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47-6-1. Short title.

Chapter 47, Article 6 NMSA 1978 may be cited as the "New Mexico Subdivision Act".

47-6-2. Definitions.

As used in the New Mexico Subdivision Act:

- A. "board of county commissioners" means the governing board of a county;
- B. "common promotional plan" means a plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where the land is either contiguous or part of the same area of land or is known, designated or advertised as a common unit or by a common name;
- C. "final plat" means a map, chart, survey, plan or replat certified by a licensed, registered land surveyor containing a description of the subdivided land with ties to permanent monuments prepared in a form suitable for filing of record;
- D. "immediate family member" means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption;
- E. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;
- F. "lease" means to lease or offer to lease land;
- G. "parcel" means land capable of being described by location and boundaries and not dedicated for public or common use;
- H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;
- I. "preliminary plat" means a map of a proposed subdivision showing the character and proposed layout of the subdivision and the existing conditions in and around it and need not be based upon an accurate and detailed survey of the land;
- J. "sell" means to sell or offer to sell land;
- K. "subdivide" means to divide a surface area of land into a subdivision;
- L. "subdivider" means any person who creates or who has created a subdivision individually or as part of a common promotional plan or any person engaged in the sale, lease or other conveyance of subdivided land; however, "subdivider" does not include any duly licensed real estate broker or salesperson acting on another's account;

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M. "subdivision" means the division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future; but "subdivision" does not include:

- (1) the sale, lease or other conveyance of any parcel that is thirty-five acres or larger in size within any twelve-month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with Section 7-36-20 NMSA 1978, for the preceding three years;
- (2) the sale or lease of apartments, offices, stores or similar space within a building;
- (3) the division of land within the boundaries of a municipality;
- (4) the division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;
- (5) the division of land created by court order where the order creates no more than one parcel per party;
- (6) the division of land for grazing or farming activities; provided the land continues to be used for grazing or farming activities;
- (7) the division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;
- (8) the division of land to create burial plots in a cemetery;
- (9) the division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member;
- (10) the division of land created to provide security for mortgages, liens or deeds of trust; provided that the division of land is not the result of a seller-financed transaction;
- (11) the sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty acres;
- (12) the division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity; or
- (13) the sale, lease or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five-year period; provided that a second or subsequent sale, lease or other conveyance from the same tract of land within five years of the first sale, lease or other conveyance shall be subject to the provisions of the New Mexico

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Subdivision Act; provided further that a survey shall be filed with the county clerk indicating the five-year holding period for both the original tract and the newly created tract;

- N. "terrain management" means the control of floods, drainage and erosion and measures required for adapting proposed development to existing soil characteristics and topography;
- O. "time of purchase, lease or other conveyance" means the time of signing any document obligating the person signing the document to purchase, lease or otherwise acquire a legal interest in land;
- P. "type-one subdivision" means any subdivision containing five hundred or more parcels, any one of which is less than ten acres in size;
- Q. "type-two subdivision" means any subdivision containing not fewer than twenty-five but not more than four hundred ninety-nine parcels, any one of which is less than ten acres in size;
- R. "type-three subdivision" means any subdivision containing not more than twenty-four parcels, any one of which is less than ten acres in size;
- S. "type-four subdivision" means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size; and
- T. "type-five subdivision" means any subdivision containing not more than twenty-four parcels, each of which is ten acres or more in size.

47-6-3. Final plat; description.

A. Any person desiring to subdivide land shall have a final plat of the proposed subdivision certified by a surveyor registered in New Mexico. The final plat shall:

- (1) define the subdivision and all roads by reference to permanent monuments;
- (2) accurately describe legal access to, roads to and utility easements for each parcel, and if the access or easements are based upon an agreement, the recording data in the land records for the agreement;
- (3) number each parcel in progression, give its dimensions and the dimensions of all land dedicated for public use or for the use of the owners of parcels fronting or adjacent to the land; and
- (4) delineate those portions of the subdivision that are located in a flood plain.

B. Descriptions of parcels by number and plat designation are valid in conveyances and valid for the purpose of taxation.

47-6-4. Final plat acknowledgment; affidavit.

Every final plat shall contain a statement that the land being subdivided is subdivided in accordance with the final plat. The final plat shall be acknowledged by the owner and subdivider or their authorized agents in the manner required for the acknowledgment of deeds. Every final

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plat submitted to the county clerk shall be accompanied by an affidavit of the owner and subdivider or their authorized agents stating whether or not the proposed subdivision lies within the subdivision regulation jurisdiction of the county. A copy of the final plat shall be provided to every purchaser, lessee or other person acquiring an interest in the subdivided land prior to sale, lease or other conveyance.

47-6-5. Dedication for public use; maintenance.

The final plat shall contain a certificate stating that the board of county commissioners accepted, accepted subject to improvement or rejected, on behalf of the public, any land offered for dedication for public use in conformity with the terms of the offer of dedication. Upon full conformance with the county road construction standards, the roads may be accepted for maintenance by the county. Acceptance of offers of dedication on a final plat shall not be effective until the final plat is filed in the office of the county clerk or a resolution of acceptance by the board of county commissioners is filed in such office.

47-6-6. Filing with county clerk; duties of county clerk.

