

BILL NO. 2025-

ESMERALDA COUNTY ORDINANCE NO.

SUMMARY: An ordinance creating a requirement to obtain a special use permit for any use not allowed and providing for criteria for approval, or denial of a special use permit, application process, application review, public hearing, approval with conditions/or denial of application, enforcement, severability, constitutionality, effective date, and other matters properly relating thereto.

TITLE: This ordinance is known as and may be cited as the "Special Use Permit Ordinance of Esmeralda County, Nevada."

WHEREAS, pursuant to NRS 278.020, for the purpose of promoting the health, safety, morals or the general welfare of the residents of Esmeralda County, the Esmeralda County Board of County Commissioners (Board) is authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures; and

WHEREAS, any such regulation, restriction and control must take into account the potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment; and

WHEREAS, policy 3-10 of the Esmeralda County Master Plan adopted on 12/7/2011 states "All existing land uses are allowed. New agricultural and residential land use is allowed anywhere within the county, provided adequate resources are available. All other proposed uses require a special use permit. Existing land uses have priority over new proposed uses for resources and for any disputes, e.g., an existing agricultural use takes precedence for any issues (e.g., noise, dust) with a new adjacent residence; an existing residence takes precedence for any issue with a new adjacent industrial facility."; and

WHEREAS, the Board finds it desirous at this time to allow for the consideration and use of special use permits through the adoption of an ordinance setting forth the standards and manner in which such permits may be considered;

NOW, THEREFORE, the Board of County Commissioners of the County of Esmeralda, State of Nevada does hereby ordain as follows:

Section 17.02 PURPOSE, AND JURISDICTION

17.02.020 PURPOSE.

This land use ordinance for the county of Esmeralda is adopted and established to serve the public health, safety, comfort, convenience, and general welfare; to provide the economic and social advantages resulting from an orderly planned use of economic, natural and community resources; to encourage, guide and provide for the future growth and development of the county; and to implement the goals, objectives, policies, and proposals of the master plan by:

- A. Giving effect to the policies and objectives of the master plan.
- B. Providing for the protection and enhancement of property rights, property values, quality of life, historic and cultural resources, and natural resources.
- C. Providing for a vibrant, stable, and diversified economy in the county.
- D. Protecting the tax base by providing for cost-effective development within the county.
- E. Concentrating development to areas where adequate water, sewerage facilities, schools, roads, and other public services can be provided, and limiting development in areas where these resources and facilities are not and should not be provided.
- F. Protecting landowners from adverse impacts of adjoining developments.

17.02.030 JURISDICTION.

Esmeralda County's governing body, the board of county commissioners (board), is authorized by NRS 278.250 to divide the county into Land Use districts to carry out the purposes of NRS 278.010—278.630, and may regulate and restrict the erection, construction, alteration, repair or use of buildings, structures, or land within its jurisdiction.

17.02.040 INTERPRETATION AND CONFLICT.

In their interpretation and application, the provisions of this ordinance are held to be minimum requirements. Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, restrictions, or ordinances, the most restrictive or that imposing the higher standards will govern. This ordinance must be interpreted, whenever the board is called upon to do so, in conformance with the purposes intended by the board to be served by its enactment. The intent of the standards and supporting definitions of this ordinance is to protect both individual property owners and the general public from substantial adverse impacts that may otherwise be the result of a proposed use. To this end, those called upon to interpret this ordinance shall proceed as follows:

- A. Determine the public purposes of the standards with respect to which an interpretation is required;
- B. Determine the actual impact of the proposed interpretation; and
- C. Determine that the proposed interpretation will insure a just balance between the right of the landowner and all others who will be affected by that person's land use proposal.

17.02.050 CONFORMANCE WITH THE MASTER PLAN.

The board declares and makes the specific finding that this ordinance conforms to the master plan.

Section 17.03 ADMINISTRATIVE PROVISIONS

17.03.010 POWER OF THE BOARD.

The board of county commissioners (the board) has the power to make planning and Land Use decisions for Esmeralda County as provided in NRS Sections 278 and 278A.

