

**STATE OF NEW MEXICO**

**COUNTY OF EDDY**

**ORDINANCE NO: 41**

**LAND USE POLICIES AND PROCEDURES  
FOR FEDERAL, STATE AND COUNTY**

WHEREAS, the County of Eddy, New Mexico, acting by and through its duly elected Board of County Commissioners, hereinafter County, is authorized by Section 4-37-1, N.M.S.A., 1978 Compilation, to adopt ordinances to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the citizens and property owners of the County;

AND WHEREAS, the Board of County Commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties;

AND WHEREAS, in accordance with Section 4-37-3, N.M.S.A., 1978, county ordinances are effective within the boundaries of the county, including privately owned land or land owned by the United States, but are not effective within the limits of any incorporated municipality;

AND WHEREAS, enforcement of this ordinance will be in accordance with Section 4-37-3, N.M.S.A., 1978 and 4-37-4, N.M.S.A., 1978;

AND WHEREAS, in accordance with 4-37-9, N.M.S.A., 1978, this ordinance shall take effect thirty (30) days after the ordinance has been recorded in the records of the Eddy County Clerk.

BE IT ORDAINED by the Eddy County Board of Commissioners that:

**SECTION I – TITLE:**

This document may be cited as the “Eddy County Land Use Policies and Procedures”.

**SECTION II – ESTABLISHMENT OF A COUNTY LAND USE POLICIES AND PROCEDURES:**

The Eddy County Land Use Policies and Procedures is the County land use plan developed by the Eddy Government to guide the use of public lands and public resources in Eddy County, to protect the rights of private landowners, and to promote coordination and cooperation between the County, Federal and State agencies in decisions affecting the uses of public lands and resources in Eddy County, New Mexico.

Federal and State lands make up a substantial part of Eddy County. Moreover, Eddy County’s economy is dependent on business activities on Federal and State lands. These activities are inseparably tied to the small fraction of private patented lands in Eddy County. The nature and intent of Eddy County government land use planning is to protect the custom, culture and economic stability of County citizens through protection of private property rights, the facilitation of a free market economy, and the establishment of a process to ensure coordination, definition and self-determination by local communities, individuals and entities in federal and state land management decisions. It is therefore necessary to develop and implement land use planning mechanisms that focus on Federal and State land uses and activities.

The Policy addresses federal and state land use management issues directly and is intended to be used as a positive guide for federal and state land management agencies in their development and implementation of land use plans and management actions.

The County and its citizens support the continued multiple use of federal and state lands and resources in Eddy County. Therefore, it is the policy of Eddy County that federal and state agencies will inform local governments of those pending actions affecting local communities and citizens economically, and coordinate with them in the planning and implementation of these actions.

Finally, in compliance with federal and state law, including but not limited to the Federal Land Management and Policy Act of 1976, the National Forest Management Act of 1973, the Threatened & Endangered Species Act, NEPA and CEQ's multiple use and sustained used Rangeland and Renewal Resource Act of 1974, all federal and state agencies will use the Eddy County Land Use Policies and Procedures as a guide and coordinate with the County Commission for the purpose of planning and managing federal and state lands within the geographic boundaries of Eddy County, New Mexico.

Federal and State agencies proposing actions that will impact the Eddy County Land Use Policies and Procedures will prepare and submit in writing, and in a timely manner, report(s) on the purposes, objectives and estimated impacts of such actions, including economic, to the Eddy County Commission. These report(s) will be provided to the Eddy County Commission for review, coordination and response prior to federal or state initiation of action.

**SECTION III – PREAMBLE:**

We, the people of Eddy County, State of New Mexico, accept, support and sustain the Constitutions of the United States and the State of New Mexico. We have demanded through our elected legislature and Governor that the federal government comply with the constitution of the United States, Article One, Section Eight, which limits the authority of the federal government to specific lands. We hereby reaffirm our demand that all lands in Eddy County not so specifically designated be relinquished to the citizens thereof.

Further, we reaffirm the fundamental rights as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation’s founding fathers. Based on these cherished traditions, we declare that all natural resource and land use planning decisions affecting Eddy County shall be guided by the principles of protecting private property rights, protecting and sustaining valuable natural resources, protecting local custom and culture, maintaining traditional economic structures through coordination, definition, and self-determination, and opening new economic opportunities through reliance on free markets. Resource decisions made in this manner will sustain or enhance the environmental quality of the county.

**SECTION IV – LAND DISPOSITION:**

Recognizing that land is essential to local industry and residence, it is the policy of this county that the design and development of all federal and state land transactions, including land adjustments, purchases, disposals and exchanges, be carried out only after consultation, coordination and cooperation with the County in the planning stages to insure full citizen participation and comment, in

compliance with the purposes and provisions of this Land Use Policies and Procedures.