The county clerk shall not accept for filing any final plat subject to the New Mexico Subdivision Act [this article] that has not been approved as provided in the New Mexico Subdivision Act. Whenever separate documents are to be recorded concurrently with the final plat, the county clerk shall cross-reference such documents. Preliminary plats shall not be filed with the county clerk.

47-6-7. Vacation of plats; approval; duties of county clerk; effect.

A. Any final plat filed in the office of the county clerk may be vacated or a portion of the final plat may be vacated if:

(1) the owners of the land proposed to be vacated sign an acknowledged statement, declaring the final plat or a portion of the final plat to be vacated; and

(2) the statement is approved by the board of county commissioners of the county within whose platting authority the vacated portion of the subdivision is located.

B. In approving the vacation of all or a part of a final plat, the board of county commissioners shall determine whether or not the vacation will adversely affect the interests of persons on contiguous land or persons within the subdivision being vacated. In approving the vacation of all or a portion of a final plat, the board of county commissioners may require that streets dedicated to the county in the final plat continue to be dedicated to the county. The owners of parcels on the vacated portion of the final plat may enclose in equal proportions the adjoining streets and alleys that are authorized to be abandoned.

C. The approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the county clerk in which the final plat is filed. The county clerk shall mark the final plat with the words "Vacated" or "Partially Vacated" and refer on the final plat to the volume and page on which the statement of vacation is recorded.

D. The rights of any utility existing prior to the vacation, total or partial, of any final plat are not affected by the vacation of a final plat.

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47-6-8. Requirements prior to sale, lease or other conveyance.

It is unlawful to sell, lease or otherwise convey land within a subdivision before the following conditions have been met:

- A. the final plat has been approved by the board of county commissioners and has been filed with the clerk of the county in which the subdivision is located. Where a subdivision lies within more than one county, the final plat shall be approved by the board of county commissioners of each county in which the subdivision is located and shall be filed with the county clerk of each county in which the subdivision is located;
- B. the subdivider has furnished the board of county commissioners a sample copy of his sales contracts, leases and any other documents that will be used to convey an interest in the subdivided land; and
- C. all corners of all parcels and blocks within a subdivision have been permanently marked with metal stakes in the ground and a reference stake placed beside one corner of each parcel.

47-6-9. Subdivision regulation; county authority.

A. The board of county commissioners of each county shall regulate subdivisions within the county's boundaries. In regulating subdivisions, the board of county commissioners of each county shall adopt regulations setting forth the county's requirements for:

- (1) preliminary and final subdivision plats, including their content and format;
- (2) quantifying the maximum annual water requirements of subdivisions, including water for indoor and outdoor domestic uses;
- (3) assessing water availability to meet the maximum annual water requirements of subdivisions;
- (4) water conservation measures;
- (5) water of an acceptable quality for human consumption and for protecting the water supply from contamination;
- (6) liquid waste disposal;
- (7) solid waste disposal;
- (8) legal access to each parcel;
- (9) sufficient and adequate roads to each parcel, including ingress and egress for emergency vehicles;
- (10) utility easements to each parcel;
- (11) terrain management;

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- (12) phased development;
- (13) protecting cultural properties, archaeological sites and unmarked burials, as required by the Cultural Properties Act [18-6-1 NMSA 1978];
- (14) specific information to be contained in a subdivider's disclosure statement in addition to that required in Section 47-6-17 NMSA 1978;
- (15) reasonable fees approximating the cost to the county of determining compliance with the New Mexico Subdivision Act and county subdivision regulations while passing upon subdivision plats;
- (16) a summary procedure for reviewing certain type-three and all type-five subdivisions as provided in Section 47-6-11 NMSA 1978;
- (17) recording all conveyances of parcels with the county clerk;
- (18) financial security to assure the completion of all improvements that the subdivider proposes to build or to maintain;
- (19) fencing subdivided land, where appropriate, in conformity with Section 77-16-1 NMSA 1978, which places the duty on the purchaser, lessee or other person acquiring an interest in the subdivided land to fence out livestock; and
- (20) any other matter relating to subdivisions that the board of county commissioners feels is necessary to promote health, safety or the general welfare.

B. Subsection A of this section does not preempt the authority of any state agency to regulate or perform any activity that it is required or authorized by law to perform.

C. Nothing in the New Mexico Subdivision Act shall be construed to limit the authority of counties to adopt subdivision regulations with requirements that are more stringent than the requirements set forth in the New Mexico Subdivision Act, provided that:

- (1) the county has adopted a comprehensive plan in accordance with Section 3-21-5 NMSA 1978;
- (2) the comprehensive plan contains goals, objectives and policies that identify and explain the need for requirements that are more stringent; and
- (3) the more stringent regulations are specifically identified in the comprehensive plan.

D. The board of county commissioners of a class A county with a population according to the most recent federal decennial census of greater than three hundred thousand may delegate the authority to review and approve preliminary plats and final plats to a county administrative officer or to the planning commission; provided that the delegation complies with the public hearing requirements contained in Section 47-6-14 NMSA 1978.

47-6-9.1. Merger of contiguous parcels; prohibition.

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A. Contiguous parcels that are owned by a single owner shall not be required by a board of county commissioners to be merged into one parcel if:

- (1) each of the contiguous parcels:
 - (a) is shown on the official plat map of the county; or
 - (b) was created by a deed or survey recorded with the office of the county clerk;
- (2) the chain of title to the contiguous parcels clearly demonstrates that the parcels have been considered separate prior to transfer into common ownership; and
- (3) the owner of the contiguous parcels has taken no action to consolidate the parcels.

