailing and controlling. Where two or more provisions of this code are conflicting, the most restrictive shall apply.

**Section 1.4. Severability.** If any article, section, paragraph, sentence, phrase or part hereof is declared unconstitutional or invalid, the remaining portions shall apply.

**Section 1.5. Appeal.** A determination that a property requires an (Erosion Control Plan)

ECP or Erosion Mitigation Plan (EMP), or that a proposed ECP or EMP is insufficient, or both, shall be subject to administrative appeal to the County Manager, and then to the Board of County Commissioners. A property owner wishing to appeal a determination shall request an appeal in writing, directed to the County Manager.

**Section 1.6. New Development.** Any development that requires a permit under any County Ordinance, other than for construction of a single family dwelling unit (multiple applications within a subdivision shall not apply), shall require an Erosion Control Plan to be submitted consistent with Article 2. Grading for all construction, including single family dwelling units shall be limited to the building pad site, pond and driveway plus an additional five feet in all directions of these areas.

**Section 1.7. Existing Conditions.** The owner of any property that is determined to be in a condition vulnerable to erosion by natural forces due to human development of the property may be required to submit an Erosion Mitigation Plan (EMP) consistent with Article 2, if the condition of the property is determined to pose a significant health threat due to the nature or extent of the vulnerable condition of the property, or its location near concentrations of vulnerable populations, such as of school children, or ill or elderly persons.

**Section 1.8. Exempt Activities.** Although Doña Ana County encourages the use of reasonable Erosion Control Measures in all activities, the following activities are exempt from the regulations and restrictions of this Ordinance:

- A. Regular agricultural operations covered by the Right to Farm Act, NMSA 1978, §§ 47-9-1 through 47-9-7(1991), including cultivating, tilling, growing, and harvesting crops, and the raising of farm animals or fowl.
- B. Governmental activities during life threatening situations or other emergencies, or in connection with any officially declared disaster or state of emergency.
- C. Operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission lines, telephone, water and sewage during or to avoid service outages and emergency disruptions.
- D. Temporary use of unpaved roads and parking lots that generate less than 20 vehicle trips per day for less than three (3) successive calendar days.

**Section 1.9. Definitions.** The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Active operations” means any human activity that is capable of generating, or generates visible fugitive dust, including bulk material storage, handling and processing; earth moving; construction/renovation/demolition activities; and the movement of motorized vehicles on any unpaved roadways and parking areas.

“Bulk material” means sand, gravel, soil, aggregate and any other inorganic or organic solid matter capable of releasing visible fugitive dust.

“Chemical soil stabilization/suppression” means a method of dust control implemented by any person to mitigate PM10 emissions by applying asphaltic emulsions, acrylics, adhesives, or any other approved material that are not prohibited for use by the New Mexico Environment Department, the Environmental Protection Agency, or any other law, rule, or regulation.

“Disturbed area” means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or movement will or has occurred.

“Dust generating operation” means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

“Dust suppressant” means water, hygroscopic materials, or non-toxic chemical stabilizers used as a treatment to reduce visible fugitive dust emissions. Dust suppressants shall be used as recommended by the manufacturer and in concentrations and application frequencies sufficient to prevent violation of this Ordinance.

“Erosion Control Measures (ECM)” means techniques used to limit the emission and/or airborne transport of fugitive dust from its original site to accomplish satisfactory results for temporary and/or extended suppression of dust and PM10 emission(s).

“Erosion Control Plan (ECP)” means a written description of all Reasonably Available Control Measures (RACM’s) to be implemented at a work site and/or in transit to and from a work site for any earth moving, construction, or potential dust generating operation. Such written description may be incorporated into building and construction plans or a separate document submitted with said plans.

“Fugitive dust” means any particulate matter entrained in the ambient air that is caused from man-made and natural activities without first passing through a stack or duct designed to control flow, including, but not limited to, emissions caused by movement of soil, vehicles, equipment, and windblown dust. Excluded particulate matter includes matter emitted directly from the exhaust of motor vehicles, or from other combustion devices, portable brazing, soldering or welding equipment, and pile drivers.

“High wind conditions” means on-site hourly average wind speed greater than 15 m.p.h., gusts of 20 m.p.h. or an active Wind Advisory issued by National Weather Service for Doña Ana County.

“Native plants” means plants that are indigenous to the state from other places that have become established in wildlands without cultivation.