**POLICIES:**

1. Increase opportunities for local economic development by increasing the amount of patented and non-federal land within the County.
2. Federal land agencies shall not acquire any private lands or rights in private lands within Eddy County without first coordinating with the County to first ensure:
  - a. That as a minimum, parity in land value by status is maintained in each school district in the county; and
  - b. That private property interests are protected and enhanced.
3. Federally managed lands that have conflicting use, particularly those which lie in isolated tracts, will be targeted for disposal.
4. The general public, the State of New Mexico and local communities will be notified of, consulted about and otherwise involved in all federal and state land adjustments in Eddy County. Eddy County participating in the early planning stages as set forth in the federal regulations will be required prior to any such land adjustments.
5. The New Mexico State Land Office shall be called upon as necessary to assist Eddy County in coordinating land exchanges so as to maximize patented fee simple lands.

6. In land use decisions which may affect the local historic customs, culture and stability of land use, the Eddy County Commission, as its option, will require adverse impact studies as outlined in Presidential Executive Order 12630 which requires federal agencies to complete a takings implications assessment (TIA) to evaluate the effect of their rules, regulations and decisions on said local historic customs, culture, economic expectations and community stability of land use, both public and private. These requirements shall be conducted and mitigation measures adopted with participation from Eddy County. Adverse impact studies shall also address all classes of grazing rights, flood prone areas and public access, in addition to any other related areas above mentioned.

#### **SECTION V – WATER RESOURCES:**

Eddy County recognizes that the protection and development of its water resources are essential to its short and long term economic, recreational and cultural viability.

#### **POLICIES:**

1. The protection of existing water rights and water users within the county is of primary importance to the County's economic and cultural well being. Therefore, water use should be carefully considered in relationship to the history, traditions and culture of Eddy County. Any federally proposed designation of Wild and Scenic Rivers and all federal policies regarding riparian management in Eddy County shall be coordinated with the County Commission and Water Users Groups in the County, and will consult with all

County Water Use Plans. In addition, Eddy County, may at its option, prepare plans for the protection of all aquatic Threatened and Endangered Species within its boundaries. Federal agencies managing waterways and wetlands containing such species will coordinate their management activities and plans with the County Commission.

2. Eddy County may, at its option, promote or pursue development of water markets for existing as well as future water rights for agricultural, municipal, industrial, and domestic purposes. In addition, Eddy County may, at its option, explore and promote alternative uses of water, including but not limited to recreation and hydro-electric power.
3. Eddy County has promoted and will continue to be actively engaged in providing opportunity for the development of water-based recreation within the County.
4. Eddy County, if deemed necessary, may initiate or participate in a process for establishing a geologic, hydrologic and biologic data base within the county. The County may acquire, develop, and synthesize in coordination with other government agencies drilling information, water well testing information, flood prone information, riparian vegetation information and all other information necessary for the county.

The County may further seek to define within the County “natural” hydrologic environment so as to assess the use of water in the county by man, vegetation, livestock and wildlife within the context of current and historical use.

5. The Eddy County government will be notified of all state, interstate and federal actions that have any impact on the water of the County in the initial planning stages of such action. In addition, such proposed actions, including federally proposed Wild and Scenic River designations, will be coordinated with the Eddy

County Commission, and appropriate water use groups, and the County water and land use plans prior to adoption and implementation. It is the intent of the County to participate and guide federal and state agencies in the planning and management of the County’s natural, cultural and economic resources. However, it is not the County’s intent to encroach on private property rights or to prohibit the sale of privately owned agriculture land with appurtenant water rights to any state agency if the sole purpose of the sale is for compliance with the Texas – New Mexico Pecos River Compact.

6. Eddy County may seek to ensure both water quality and quantity.
7. Eddy County may develop Wild and Scenic River Designations, or other Federal river designations at its option. Federal Agencies will coordinate Wild and Scenic River Plans with the stated purposes and intent of County government. The County may, further, seek to develop riparian management planning, in concert and coordination

with landowners, ranchers, the appropriate state and federal agencies and other interested parties.

## **SECTION VI – AGRICULTURE:**

The custom and culture associated with agricultural production in Eddy County is necessary to the livelihood and well-being of its citizens. Therefore, it is the policy of Eddy County to protect agricultural and promote the continuation of agricultural pursuits by protecting private property rights, relying on self-determination, and ensuring open-market conditions.