B. Nothing in this section limits a board of county commissioners, pursuant to notice and public hearing, from requiring consolidation of contiguous parcels in common ownership for the purpose of enforcing minimum zoning or subdivision standards on the parcels.

47-6-10. County subdivision regulations; hearings; appeal.

In promulgating subdivision regulations, the board of county commissioners shall adhere to the following procedures.

A. Prior to adopting, amending or repealing any regulation, the board of county commissioners shall consult with representatives of the state engineer's office, the department of environment, the office of cultural affairs, all soil and water conservation districts within the county, the state highway and transportation department and the attorney general about the subjects within their respective expertise for which the board of county commissioners is considering promulgating a regulation. In the process of the consultation, the representatives of each of the state agencies shall give consideration to the conditions peculiar to the county and shall submit written guidelines to the board of county commissioners for its consideration in formulating regulations. The guidelines:

- (1) shall be given consideration by the board of county commissioners in the formulation of the county's subdivision regulations;
- (2) shall become a part of the record of any hearing in which regulations are adopted, amended or repealed; and
- (3) may be in such detail as the agency involved desires.

B. A regulation may not be adopted, amended or repealed until after a public hearing held by the board of county commissioners. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state:

- (1) the subject of the regulation;
- (2) the time and place of the hearing;
- (3) the manner in which interested persons may present their views; and

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(4) the place and manner in which interested persons may secure copies of any proposed regulation. The board of county commissioners may impose a reasonable charge for the costs of reproducing and mailing of the proposed regulations.

C. The notice shall be published in a newspaper of general circulation in the county.

D. Reasonable effort shall be made to give notice to all persons who have made a written request to the board of county commissioners for advance notice of its hearings.

E. The board of county commissioners shall give the state engineer, the department of environment, the office of cultural affairs, the state highway and transportation department, all soil and water conservation districts within the county and the attorney general thirty days' notice of its regulation hearings.

F. At the hearing, the board of county commissioners shall allow all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing. The board shall keep a complete record of the hearing proceedings.

G. Representatives from the state engineer's office, the department of environment, the office of cultural affairs, all soil and water conservation districts within the county, the state highway and transportation department and the attorney general shall be given the opportunity to make an oral statement at the hearing and to enter into the record of the hearing a written statement setting forth any comments that they may have about the proposed regulation, whether favorable or unfavorable, when the proposed regulation relates to an issue that is within the agencies' respective areas of expertise.

H. A regulation is not invalid because of the failure of a state agency to submit a guideline prior to the promulgation of the regulation or because the representative of a state agency did not appear at a public hearing on the regulation or did not make any comment for entry in the hearing record.

I. The board of county commissioners shall act on the proposed regulations at the regulation hearings or at a public meeting to be held within thirty days of the hearing on the proposed regulations. Upon adopting, amending or repealing the regulations, the board of county commissioners shall include in the record a short statement setting forth the board's reasoning and the basis of the board's decision, including the facts and circumstances considered and the weight given to those facts and circumstances.

J. Any person heard or represented at the hearing shall be given written notice of the board's decision, including the facts and circumstances considered, if the person makes a written request to the board for notice of its decision.

K. A regulation, amendment or repeal is not effective until thirty days after it is filed with the county clerk and the state records administrator.

L. Any person who is or may be adversely affected by a decision of the board of county commissioners to adopt, amend or repeal a regulation may appeal that decision to the district court. All appeals shall be upon the record made at the hearing and shall be filed in the district

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court within thirty days after the board of county commissioners votes to adopt, amend or repeal the regulation.

M. An appeal is perfected by filing a notice of appeal in the district court of the county that has adopted, amended or repealed the regulation. The appellant shall certify in his notice of appeal that arrangements have been made with the board of county commissioners for preparation of a sufficient number of transcripts of the record of the hearing to support his appeal, including one copy that he shall furnish at his own expense to the board of county commissioners. A copy of the notice of appeal shall also be served upon the board of county commissioners.

N. Upon appeal, the district court shall set aside the regulation only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence; or
- (3) otherwise not in accordance with law.

O. Any party to the action in district court may appeal to the court of appeals for further relief.

47-6-11. Preliminary plat approval; summary review.

A. Preliminary plats shall be submitted for type-one, type-two, type-three, except type-three subdivisions that are subject to review under summary procedure as set forth in Subsection I of this section, and type-four subdivisions.

B. Prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall require that the subdivider furnish documentation of:

- (1) water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;
- (2) water of an acceptable quality for human consumption and measures to protect the water supply from contamination;
- (3) the means of liquid waste disposal for the subdivision;
- (4) the means of solid waste disposal for the subdivision;
- (5) satisfactory roads to each parcel, including ingress and egress for emergency vehicles, and utility easements to each parcel;
- (6) terrain management to protect against flooding, inadequate drainage and erosion; and
- (7) protections for cultural properties, archaeological sites and unmarked burials that may be affected directly by the subdivision, as required by the Cultural Properties Act [18-6-1 NMSA 1978].