“Natural cover” means any vegetation that exists on the property, prior to any construction activity or achieved through vegetation restoration back to a natural state, including the placement of sod.

“PM10” means particulate matter, both filterable and condensable, with an aerodynamic

diameter less than or equal to a nominal ten (10) micrometers.

“Palliative” means any agent used to lessen or reduce dust emissions.

“Particulate matter” means any material emitted or entrained into the air as liquid or solid particulate, with the exception of uncombined water.

“Reasonably Available Control Measure (RACM)” means any device, system, process modification, apparatus, technique, or control measure, or combination thereof, which results in the lowest emissions rate possible taking into consideration the RACMs technological and economical feasibility as determined by approval of the Erosion Control Plan.

“Stabilized” or “Stabilization” means the ongoing process necessary to reduce the fugitive dust generating capability of a surface by paving, dust suppression, watering, compacting or revegetating the disturbed surface sufficient to prevent a violation of this Ordinance.

“Track-out” means visible bulk material deposited upon a paved public or private roadway and capable of going airborne due to mechanical actions.

## **ARTICLE 2. DEVELOPMENT STANDARDS AND PROCESS**

**Section 2.1. Erosion Control Plan (ECP) Requirements for Development.** Other than for a single family dwelling unit, any grading, construction, demolition, or other development requiring a permit or other form of approval under any County ordinance shall have an approved Erosion Control Plan (ECP) in place prior to receiving a permit. The ECP may be separate documents or incorporated as part of required building and/or construction plans.

**Section 2.2. Documentation.** The following shall constitute the minimum information required within the ECP to be submitted as part of an application for building and/or subdivision construction to describe the Erosion Control Measures (ECMs) proposed for the project. For all subdivisions, ECMs shall be outlined and approved as part of the overall review of the subdivision construction drawings through the Engineering and Planning Departments.

- A.** Name(s), address(es) and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the ECP , and for the dust generating operations generally.
- B.** A site plan or plat of survey of the site that describes:
  - 1.** The total area of land surface to be disturbed and the total area of the entire project site, in acres or square feet, depending on scale;
  - 2.** The operation(s) and activities to be carried out on the site;
  - 3.** All anticipated sources of fugitive dust emissions on the site;
  - 4.** Temporary drainage and/or ponding facilities to minimize soil erosion and localized flooding of adjacent properties from water utilized on site for development or for dust control;

5. Delivery, transport and storage areas for the site, including types of materials to be stored, and proposed maximum sizes of stockpiles for different types of materials.
- C. A description of ECMs or combination thereof to be applied during all periods of dust generating operations to each of the fugitive dust sources described on the site plan or plat. For each source identified at least one control measure must be implemented. The same control measure(s) may be used for more than one dust generating activity. Specific details must include:
1. If dust suppressants are to be applied, then the type of suppressant, method, frequency, and intensity of application, the number and capacity of application equipment to be used, and any pertinent information on environmental impacts and/or certifications related to appropriate and safe use for ground applications;
  2. The specific surface treatment(s) and/or other ECMs utilized to control material track-out and sedimentation where unpaved and/or access points join paved surfaces;
  3. For each fugitive dust source at least one auxiliary ECM designated as a contingency measure shall be described in the original control plan. Should the original ECM in the control plan prove ineffective, immediate and effective implementation of the contingency measure shall obviate the requirement of submitting a revised control plan; and
  4. ECMs to be implemented prior to any period of inactivity of ten (10) days or more, due to any reason other than extended rainfall.
- D. A description of ECMs or combination thereof to be used to minimize the negative effects of water usage on site during the development activities. All approved measures should be continued until final paving, wall or fence construction and landscaping is in place.
- E. The person responsible for implementing the objectives of the ECP shall keep accurate records and document all activities in carrying out the ECP. These records shall be made available upon request by the County staff.

**Section 2.3. Control Plan Review and Approval.** Review and approval of a proposed ECP shall be the responsibility of the County Engineering, Planning Departments or designee. Approval may be conditioned upon the implementation of additional measures, actions, or other activities, in addition to those included in the proposed ECP. Approval and issuance of the building and/or subdivision construction permit(s) and the approval of all outlined ECMs contained within the control plan or description shall constitute a mandate that the approved ECMs be implemented by the developer, contractor, builder, owner, and/or agents as part of construction activities.