### **POLICIES:**

1. Opportunities for grazing livestock on federal and state land will be continued at levels consistent with proper range management, custom, culture and the protection of equitable property rights.
2. Federal and state governments will not obstruct sound agricultural opportunities on their respective lands, along with other appropriate multiple uses.
3. Eddy County relies on the established Range Improvement Task Force and may seek assistance from additional experts to help advise the Eddy County Commission of the equitable and feasible animal unit months (AUM) for maximum grazing fees which are based on New Mexico Universities and other economic data, paid to federal and state agencies. Eddy County should be consulted and promptly notified of the fees to be reviewed for formula fluctuation in order to

protect local citizens from adverse economic impact on their personal property grazing and/or other contract rights.

4. Eddy County may, at its option, develop, in coordination with federal and state governments, an effective Section 8 process pursuant to the Public Rangeland Improvement Act of 1978 and may, at its option, implement procedures and guidelines to account for the allocation of expenditures of range improvement funds and funds collected through the Sikes Act.
5. Incentives for improving grazing lands and promoting good land stewardship should be developed through:
  - a. Encouraging permittee ownership of range improvements or other acceptable means;
  - b. Appropriate fee schedules;
  - c. Allowing subleasing of equitable property rights;
  - d. Allotment management plan flexibility; and
  - e. Increasing grazing capacity or allowing other economic benefits to accrue to permittees making investments in range betterment.
6. Eddy County will encourage agencies continued desire to explore market and incentive systems to reduce administrative and grazing cost on federal and state lands.

7. Eddy County may request of the responsible agency the removal from the County, or transfer within the County, excessive numbers of wild animals that damage private or public lands so as to have an economic impact on the County or its citizens.
8. Eddy County, at its option, may coordinate in planning stages and otherwise assist the New Mexico Department of Game and Fish with policies governing the maximum and minimum hunting days for big game.
9. Eddy County should obtain input from various sources within the County in order to determine its position in the promoting of a wetlands policy and, if desired, adopt same as an amendment to this Land Use Policies and Procedures.
10. Eddy County will continue enforcement of County Ordinance 19, an ordinance regulating and controlling the growth and removal of weeds, and other rank, noxious, poisonous or harmful vegetation within the County of Eddy. Through this ordinance, Eddy County will work to get various noxious plants recognized in the Federal Noxious Weeds Act (P.L.93-629, Section 15, management of undesirable plants on federal lands) which will require all Federal and State agencies owning or controlling land within Eddy County to comply with the Act as is related to weed control on their lands.

## **SECTION VII – TIMBER AND WOOD PRODUCTS:**

The custom and culture associated with timber and wood products production in Eddy County is necessary to the livelihood and well-being of its

citizens. Therefore, it is the policy of Eddy County to protect timber resources and promote the continuation of a sustainable wood products industry by providing economic opportunity, relying on self-determination, and ensuring open market conditions.

**POLICIES:**

1. Eddy County may, at its option, promote sale sizes that provide opportunities for a wide spectrum of producers and that allow for local entrepreneurship.
2. Opportunities for a sustainable wood products industry will be continued at levels consistent with custom and culture as affected by prevailing market conditions.
3. Eddy County will encourage continued private use of timber products for its citizens in terms of wood fuel, Christmas trees, etc.

**SECTION VIII – CULTURAL RESOURCES, RECREATION, WILDLIFE, WILDERNESS AND THREATENED ENDANGERED SPECIES:**

Eddy County should seek to promote and facilities public and private recreational, cultural, wilderness, and wildlife opportunities compatible with local custom and culture.

**POLICIES:**

1. Eddy County shall be included as provided by federal law in the formulation of plans for the recovery of all federal and state listed Threatened or Endangered species. Eddy County will work with the

agencies on any recovery plans. State and Federal agencies must prove a species is endangered or threatened with full independent counts and historical data, rather than relying on the data and information provided by interest groups petitioning or otherwise supporting the endangerment listing.

2. Federal and State land and wildlife management and enforcement agencies will coordinate with the County Commission relative to matters regarding wildlife and resources. All wildlife management plans will be submitted for review by the County Commission prior to finalization or initiation of actions.
3. No additional Federal Wilderness or parks areas, or special designated areas, shall be designated in Eddy County that may have an adverse impact on the custom, culture and economic stability of Eddy County. Pursuant to federal law, public lands will be managed under the multiple use policy to provide opportunities for all users of public lands.
4. Cultural resources should be reviewed by the County Commission or their designee to determine their value as a resource in the customs and cultures of the people of Eddy County.
5. All proposed federal agency projects including Sikes Act projects, shall be submitted for review to the Eddy County Commission or their designee to determine benefits to wildlife, cost to benefits and to set County priorities.