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C. In addition to the requirements of Subsection B of this section, prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall:

- (1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and
- (2) determine whether the subdivision will conform with the New Mexico Subdivision Act and the county's subdivision regulations.

D. The board of county commissioners shall not approve the preliminary plat if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsections B and C of this section.

E. Any subdivider submitting a preliminary plat for approval shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsections B and C of this section.

F. In determining whether a subdivider can fulfill the requirements of Subsections B and C of this section, the board of county commissioners shall, within ten days after the preliminary plat is deemed complete, request opinions from:

- (1) the state engineer to determine:
 - (a) whether the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses; and
 - (b) whether the subdivider can fulfill the proposals in the subdivider's disclosure statement concerning water, excepting water quality;
- (2) the department of environment to determine:
 - (a) whether the subdivider can furnish water of an acceptable quality for human consumption and measures to protect the water supply from contamination in conformity with state regulations promulgated pursuant to the Environmental Improvement Act [74-1-1 NMSA 1978];
 - (b) whether there are sufficient liquid and solid waste disposal facilities to fulfill the requirements of the subdivision in conformity with state regulations promulgated pursuant to the Environmental Improvement Act, the Water Quality Act [74-6-1 NMSA 1978] and the Solid Waste Act [74-9-1 NMSA 1978]; and
 - (c) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning water quality and concerning liquid and solid waste disposal facilities;
- (3) the department of transportation to determine whether the subdivider can fulfill the state highway access requirements for the subdivision in conformity with state regulations promulgated pursuant to Section 67-3-16 NMSA 1978;
- (4) the soil and water conservation district to determine:

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- (a) whether the subdivider can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion; and
 - (b) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning terrain management;
- (5) each Indian nation, tribe or pueblo with a historical, cultural or resource tie with the county that submits at least annually, via certified mail, return receipt requested, a written request for notification to the board of county commissioners, which request indicates the Indian nation, tribe or pueblo's historical, cultural or resource tie with the county, its contact information and a listing of the types of documentation required to be submitted by a subdivider to the county that may be necessary for its review to determine:
- (a) whether the subdivider can furnish, fulfill or otherwise meet the requirements set forth in Paragraphs (1) through (4) of this subsection; and
 - (b) how the subdivider's proposed plat may directly affect cultural properties, archaeological sites and unmarked burials; and
- (6) such other public agencies as the county deems necessary, such as local school districts and fire districts, to determine whether there are adequate facilities to accommodate the proposed subdivision.
- G. If, in the opinion of each appropriate public agency or an Indian nation, tribe or pueblo, a subdivider can fulfill the requirements of Subsection F of this section, the board of county commissioners shall weigh these opinions in determining whether to approve the preliminary plat at a public hearing to be held in accordance with Section 47-6-14 NMSA 1978.
- H. If, in the opinion of the appropriate public agency or an Indian nation, tribe or pueblo, a subdivider cannot fulfill the requirements of Subsection F of this section or, if the appropriate public agency or the Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion on any one of these subjects, the subdivider shall be notified of this fact by the board of county commissioners, and the procedure set out below shall be followed:
- (1) if the appropriate public agency or the Indian nation, tribe or pueblo has rendered an adverse opinion, the board of county commissioners shall give the subdivider a copy of the opinion;
 - (2) the subdivider shall be given thirty days from the date of notification to submit additional information to the public agency or the Indian nation, tribe or pueblo through the board of county commissioners; and
 - (3) the public agency or the Indian nation, tribe or pueblo shall have thirty days from the date the subdivider submits additional information to change its opinion or issue a favorable opinion when it has withheld one because of insufficient information. No more than thirty days following the date of the expiration of the thirty-day period, during which the public agency or the Indian nation, tribe or pueblo reviews any additional information submitted by the subdivider, the board of county commissioners shall hold a public hearing in accordance with Section 47-6-14 NMSA 1978 to determine whether to approve the preliminary plat. Where the public agency has rendered an adverse opinion, the subdivider has the burden of showing that the adverse opinion

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is incorrect either as to factual or legal matters. Where the Indian nation, tribe or pueblo has rendered an adverse opinion, the subdivider may submit additional information to the board of county commissioners. If a public agency disagrees with an adverse opinion rendered by an Indian nation, tribe or pueblo, that agency shall submit a response to the board of county commissioners.

I. If a type-three subdivision contains five or fewer parcels of land, and unless the land within the subdivision has been previously identified in the county's comprehensive plan, as amended or supplemented, or zoning ordinances as an area subject to unique circumstances or conditions that require additional review:

(1) if the smallest parcel is not less than three acres in size, the board of county commissioners shall use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions; or

(2) if the smallest parcel is less than three acres in size, the board of county commissioners may use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions.

J. Prior to approving the final plat of a type-five subdivision, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision conforms with the New Mexico Subdivision Act and the county's subdivision regulations.

K. The board of county commissioners shall not approve the final plat of any type-five subdivision if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsection J of this section.

L. Any subdivider submitting a plat of a type-five subdivision shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsection J of this section.

M. The board of county commissioners shall by regulation establish a procedure for summary review for certain type-three subdivisions, as provided in Subsection I of this section, and all type-five subdivisions. If the board of county commissioners fails to adopt criteria for summary review, the board of county commissioners shall approve the plat if it complies with Sections 47-6-3 and 47-6-4 NMSA 1978 within the time limitation set forth in Section 47-6-22 NMSA 1978. The board of county commissioners may delegate to any county administrative officer or planning commission member the authority to approve any subdivision under summary review. Approval by summary review is conclusive evidence of the approval of the board of county commissioners.