**Section 2.4. Erosion Control Measures (ECMs).** Erosion Control Measures included with an Erosion Control Plan required by this Ordinance may include, but are not necessarily limited to, any one or more of the following measures:

**2.4.1. General Guidelines.**

1. Designing subdivisions or building sites to utilize existing, pre-development

- grades;
- 2. Watering disturbed areas on a regular and minimum basis throughout daily construction activities;
- 3. Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;
- 4. Constructing snow and/or wind fences;
- 5. Re-seeding or re-vegetation of graded or disturbed areas;
- 6. Grading for street and utility placement only as part of subdivision construction;
- 7. Building some or all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of all subdivisions and not part of the individual building permit for each lot;
- 8. Retaining natural vegetation during the construction phase of buildings excluding the building pad site;
- 9. Utilizing existing or natural vegetation as part of the required landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;
- 10. Installing vegetation or non-natural landscaping elements in the latter part of construction to reduce the amount of disturbed area and the potential for dust generation; or
- 11. Implementing any other reasonable dust suppressing agent or activity.

**2.4.2. Active Operations in Construction Areas and Other Land Disturbances.**

- 1. Short term control measures may include:
  - a. Regularly scheduled wet suppression;
  - b. Dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
  - c. Upwind temporary windbreaks, including fabric fences with the bottom of the fence sufficiently anchored to the ground to prevent material from blowing underneath the fence;
  - d. Starting construction upwind and stabilizing disturbed areas before disturbing additional areas; and/or
  - e. Stopping active operations during high wind periods.
- 2. Long term control measures may include:
  - a. Site stabilization using dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
  - b. Reseeding using native grasses;
  - c. Xeriscaping;
  - d. Tree planting; and/or
  - e. Permanent perimeter and interior fencing.

**2.4.3. Specific Construction Guidelines.** The following additional ECMs may be incorporated in a proposed ECP to mitigate the effects of the specified activities.

- 1. **Unpaved Roadways.**
  - a. Paving using asphalt, recycled asphalt, asphaltic concrete, concrete,

or double-penetration (consistent with subdivision or zoning requirements);

- b. Dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer; Regularly scheduled wet suppression; and/or
- c. The use of traffic controls, including decreased speed limits with appropriate enforcement; vehicle access restrictions and controls; road closures and barricades; and off-road vehicle access controls and closures.

**2. Trucks Hauling Bulk Materials on Public Roadways.**

- a. Properly secured tarps or cargo covering that covers the entire surface of the load;
- b. Dust suppressants applied in amounts and rates recommended by the manufacturer;
- c. Maintain 6 inches of freeboard from the rim of the truck bed. Freeboard means the vertical distance from the highest portion of the load to the lowest part of the rim of the truck bed; and/or
- d. Prevent leakage from the truck bed, sideboards, tailgate or bottom dump gate.

**3. Bulk Material Handling.**

- a. Spray bars;
- b. Wetting agents (surfactants) added to bulk material;
- c. Wet suppression through manual application;
- d. Dust suppressants added to bulk materials in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
- e. Stop bulk material handling during high wind conditions;
- f. Reduce process speeds; and/or
- g. Reduce drop heights.

**4. Industrial Sites.**

- a. Pave roadways and parking area with asphalt, recycled asphalt, asphaltic concrete, and concrete;
- b. Regularly scheduled vacuum street cleaning;
- c. Regularly wet suppression of unpaved areas;
- d. Dust suppression applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
- e. Wind breaks;
- f. Enclosures;
- g. Increase wet suppression applications during high wind conditions;
- h. Slow active operations during high wind conditions; and/or
- i. Stop active operations during high wind conditions.

**5. Demolition and Renovation Activities When Asbestos Containing**

**Materials Are Not Present:** If asbestos containing material may be present, all demolition or renovation activity shall be performed in accordance with the federal standards referenced in 20 NMAC 11.64, Emission Standards for Hazardous Air Pollutants for Stationary Sources. In other instances, the following ECMs may be utilized:

- a. Constant wet suppression on the debris piles during demolition;
  - b. Dust suppression applied on the debris piles in amounts and rates recommended by the manufacturer;
  - c. Enclosures;
  - d. Curtains or shrouds;
  - e. Negative pressure dust collectors; and/or
  - f. Stop demolition during high wind conditions.
- 6. Milling, Grinding or Cutting of Paved or Concrete Surfaces.**
- a. Constant wet suppression;
  - b. Ongoing clean up of milled, ground or cut material;
  - c. Dust suppression applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer.
  - d. Enclosures;
  - e. Negative pressure dust collectors; and/or
  - f. Curtains or shrouds.
- 7. Pressure Blasting Operations.**
- a. Use of non-friable abrasive material;
  - b. Curtains or shrouds;
  - c. Negative pressure dust collectors;
  - d. Constant wet suppression; and/or
  - e. Ongoing clean up of abrasive material.