6. Eddy County will be consulted prior to the distribution of any Sikes Act Funds collected from Eddy County, New Mexico.

**SECTION IX – MINERAL RESOURCES:**

Eddy County recognizes that the development of its abundant hydrocarbon and mineral resources is desirable and necessary to the state and nation. Therefore, it is the policy of Eddy County to promote procedures and site specific plans that provide for the long term availability and responsible development of its hydrocarbon and mineral resources. Further, it is the policy of Eddy County to promote the exploration of and enhance the development of its hydrocarbon and mineral resources.

**SECTION X – ACCESS AND TRANSPORTATION:**

Eddy County recognizes the need for an adequate transportation system within the County and should utilize the plans developed by the Southeastern New Mexico Transportation Development District in developing and monitoring policies concerning the same. RS 2477 right-of-ways must be taken into account by Federal and State agencies.

Conscientious effort shall be made not to entail new encumbrances or restrictions on existing private property rights for access to or across public lands. Eddy County recognizes a need for adequate routes to transport the natural resources produced within the County as well as a need for tourism enhancement.

**SECTION XI – MONITORING AND COMPLIANCE:**

This Land Use Policies and Procedures shall be implemented and monitored through the Eddy County Commission utilizing the advise and recommendations

of the Eddy County Land Use Committee which shall be appointed by the Eddy County Commission, with said Committee to be composed of a minimum of five and not more than fifteen members which shall be a cross-section of residents and industry representatives in Eddy County, New Mexico.

**POLICIES:**

1. Eddy County may monitor, as needed, through the appropriate land user or agency, the condition of grazing lands, woodlands, wildlife, and wetlands. Federal and State Agencies shall provide to the County, upon request, any resource data and the subsequent analysis of all resource conditions.
2. All Federal and State Agencies shall comply with the provisions of the Eddy County Land Use Policies and Procedures. All public notices will be published in the newspapers of record which are the Carlsbad Current-Argus and Artesia Daily Press.
3. The Eddy County Sheriff shall be entitled and authorized to act as the Law Enforcement Agency within Eddy County in those areas and concerning those matters specifically authorized by 1976 FLPMA which occurs outside of incorporated cities and villages. Any federal funding available pursuant to 1976 FLPMA in connection with such law enforcement actions should be applied for and controlled by the Eddy County Sheriff.

4. Violations of this Ordinance by any person, entity, or agency shall be deemed to be a violation of Eddy County Ordinance Number 41. Liability under this ordinance shall be placed upon which person, entity or agency shall be liable in an action at law, suit in equity, or other proper proceeding for redress.

**SECTION XII – SEVERABILITY:**

That if any section, paragraph, clause or provision of this ordinance for any reason shall be held to be invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any other part of this Ordinance.

**SECTION XIII – PENALTY:**

Penalties for violations of any county ordinances shall not exceed a fine of three hundred dollars (\$300) or imprisonment for ninety days, or both.

**SECTION XIV – HEARING:**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2002, a public hearing was held by the Board of County Commissioners of Eddy County, New Mexico to consider the passage of Ordinance Number 41, governing the establishment of the Eddy County Land Use Policies and Procedures. All parties in interest and citizens had an opportunity to be heard. Notice of the date, time, and place of the hearing, and an outline of the proposed Ordinance, was published in a newspaper of general circulation at least once, at least two weeks prior to the hearing.

**SECTION XV – ADOPTION:**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, after due consideration of the results of the public hearing described in the foregoing section, Ordinance Number 41, “Eddy County Land Use Policies and Procedures” is hereby adopted.

PASSED, APPROVED AND ADOPTED by the Eddy County Board of Commissioners in an open public hearing in Carlsbad, Eddy County, New Mexico.

EDDY COUNTY BOARD OF COMMISSIONERS  
EDDY COUNTY, NEW MEXICO

\_\_\_\_\_  
Julius Doubrava, District #1

\_\_\_\_\_  
Glenn Collier, District #2

\_\_\_\_\_  
Kincaid, Chairman - District #3

\_\_\_\_\_  
Lucky Briggs, Vice-Chairman  
– District #4

\_\_\_\_\_  
Ray Camp, District #5

ATTEST:

\_\_\_\_\_  
Jean Blenden, County Clerk

**SECTION XVI – CERTIFICATION:**

I, Jean Blenden, Eddy County Clerk, hereby certify that Ordinance Number 41 being “Eddy County Land Use Policies and Procedures” was passed, approved and adopted by the Eddy County Board of Commissioners on this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

My Term Expires: \_\_\_\_\_

BY: \_\_\_\_\_  
Jean Blenden, County Clerk