47-6-11.1. Expiration of preliminary plat.

A. An approved or conditionally approved preliminary plat shall expire twenty-four months after its approval or conditional approval, or after any additional period of time as may be prescribed by county regulation, not to exceed an additional twelve months. However, if the subdivider

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proposes to file multiple final plats as provided for under county regulations governing phased development, each filing of a final plat shall extend the expiration of the approved or conditionally approved preliminary plat for an additional thirty-six months from the date of its expiration or the date of the previously filed final plat, whichever is later. The number of phased final plats shall be determined by the board of county commissioners at the time of the approval or conditional approval of the preliminary plat.

B. Prior to the expiration of the approved or conditionally approved preliminary plat, the subdivider may submit an application for extension of the preliminary plat for a period of time not exceeding a total of three years. The period of time specified in this subsection shall be in addition to the period of time provided in Subsection A of this section.

C. The expiration of the approved or conditionally approved preliminary plat shall terminate all proceedings on the subdivision, and no final plat shall be filed without first processing a new preliminary plat.

47-6-11.3. Approval of final plats.

A. After the approval or conditional approval of a preliminary plat and prior to the expiration of such plat, the subdivider may prepare a final plat in accordance with the approved or conditionally approved preliminary plat.

B. The board of county commissioners shall not deny a final plat if it has previously approved a preliminary plat for the proposed subdivision and it finds that the final plat is in substantial compliance with the previously approved preliminary plat. Denial of a final plat shall be accompanied by a finding identifying the requirements that have not been met.

C. If, at the time of approval of the final plat, any public improvements have not been completed by the subdivider as required by the board of county commissioners pursuant to the New Mexico Subdivision Act [this article] or county subdivision regulations, the board of county commissioners shall, as a condition precedent to the approval of the final plat, require the subdivider to enter into an agreement with the county upon mutually agreeable terms to thereafter complete the improvements at the subdivider's expense.

47-6-14. Public hearings on preliminary plats.

The board of county commissioners shall adhere to the following requirements concerning public hearings on preliminary plats.

A. Notice of the hearing shall be given at least twenty-one days prior to the hearing date and shall state:

- (1) the subject of the hearing;
- (2) the time and place of the hearing;
- (3) the manner for interested persons to present their views; and

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(4) the place and manner for interested persons to secure copies of any favorable or adverse opinion and of the subdivider's proposal. The board of county commissioners may impose a reasonable charge for the costs of reproducing and mailing the opinions and proposals.

B. The notice shall be published in a newspaper of general circulation in the county.

C. Reasonable effort shall be made to give notice to all persons who have made a written request to the board of county commissioners for advance notice of its hearings. Notice shall also be given to any public agency that issued an opinion or withheld an opinion on the basis of insufficient information.

D. Public hearings on preliminary plats shall be held within thirty days from the receipt of all requested public agency opinions where all such opinions are favorable, or within thirty days from the date all public agencies complete their review of any additional information submitted by the subdivider pursuant to Section 47-6-11 NMSA 1978. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed.

E. At the hearing, the board of county commissioners shall allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. The board of county commissioners shall approve, approve with conditions or disapprove the preliminary plat within thirty days of the public hearing at a public meeting of the board of county commissioners.

47-6-15. Appeals.

A. A party who is or may be adversely affected by a decision of a delegate of the board of county commissioners shall appeal the delegate's decision to the board of county commissioners within thirty days of the date of the delegate's decision. The board of county commissioners shall hear the appeal and shall render a decision within thirty days of the date the board receives notice of the appeal. Thereafter, the procedure for appealing the decision of the board of county commissioners set out in Subsection B of this section shall apply.

B. A party who is or may be adversely affected by a decision of the board of county commissioners may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

47-6-16. Succeeding subdivisions.

Any proposed subdivision may be combined and upgraded for classification purposes by the board of county commissioners with a previous subdivision if the proposed subdivision includes:

A. a part of a previous subdivision that has been created in the preceding seven-year period; or

B. any land retained by a subdivider after creating a previous subdivision when the previous subdivision was created in the preceding seven-year period.

47-6-17. Disclosure.

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A. Prior to selling, leasing or otherwise conveying any land in a subdivision, the subdivider shall disclose in writing such information as the board of county commissioners requires, by regulation, to permit the prospective purchaser, lessee or other person acquiring an interest in subdivided land to make an informed decision about the purchase, lease or other conveyance of the land.