- A. The county commissioners must perform all duties and functions delegated to a by the terms of NRS 278.010 to 278.630, inclusive, and Section 2.12 (County commissioners).
- B. The county commissioners must hear applications on special use permits, variances, and appeals of administrative decisions, changes to the county master plan, Land Use districts, and all other appropriate subjects.

17.03.020 ADMINISTRATION OF THIS ORDINANCE.

The Planning Department under the direction of the county commission will administer this ordinance. For the purposes of this ordinance, the term "planner" means an employee of the department or independent contractor engaged by the county to perform the function, The planner will determine when any application under his jurisdiction is complete.

17.03.030 JURISDICTION, INTERPRETATION, AND APPLICATION.

The provisions and standards contained in this ordinance are the minimum standards for the allowed or permitted uses and must not be construed as limiting the legislative discretion of the board to further restrict the allowed or permissive uses or to withhold or revoke permits for uses when the protection of the public health, morals, safety, welfare, and protection of surrounding land uses is necessary. Requirements apply to all properties within the county.

- A. Conflict of regulation. When this ordinance imposes a greater restriction upon the use of land, or upon height, bulk, location or use of buildings and structures than is required by existing provisions of law or by private covenant or other restriction, the provisions of this ordinance will prevail. Private covenants or deed restrictions that impose more restrictive conditions than those contained in this ordinance are not superseded by this ordinance or enforced by the county.
- B. Rules of interpretation. In interpreting the language of this ordinance, the rules set out in this section will be observed unless the interpretation is inconsistent with the expressed language of this ordinance.
- C. Computation of time. The time in which an act is to be performed will be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or legal federal or state holiday, the period runs until the next day which is not a Saturday, Sunday, or legal federal or state holiday. The following time-related words will have the meanings ascribed below:
 - 1. "Day" means a calendar day unless otherwise stated.
 - 2. "Week" means seven calendar days.

3. "Business week" means five days starting Monday and ending Friday.
 4. "Business day" means one or more days beginning on Monday and ending on Friday.
 5. "Month" means one calendar month.
 6. "Year" means a calendar year unless a fiscal year is indicated.
- E. Other clarifications.
1. Tense. Unless clearly indicated to the contrary, words used in the present tense include the future, words used in the plural include the singular, words used in the singular include the plural and words of one gender include the other.
 2. Use of certain words. The words "shall," "must," and "will" are always mandatory. The term "may" is discretionary to the subject which it refers. Words and phrases are to be construed according to the common and approved usage in the language, except for technical words and phrases that may have acquired a peculiar and appropriate meaning.
 3. Conjunctions. Unless the context clearly indicates the contrary, conjunctions are to be interpreted as follows:
 - a. "And" indicates that all connected items or provisions apply; and
 - b. "Or" indicates that the connected items or provisions may apply singularly or in any combination.
 4. Delegation of authority. Whenever reference is made to the head of a department or to some other county officer or employee, the reference will be construed as authorizing the head of the department or other officer to designate, delegate to and authorize subordinates to perform the required act or duty, unless expressly provided otherwise.

17.03.040 ENFORCEMENT.

It is unlawful for any person, firm, or corporation, whether as a principal, agent, employee, or otherwise, to construct, build, convert, alter, erect, maintain a building, structure or any use of property, equipment, or operation in violation of a provision of this ordinance. Any violation of this ordinance is a public nuisance and a misdemeanor offense punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a period of not more than six months, or by both fine or imprisonment. The following procedures apply to enforce the provisions of this ordinance:

- A. If a violation of this ordinance occurs, the planner may deliver to the party in violation an order to comply with the provision of this ordinance in a time period up to thirty days from the issuance of the order to comply at the planner's discretion.
- B. The planner may also refer notice of the violation to the district attorney who may commence an action to abate, remove and enjoin the violation as a public nuisance or a criminal action in the manner provided by law. A party is guilty of a separate offense for each and every day the violation of this ordinance, or the failure to comply with any order, is committed or otherwise maintained.
- C. The conviction and punishment of any person under this section will not relieve the person from the responsibilities of correcting the nuisance.