### **ARTICLE 3. GENERAL NON-CONSTRUCTION ACTIVITY STANDARDS**

**Section 3.1. Ground Cover Removal Prohibited.** No person shall disturb the topsoil or remove ground cover on any real property within the County unless reasonable actions are taken to prevent generation of dust caused by the disturbed condition.

#### **3.1.1. Weed Eradication and Dust Suppression.**

1. Weed eradication is limited to removal of specific weeds; clearing of the entire lot is prohibited.
2. Once weeds are removed or mowed, dust suppression can be achieved through watering, chemical suppressant application, or the expansion of natural vegetation areas on the site. Expansion of natural vegetation areas is encouraged.

**3.1.2. Storage of Materials and Material Transport.** Actions shall be taken to ensure that such areas or uses with the potential of becoming or generating fugitive dust and particulate matter, shall be covered, moistened, compacted, or otherwise treated to prevent fugitive dust creation.

### **ARTICLE 4. EXISTING CONDITIONS**

**Section 4.1. Existing Human Created Vulnerable Conditions.** If the condition of a property is determined to pose a significant health threat, due to the nature or extent of existing development that makes the property vulnerable to natural erosion forces, or due to its location near concentrations of vulnerable populations, such as of school children, or

ill or elderly persons, an Erosion Mitigation Plan (EMP) shall be required.

**Section 4.2. Determination.** The initial determination that a property is in such a condition may be made by any law enforcement or code enforcement, or other County agent authorized to make such a determination, subject to review by the Planning Director.

**Section 4.3. Plan Submission Requirement.** Once the determination has been made in writing, the property owner shall be required to submit within thirty (30) working days a proposed Erosion Mitigation Plan, which may include any of the Erosion Control Measures (ECMs) presented in this Ordinance, or other reasonable plans for eliminating or mitigating the vulnerable condition of the property. The Plan may include a proposed time line for implementation.

**Section 4.4. Review of EMP.** Upon receipt of a proposed EMP by the County representative making the determination that a Plan is required, the EMP shall be submitted for review to the County Engineering and Planning Departments. The determination of whether the EMP is sufficient shall be made by the County Planning Director or other authorized County staff member. If the Plan is determined to be insufficient, that determination and the reasons there shall be provided to the applicant in writing, and the applicant shall be given ten (10) working days to revise the EMP to address the insufficiencies.

## ARTICLE 5. ENFORCEMENT

**Section 5.1. Enforcement Provisions.** Any violation of the provisions of this Ordinance, including any failure to implement any ECM of an approved ECP or EMP, may be subject to any penalties or remedies allowed by law, including but not limited to a fine of up to Three Hundred Dollars (\$300), up to ninety (90) days in jail, or both, for each violation, as allowed by NMSA 1978, § 4-37-4, or as allowed consistent with any subsequent legislation providing for penalties for violations of county ordinances. In addition, the County may enforce the provisions of this Ordinance through the procedures in the County Abatement Ordinance, No. 169-96, or any similar ordinance subsequently enacted. The County may also pursue injunctive relief, or any other remedies available under the law.

**Section 5.2. Effective Date.** This Ordinance shall become effective thirty (30) days after an executed copy is recorded in the Doña Ana County Clerk's Office.

**ADOPTED** by the Board of Commissioners of Doña Ana County this 15<sup>th</sup> day of December, 2000.

Original Signed - Carlos E. Garza  
Carlos E. Garza, Chairman

Original Signed - Joseph R. Cervantes  
Joseph R. Cervantes, Vice-Chairman

Original Signed - Gilbert T. Apodaca  
Gilbert T. Apodaca, Member

ATTEST:

Original Signed - Rita Torres  
Rita Torres, County Clerk

Original Signed - Kenneth D. Miyagishima  
Kenneth D. Miyagishima, Member

Original Signed - Miguel G. Silva  
Miguel G. Silva, Member

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