B. The disclosure statement for subdivisions with not fewer than five and not more than one hundred parcels shall contain at least the following information:

- (1) the name of the subdivision;
- (2) name and address of the subdivider and the name and address of the person in charge of sales or leasing in New Mexico;
- (3) total acreage of the subdivision, both present and anticipated;
- (4) size of the largest and smallest parcels offered for sale, lease or other conveyance within the subdivision and the proposed range of selling or leasing prices including financing terms;
- (5) distance from the nearest town to the subdivision and the route over which this distance is computed;
- (6) name and address of the person who is recorded as having legal and equitable title to the land offered for sale, lease or other conveyance;
- (7) a statement of the condition of title including any encumbrances;
- (8) a statement of all restrictions or reservations of record that subject the subdivided land to any conditions affecting its use or occupancy;
- (9) name and address of the escrow agent, if any;
- (10) a statement as to availability and cost of public utilities;
- (11) a statement describing the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses, and describing the availability of water to meet the maximum annual water requirements;
- (12) a statement describing the quality of water in the subdivision available for human consumption;
- (13) a description of the means of liquid waste disposal for the subdivision;
- (14) a description of the means of solid waste disposal for the subdivision;
- (15) a description of the means of water delivery within the subdivision;
- (16) the average depth to water within the subdivision if water is available only from subterranean sources;
- (17) a description of access to the subdivision;

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- (18) a statement disclosing whether the roads and other improvements within the subdivision will be maintained by the county, the subdivider or an association of lot owners and what measures have been taken to ensure that maintenance will take place;
 - (19) a description of the subdivider's provisions for terrain management;
 - (20) a summary, approved by the issuing state agency, of the opinions, if any, whether favorable or adverse, provided by state agencies to the board of county commissioners concerning any one of the points listed above;
 - (21) a statement that the subdivider shall record the deed, real estate contract, lease or other instrument conveying an interest in subdivided land with the appropriate county clerk within thirty days of the signing of such instrument by the purchaser, lessee or other person acquiring an interest in the land;
 - (22) a statement advising the purchaser, lessee or other person acquiring an interest in subdivided land that building permits, wastewater permits or other use permits are required to be issued by state or county officials before improvements are constructed; and that further, he is advised to investigate the availability of such permits before purchase, lease or other conveyance and whether these are requirements for construction of additional improvements before he may occupy the property; and
 - (23) such other information as the board of county commissioners may require.
- C. The disclosure statement for subdivisions with one hundred or more parcels shall contain all of the information required in Subsection B of this section as well as the following information:
- (1) a statement of any activities or conditions adjacent to or nearby the subdivision that would subject the subdivided land to any unusual conditions affecting its use or occupancy;
 - (2) a description of all recreational facilities, actual and proposed, in the subdivision;
 - (3) a statement as to the availability of:
 - (a) fire protection;
 - (b) police protection;
 - (c) public schools for the inhabitants of the subdivision, including a statement concerning the proximity of the nearest elementary and secondary schools;
 - (d) hospital facilities;
 - (e) shopping facilities; and
 - (f) public transportation; and
 - (4) a statement setting forth the projected dates upon which any of the items mentioned in this section for which the subdivider has responsibility will be completed if they are not yet completed.

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D. Disclosure statements shall be in the form that the board of county commissioners, after consultation with the attorney general, may require by regulation. The board of county commissioners may require by regulation that disclosure statements be printed in both English and Spanish. The form of disclosure statements, insofar as possible, shall be uniform for all counties.

E. Any subdivider who has satisfied the disclosure requirement of the Interstate Land Sales Full Disclosure Act [15 U.S.C. 1701 et seq.] may submit his approved statement of record in lieu of the disclosure statement required by the New Mexico Subdivision Act [this article]. However, any information required in the New Mexico Subdivision Act and not covered in the subdivider's statement of record shall be attached to the statement of record.

F. It is unlawful to sell, lease or otherwise convey land in a subdivision until:

- (1) the required disclosure statement has been filed with the county clerk, the board of county commissioners and the attorney general's office; and
- (2) the prospective purchaser, lessee or other person acquiring an interest in the subdivided land has been given a copy of the disclosure statement.

47-6-18. Advertising standards.

A. Brochures, disclosure statements, publications and advertising of any form relating to subdivided land shall:

- (1) not misrepresent or contain false or misleading statements of fact;
- (2) not describe deeds, title insurance or other items included in a transaction as "free" and shall not state that any parcel is "free" or given as an "award" or "prize" if any consideration is required for any reason;
- (3) not describe parcels available for "closing costs only" or similar terms unless all such costs are accurately and completely itemized or when additional parcels must be purchased at a higher price;
- (4) not include an asterisk or other reference symbol as a means of contradicting or substantially changing any statement;
- (5) if subdivision illustrations are used, accurately portray the subdivision in its present state, and if illustrations are used portraying points of interest outside the subdivision, state the actual road miles from the subdivision;
- (6) not contain artists' conceptions of the subdivision or any facilities within it unless clearly described as such and shall not contain maps unless accurately drawn to scale with the scale indicated;
- (7) not contain references to any facilities, points of interest or municipalities located outside the subdivision unless the distances from the subdivision are stated in the advertisement in actual road miles; and

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(8) refer to where the subdivider's disclosure statement may be obtained.

B. Copies of all brochures, publications and advertising relating to subdivided land shall be filed with the board of county commissioners of the county in which the subdivision is located and with the attorney general within fifteen days after initial use by the subdivider.

47-6-19. Road development.

A. Roads within a subdivision shall be constructed only on a schedule approved by the board of county commissioners. In approving or disapproving a subdivider's road construction schedule, the board of county commissioners shall consider:

- (1) the proposed use of the subdivision;
- (2) the period of time before the roads will receive substantial use;
- (3) the period of time before construction of homes will commence on the portion of the subdivision serviced by the road;
- (4) the county regulations governing phased development; and
- (5) the needs of prospective purchasers, lessees and other persons acquiring an interest in subdivided land in viewing the land within the subdivision.