17.03.045 ABATEMENT OF PUBLIC NUISANCES.

- A. Upon receipt of a complaint alleging a public nuisance violation of this section, the planner must determine the validity of the complaint. If the planner determines the complaint to be valid, the planner must personally deliver to the property owner, or send to the property owner by certified mail, return receipt requested, notice of the violation, and notice to abate. The notice of violation and notice to abate must inform the owner of the following:
 - 1. Nature of the violation.
 - 2. The date the owner must abate the condition. If the public nuisance is not an immediate danger to public health, safety, or welfare or was caused by the criminal activity of another person, the owner has a minimum of thirty days to abate the public nuisance.
 - 3. That the owner has a right to request a hearing before the planner.
 - 4. That should the owner not prevail at the hearing; the owner may appeal to the commission upon filing a notice of appeal with the commission and payment of a filing fee.
- B. A property owner who desires a hearing to challenge the violations set forth in the notice of violation must notify the planner in writing prior to the date indicated on the notice to abate. The property owner will be afforded an opportunity to appear before the planner and, if not satisfied with the results of the hearing, may request an appeal of the decision by filing a notice of administrative appeal with the office of the board along with the filing fee. The notice of appeal must be placed on the next available board's agenda. The board's decision is final.
- C. Should the property owner fail to comply with the terms of the notice to abate, fail to request a hearing within the time specified, fail to prevail at any requested hearing, or fail to file an appeal in the time specified, the county may abate the nuisance on the property and may recover the amount expended by the county for labor and materials used to abate the public nuisance. The expense and any civil penalties are a special assessment against the property where the nuisance is located, and this special assessment may be collected as allowed by law.
- D. The board may by resolution set civil penalties to be imposed for a public nuisance violation.

17.03.050 APPLICATIONS.

- A. An application for a variance, a special use permit, a Land Use map amendment, a master plan amendment, Land Use code amendment, road abandonment request, an amendment to this ordinance, or an appeal of an administrative decision must be filed with the planner
- B. Determination of a complete application. Within three working days after receiving an application, the planner will determine whether the application is complete. If the planner determines that the application is not complete, the planner must contact the applicant during that time period verbally or in writing and state the application's deficiencies and describe the additional information required. The planner may take no further action on the application unless the deficiencies are remedied. An application may only be scheduled for hearing if the planner deems the application complete before the agenda deadline date of the county commissioners meeting. A determination of completeness will not constitute a determination of compliance with other requirements of this ordinance or federal and state regulations.

- C. Fee submittal. The required application fee must be tendered to the planning department with the submitted application.
- D. Processing of an application. The planner will review the application and prepare a report for the county commissioners recommending approval, approval with conditions, denial, or continuance for re-design. The planner will schedule the application for public hearing within the time and in the manner required by this ordinance and state statute
- E. Official filing date. The time for processing and acting on county commissioners and board applications as established by NRS or this ordinance will commence on the date that the application is deemed complete. Material modifications of any application by the applicant following the filing of the application will re-establish the time for processing and acting on the application upon the planner's determination that the modified application is complete.

17.03.060 APPLICATION LIMITATIONS.

A second or subsequent application substantially similar to an application for a variance, special use permit, Land Use map amendment, Land Use code amendment, road abandonment request, or master plan amendment may not be submitted for review within one year of the first application's denial by the board with respect to that parcel or any portion of that parcel under the same ownership or if ownership changes unless the planner determines that the subsequent application is substantially different such that the facts supporting the previous denial from the commission or board no longer exists.

Where the holder of an application for a development approval wishes to file a subsequent application for a project that is substantially different from the first project, the new development application will supersede the previous development application, and the applicant must state on the application that, upon approval of the subsequent application, the first development approval is withdrawn.

17.03.070 NOTICE PROVISIONS.

- A. Published notice. Unless otherwise provided by this ordinance or NRS Section 278, any application upon which a public hearing is required, notice of the time and place of the hearing must be published in an official newspaper of general circulation in the county at least ten days before the date for the hearing.
- B. Personal notice. Whenever personal notice of a public hearing is required by this ordinance or NRS Section 278, in addition to the published notice, the planner will mail notice of the hearing not less than ten days before the public hearing date to:
 - 1. The applicant;
 - 2. All real property owners listed on the county assessor's records within three hundred feet of the exterior boundaries of the subject property, and to all owners of land within an area proposed for re-Land Use; and
 - 3. Each tenant of a mobile home park if that park is located within three hundred feet of the property in question, written notice of the time, place and date of such hearing and the general location of the property of the addressee with reference to the property proposed for change.
 - 4. In addition to the notice required in items 1., 2. and 3., above, notice must also be sent to the owners as listed on the county assessor's records, of each of the thirty separately owned parcels nearest the subject site to the extent this does not duplicate the notice sent pursuant to subsection

- B.2. above and to any advisory board which has been established for the affected area by the governing body.
5. Electronic notice. If requested by a party to whom notice must be provided pursuant to paragraphs B.1. to 4., inclusive, by electronic means if receipt of such an electronic notice can be verified and must be written in language which is easy to understand.
- C. Notice for text amendments. In addition to published and personal notice required above, the notice for a text amendment must set forth the time, place and purpose of the hearing and a physical description of or a map detailing the proposed change. It must contain a summary of the intent of the proposed change.
- D. Notice for design review, excluding minor design review. The planning department must send, by first class mail, notice of the filing of an application to all contiguous property owners. Contiguous for the purpose of this section includes those properties that touch the parcel which is subject to the land use request including those which would touch the property when projected across a public or private easement or right-of-way. The notice must contain a brief description of the request, the location of plans for review and a deadline for comment.
- E. When notice of a hearing is sent, the board or other entity must retain:
1. A copy of the notice;
 2. A list of the persons or governmental entities to which the notice was addressed; and
 3. A record of the date on which the notice was deposited in the United States mail postage prepaid or sent by electronic means.

17.03.100 ADMINISTRATIVE REVIEW BY THE BOARD.

The county commission will review the staff report and either approve or conditionally approve the report.

17.03.080 HEARINGS.

- A. The county commissioners, when holding a hearing on an application for a variance, special use permit, tentative map, Land Use map amendment, road abandonment request, master plan amendment, Land Use code amendment, or master plan element, must review and judge the merits of an application and find that the regulations and standards in this ordinance and state law are met.
- B. Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing must state his or her full name, and if appearing on behalf of an organization, state the name and mailing address of the organization for the record.
- C. The hearing body may exclude testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious. Any person appearing as a witness may ask relevant questions of other persons appearing as witnesses but may do so only through the chairman of the body conducting the hearing and at the chairman's discretion.
- D. Continuances. The body conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time, and place. The applicant must agree to the continuance when the time limit of the application provided by law would otherwise lapse. An

applicant has the right to one continuance upon payment of the established fee, and if required, the cost of additional notice. A continuance requested by the applicant suspends the timelines established in NRS Section 278 and this ordinance. All subsequent continuances may be granted at the discretion of the body conducting the hearing only on good cause shown, and on payment of applicable fees. If the request for continuance is denied, the hearing will be conducted as scheduled on the posted agenda and the fee for the continuance will be refunded to the applicant. If the hearing is continued to a fixed date within thirty-five days of the original hearing date, additional notice is not required. For all other continuances, additional notice is required in the manner required for the initial hearing. The county will prepare the notice and the party requesting the continuance must pay the costs.

17.03.090 ACTION BY THE COUNTY COMMISSIONERS.

At the conclusion of the hearing, the county commissioners must act on the application and announce and record its action in the form of a motion. The motion must recite the findings of the county commissioners used for its decision and include any reasonably necessary conditions of approval. Notice of the approval, approval with conditions, or a denial must be prepared by the planner and sent to the applicant.