B. All proposed roads shall conform to minimum county safety standards.

C. The board of county commissioners shall not approve the grading or construction of roads unless and until the subdivider can reasonably demonstrate that the roads to be constructed will receive use and that the roads are required to provide access to parcels or improvements within twenty-four months from the date of construction of the road.

D. It is unlawful for the subdivider to grade or otherwise commence construction of roads unless the construction conforms to the schedule of road development approved by the board of county commissioners.

7-6-20. Public agencies required to provide counties with information.

A. Any public agency receiving a request from the board of county commissioners for an opinion and any Indian nation, tribe or pueblo that chooses to submit an opinion pursuant to Section 47-6-11 NMSA 1978 shall furnish the board with the requested opinion within the time period set forth in Subsection A of Section 47-6-22 NMSA 1978. The board of county commissioners shall furnish the appropriate public agency and Indian nation, tribe or pueblo with all relevant information that the board has received from the subdivider on the subject for which the board is seeking an opinion. If the public agency or Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion, the public agency or Indian nation, tribe or pueblo shall notify the board of this fact.

B. All opinion requests mailed by the board of county commissioners shall be by certified mail, return receipt requested. Boards of county commissioners delivering opinion requests shall obtain receipts showing the day the opinion request was received by the particular public agency or Indian nation, tribe or pueblo.

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47-6-21. Information reports.

In determining whether the subdivider can fulfill the requirements of the subdivision and the proposals contained in his disclosure statement, the appropriate public agency may request, through the board of county commissioners, that the subdivider submit such information as the agency may feel necessary to permit it to make that determination.

47-6-22. Time limit on administrative action.

A. All opinions required of public agencies or submitted by an Indian nation, tribe or pueblo shall be furnished to the board of county commissioners within thirty days after the public agencies or Indian nation, tribe or pueblo receives the written request and accompanying information from the board of county commissioners. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed in accordance with its own best judgment concerning the subject of the opinion request. The failure of a public agency or Indian nation, tribe or pueblo to provide an opinion when requested by the board of county commissioners does not indicate that the subdivider's provisions concerning the subject of the opinion request were acceptable or unacceptable or adequate or inadequate.

B. Final plats submitted to the board of county commissioners for approval shall be approved or disapproved at a public meeting of the board of county commissioners within thirty days of the date the final plat is deemed complete.

C. If the board of county commissioners does not act upon a final plat within the required period of time, the subdivider shall give the board of county commissioners written notice of its failure to act. If the board of county commissioners fails to approve or reject the final plat within thirty days, the board of county commissioners shall, upon demand by the subdivider, issue a certificate stating that the final plat has been approved.

47-6-23. Right of inspection; rescission.

If the purchaser, lessee or other person acquiring an interest in the subdivided land has not inspected his parcel prior to the time of purchase, lease or other conveyance, the purchase, lease or other conveyancing agreement shall contain a provision giving the purchaser, lessee or other person acquiring an interest in the subdivided land six months within which to personally inspect his parcel. After making the personal inspection within the six-month period, the purchaser, lessee or other person acquiring an interest in the subdivided land has the right to rescind the purchase, lease or other conveyancing agreement and receive a refund of all funds paid on the transaction to the seller, lessor or other conveyer of subdivided land when merchantable title is revested in the seller, lessor or other conveyer of subdivided land. Notice of such rescission to the seller, lessor or other conveyer of subdivided land shall be made in writing and shall be given within three days of the date of personal inspection.

47-6-24. Schedule of compliance.

In approving subdivision plats, the board of county commissioners may require the subdivider to set forth a schedule of compliance with county subdivision regulations that is acceptable to the board of county commissioners.

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47-6-25. Suspension of right of sale.

The board of county commissioners may suspend or revoke approval of a plat as to the unsold, unleased or otherwise unconveyed portions of a subdivider's plat if the subdivider does not meet the schedule of compliance approved by the board.

47-6-25.1. Attorney general; district attorneys; investigation.

A. If the attorney general or a district attorney has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act [this article], the attorney general or the district attorney, or both, may before bringing any action apply to the district court of Santa Fe county, or any county where the district attorney has his office, for approval of a civil investigative demand, demanding, in writing, such person to appear and be examined under oath, to answer written interrogatories under oath or to produce the document or object for inspection and copying. The demand shall:

- (1) be served upon the person in the manner required for service of process in this state or, if the person cannot be found or does not reside or maintain a principal place of business within this state, in the manner required for service of process in the state in which the person resides, maintains a principal place of business or can be found;
- (2) describe the nature of the conduct under investigation;
- (3) describe the class of documents or objects with sufficient definiteness to permit it to be fairly identified if the production of documents or objects is requested;
- (4) contain a copy of the written interrogatories if answers to written interrogatories are sought;
- (5) prescribe a reasonable time at which the person shall appear to testify or within which the document or object must be produced;
- (6) specify a place for the taking of testimony or for production of the document or object and designate a person who may be an authorized employee of the attorney general or district attorney to be custodian of the document or object; and
- (7) contain a copy of Subsections C through E of this section.