17.03.110 AMENDMENTS AND REVISIONS OF APPROVALS.

- A. The planner, upon submittal of the applicable form, materials, and fee, may approve minor amendments to the terms of an approval. Minor amendments or revisions must be authorized in writing by the planner and are subject to appeal. Minor revisions that may be authorized are those that appear necessary in light of technical considerations requested by the applicant or the planner and are limited to the following:
 - 1. Requests that involve less than ten percent of the building area or project site area;
 - 2. Requests that involve minor changes in color, material, signage, design, landscape material or parking or driveway orientation; or
 - 3. Requests that involve minor design changes which represent improvements to previous engineering, site design or building practices, provided the request does not change the character of the project or result in negative impacts to adjoining properties, drainage facilities, irrigation facilities or rights-of-way.
- B. For a special use permit, a minor amendment means a modification to one or more of the conditions of the special use permit which: does not substantially change the use allowed by the special use permit; does not cause substantially greater impacts to surrounding properties than that allowed under the existing special use permit; does not increase area of land, increase the height of any structure, or reduce the required setbacks of any structure under the special use permit; and conforms to the minimum required findings and conditions of approval pursuant to this section.
- C. All other amendments or revisions are considered major revisions. Where the holder of an approved application for a permit wishes to make a major amendment or revision to the approval which is not covered by subsections 1. through 3. above, an application including all required materials and fees must be submitted to the planning department and forwarded for approval of the final decision-maker in accordance with the procedures established for the original approval.

17.03.120 FEES AND CHARGES.

- A. Applicant is responsible to reimburse the county for any costs incurred with respect to the review and processing of the application, county participation as a cooperating agency if project is located on public land, and on-going monitoring of any conditions under which a permit is granted.
- B. Before accepting any application required by this ordinance, a deposit not to exceed fifty thousand dollars \$50,000.00 charged, and collected by the planning department. The amount of this deposit will vary depending upon the complexity of the proposed project. Planner will provide to applicant justification for the deposit amount requested by presenting proposed scope of work(s) and type(s) of specialized or skilled professionals to be retained. Said deposit shall be used for application fees, service charges, services provided by independent contractors, retained by the county to review the application, and provide consultation to be used in determining the possible impacts of the proposed use or conditions to be placed upon granting the special use permit, to assist in oversight of the development of the proposed use and National Environmental Policy Act participation if the project is located on public land. The deposit will also be drawn upon to pay for application fee, required publication, notification, and any other costs incurred by county related to the application. Any expenses deducted from the deposit shall be reported to the applicant along with a copy of the invoice and proof of payment by the county. Planning department shall invoice applicant for amounts required to replenish deposit. Any unused deposit shall be refunded.
- C. No fee is charged to any nonprofit organization or government agency that is the owner of record of the property involved in an application.
- C. All fees are non-refundable except for recording fees when there is no actual recording.
- D. The fee for an extension of the expiration date of the special use permit or variance will be the same amount as the original application fee.
- E. Unless a continuance is requested by the county commissioners or board with the applicant's concurrence, a continuance of a county commissioners agenda item to a later meeting is subject to the following: The applicant will be required to pay any fees and the cost of re-noticing the items as required by this section or NRS.
- F. No fee or part of fee will be refunded if an application is not approved.
- G. All application costs must be paid in U.S. cash, by credit card accepted by the planning department, or check payable to Esmeralda County Planning.

17.03.130 APPEAL PROCEDURE.

- A. Appeals of staff decisions. The applicant or any aggrieved party may appeal an administrative decision of the planner to the board within ten days of the written decision. The board may affirm, modify, or reverse the decision.
- B. Procedure for filing a staff administrative decision appeal.
 - 1. Standing for filing an appeal. The applicant or any aggrieved party, defined as a person with a legal or equitable interest in the property affected by the final decision or property located within the notice area of the property that is ordained by law to notice, may file an appeal provided that the appellant has participated in the administrative process before filing the appeal.

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2. Issues for an appeal. Only issues raised or addressed in the public hearing stage of the administrative process for a project may be raised as a basis for the appeal unless there is substantial new evidence that has become available after the time of the public hearing.
 3. Appeal application. All appeal applications must be filed in writing with a letter of appeal to the planner.
 - a. The letter of appeal and application must be submitted within ten days of the date of the staff decision for which the appeal is requested.
 - b. The appeal letter must include the appellant's name, mailing address, daytime phone number, and must be accompanied by the appropriate fee.
 - c. The letter must specify the project or decision for which the appeal is being requested. The letter must indicate which aspects of the decision are being appealed. No other aspect of the appealed decision may be heard.
 - d. The letter must provide the necessary facts or other information that support the appellant's contention that the staff erred in its consideration or findings supporting its decision.
 - e. The staff may provide the board with a report containing the information used in making the decision.
 - f. The board must set the appeal for hearing and render its decision on the appeal within sixty days of the submittal of a complete appeal application.
 - g. Notice of appeals. Notice of time and place of appeal hearings must meet the requirements of Section 17.03.070.

17.03.150 SPECIAL USE PERMIT (CONDITIONAL USE).

The county commissioners, may approve, approve with conditions, continue within the allowed timeframe, or deny uses expressly listed as "uses subject to permit". The following requirements apply to the approval of a special use permit:

- A. Application requirements. Before a special use permit may be considered for approval, the proposed use must be listed as a use requiring a special use permit in the regulatory zone or must be a similar use as determined by the board with action by the county commissioners. For the purpose of accepting an application, the planner will determine whether the use is similar to those expressly listed as requiring a special use permit. The similar use must not deviate from the pattern of other conditional uses in the zone.
- B. Investigation. The planner will investigate each application to assure that the proposal is consistent with the requirements of this ordinance and make a report to the county commissioners and board.
- C. Hearing. The county commissioners must hold a public hearing after acceptance of a complete application and notice of the hearing is given as required by this section and the NRS. The board must hold a public hearing no later than sixty-five days after the acceptance of the complete application. The hearings must meet the requirements of Section 17.03.080 (Hearings).
- D. Findings. The approval of a special use permit must be based on findings that indicate that the proposed use is appropriate in the location for which it is approved. The findings listed in this

subsection are the minimum to be cited in an approval; the board and county commissioners may include additional findings in their decision. The body must cite findings in its motion for approval or findings for their motion for denial. The applicant will bear the burden of proof by a preponderance of the evidence to provide facts supporting the proposed special use permit. At a minimum, the approval must be based on findings that the proposal:

1. Complies with the general purpose, goals, objectives, and standards of the county master plan, this ordinance, and any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the county.
 2. The proposal location, size, height, operations, and other significant features will be compatible with and will not cause substantial negative impact on adjacent land uses, or will perform a function or provide a service that is essential to the surrounding land uses, community, and neighborhood.
 3. Will result in no substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or right-of-way, or other matters affecting the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions and policies of the county master plan, this ordinance, and any other plans, program, map, or ordinance adopted or under consideration pursuant to an official notice, by the county, or other governmental agency having jurisdiction to guide growth and development.
 4. The proposed use in the proposed area will be adequately served by and will impose no undue burden or any of the improvements, facilities, utilities, or services provided by the county or other governmental agency having jurisdiction in the county. Where improvements, facilities, utilities, or services are not available or adequate to service the proposed use in the proposed location, the special use permit applicant must, as part of the application and as a condition of approval of the proposed special use permit, be responsible for establishing ability, willingness, and binding commitment to provide the improvements, facilities, utilities, infrastructure, and services in sufficient time and in a manner consistent with the county master plan, this ordinance, and all plans, programs, maps, and ordinances adopted by the county to guide its growth and development. The approval of the special use permit must be conditioned upon the improvements, facilities, and services being provided and guaranteed by the applicant.
- E. Conditions of approval. The county commissioners may require conditions (including a development agreement) under which the lot or parcel may be used or the building constructed if the use may otherwise be incompatible with other existing and potential uses within the same general area or will constitute a nuisance or will overburden public services, improvements, or facilities.
- F. Expiration and revocation. Where a use permitted by a special use permit is not started on the property within twenty-four months from the date of approval, unless additional time is granted by the board with action by the county commissioners based upon consideration of the specific circumstances of the project, then the special use permit will be null and void without any further action and the use will not be allowed except by the granting of a new special use permit.
- G. Extension and expiration of permits. If circumstances beyond the control of the applicant result in a failure to complete applicable special use permit conditions and construct or commence the