B. No demand to produce a document or object for inspection and copying shall contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued in a civil proceeding by a district court of this state. The district court shall approve the demand if it finds that the attorney general or district attorney has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act and that the demand is proper in form. A demand shall not be issued without approval of the district court.

C. If a person fails to comply with the written demand served upon him under the provisions of Subsection A of this section, the attorney general or district attorney may file a petition for an order to enforce the demand in the district court of the county in which the person resides or in

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which he maintains a principal place of business within this state or of the county of Santa Fe if the person neither resides nor has a principal place of business in this state. Notice of hearing on the petition and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper in form and there is reasonable cause to believe that the person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act, the court shall order the person to comply with the demand, subject to any modification that the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further protective order in the proceedings that justice requires.

D. Prior to the filing of an action under the provisions of the New Mexico Subdivision Act for the violation under investigation, any testimony taken or material produced under this section shall be kept confidential by the attorney general or district attorney unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories or produced material, or unless disclosure is authorized by the court. Any testimony taken or material produced under this section shall be open to inspection only to the attorney general or district attorney and the person upon whom the demand for which inspection is sought has been served, unless otherwise ordered by the court.

E. Any person compelled to appear under this section and required to testify under oath may be accompanied, represented and advised by counsel. An objection may properly be made, received and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege.

47-6-26. Injunctive relief; mandamus.

A. The board of county commissioners, the district attorney or the attorney general may apply to the district court for any one or more of the following remedies in connection with violations of the New Mexico Subdivision Act [this article] and county subdivision regulations:

- (1) injunctive relief to prohibit a subdivider from selling, leasing or otherwise conveying an interest in subdivided land until he complies with the terms of the New Mexico Subdivision Act and county subdivision regulations;
- (2) mandatory injunctive relief to compel compliance by any person with the provisions of the New Mexico Subdivision Act and county subdivision regulations;
- (3) rescission and restitution for persons who have purchased, leased or otherwise acquired an interest in subdivided land that was divided, sold, leased or otherwise conveyed in material violation of the New Mexico Subdivision Act or county subdivision regulations; or
- (4) a civil penalty of up to five thousand dollars (\$5,000) for each parcel created in knowing, intentional or willful material violation of the New Mexico Subdivision Act or county subdivision regulations.

B. The board of county commissioners, the district attorney and the attorney general shall not be required to post bond when seeking a temporary or permanent injunction or mandamus pursuant to the provisions of the New Mexico Subdivision Act.

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C. In any action by the attorney general pursuant to the New Mexico Subdivision Act, venue shall be proper in the district court of any county where all or part of the land is situated or the district court of the county where the defendant resides.

D. Nothing in this section shall be construed as limiting any common-law right of any person in any court relating to subdivisions.

47-6-27. Criminal penalties.

A. Any person who knowingly, intentionally or willfully commits a material violation of the New Mexico Subdivision Act [this article] is guilty of a misdemeanor, punishable by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one year, or both.

B. Any person who is convicted of a second or subsequent knowing, intentional or willful violation of the New Mexico Subdivision Act is guilty of a fourth degree felony, punishable by a fine of not more than twenty-five thousand dollars (\$25,000) per violation or by imprisonment for not more than eighteen months, or both.

47-6-27.1. Private remedies.

A. Any sale, lease or other conveyance of land within a subdivision subject to the New Mexico Subdivision Act [this article], which subdivision has not been approved by the board of county commissioners, shall be voidable at the option of the purchaser, lessee or other person acquiring an interest in the subdivided land. The purchaser, lessee or other person acquiring an interest in the subdivided land may recover restitution of all money, property or other things paid to or received by the seller, lessor or other conveyor of the subdivided land. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

B. Any purchaser, lessee or other person acquiring an interest in the subdivided land who suffers any loss of money or property, real or personal, as a result of any violation of the New Mexico Subdivision Act or any county subdivision regulation may bring an action to recover actual damages. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

C. Any purchaser, lessee or other person acquiring an interest in the subdivided land who has purchased, leased or otherwise acquired an interest in land within an approved subdivision may bring an action in district court to compel specific performance of any proposed improvement set forth in a subdivider's disclosure statement or in any document obligating the person signing the document to purchase, lease or otherwise acquire an interest in subdivided land or set forth in any advertising or promotional materials relating to the subdivided land. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

D. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court, in its discretion, may award reasonable attorneys' fees to the prevailing party.

E. The remedies provided in this section are in addition to remedies otherwise available under common law or other statutes of this state.

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F. This section shall apply to all purchases, leases or other conveyances of subdivided land in approved or unapproved subdivisions that occur after the effective date of this section.

47-6-27.2. Approval necessary for utility connection.

Any water, sewer, electric or gas utility that connects service to individual parcels within a subdivision, before a final plat for the subdivision has been approved by the board of county commissioners or before the landowner holds a valid building permit, may be fined a civil penalty of up to five hundred dollars (\$500) by the board of county commissioners. The board of county commissioners may also require any utility connected in violation of this section to be disconnected.

47-6-28. Use of fees.

All fees collected by a county for passing upon subdivision plats shall be deposited in the county general fund.

47-6-29. Jurisdiction.

Nothing in the New Mexico Subdivision Act shall be construed as limiting the municipal extraterritorial subdivision and platting jurisdiction provided for in Sections 3-20-1 through 3-20-15 NMSA 1978.