use prior to the expiration date, the applicant may request in writing an extension of the expiration date. The written request for an extension must be received by the planning department within thirty days prior to the expiration date. The application must state the reason for the extension request. The board with action by the county commissioners may approve a twenty-four-month extension of the special use permit and may approve up to two additional extensions for time subject to the consideration of the continued appropriateness of the special use permit. The extended special use permit may be subject to additional conditions imposed by the board to ensure that the activity permitted by the special use permit does not adversely impact other properties in the area or the public interest. If construction work is involved, the work must commence within the stated period and be diligently pursued to completion. A stoppage or lapse of work for a period of twelve months will invalidate the special use permit. When any use of land, building, structure, or premises established under the provisions of this section has been discontinued for a period of twenty-four consecutive months, it is unlawful to again use the land or building or premises for the discontinued use unless a subsequent special use permit is authorized and issued.

- H. Re-application. No person, including the original applicant, may reapply for a similar special use permit on the same land, building, or structure within a period of one year from the date of the final decision by the board of such previous application.

17.03.160 STANDARD CONDITIONS OF APPROVAL—SPECIAL USE PERMITS AND VARIANCES.

The standard conditions contained in this section are imposed on applications requiring discretionary approval. Additional conditions may be imposed by the county commissioners. The minimum required conditions are as follows:

- A. Conformance with plans. All development must be substantially in accordance with the site development plans submitted with the application.
- B. Conformance with regulations. All on- and off-site improvements must conform to federal, state, and county regulations and the regulations by any applicable political subdivision of the county.
- C. Period to commencement. The use for which the permit or variance is approved must commence within twenty-four months of the date of final approval. A single, one-year extension of time must be requested in writing to the planning department thirty days prior to the permit or variance expiration date. The permit or variance will become null and void if the project applicable to the permit is not initiated within one year and no extension granted.
- D. Department conditions. The recommended conditions of approval from each county department must be incorporated as conditions to the final permit or variance, provided that the recommended conditions comply with federal, state, and county regulations.

17.03.170 REVIEW OR REVOCATION OF VARIANCE OR SPECIAL USE PERMIT.

The planner may refer a variance or a special use permit to the board for a show cause hearing on revocation based on any of the following reasons or occurrences

- A. A failure or refusal of the applicant to comply with any of the terms or conditions of a variance or special use permit.

- B. Any misrepresentation made in the application for a variance or special use permit.
- C. Any act or failure to act by the applicant or its agents or employees directly related to the variance or special use permit which would be a violation of federal or state law or a violation of the county code.
- D. Any act or failure to act by the applicant or its agents or employees directly relating to the variance or special use permit that creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare.
- E. A failure to return a signed copy of the notice of decision, twenty-one days from receipt of said notice.
- F. Further use of a revoked variance or special use permit is a violation of this ordinance and will be punishable as provided in this ordinance.

17.03.180 SHOW CAUSE PROCEDURES OF VARIANCE OR SPECIAL USE PERMIT.

- A. Procedures. The board upon its own motion, or upon the sworn complaint in writing of any person, or upon information presented by the planner, must request that the planner investigate the conduct of any applicant under this section to determine whether grounds for revocation of any variance or special use permit exist. The planner will notify the applicant of any investigation prior to any public hearing.
- B. Investigation. After an investigation, if the planner determines that a ground for revocation of a variance or special use permit exists, the planner will issue and serve the applicant with an order to show cause why the variance or special use permit should not be revoked. The order must contain:
 - 1. A statement directing the applicant or applicant's representative to appear before the board at a particular time and place; provided, that the applicant has at least ten days from the date of service of the order before the scheduled meeting;
 - 2. A statement of the grounds for revocation;
 - 3. A statement that the applicant will have an opportunity to be heard, present witnesses and respond to any witnesses against him or her;
 - 4. Service on the applicant must be made by personally delivering a copy of the order to show cause to one of the persons whose name is on the application or by mailing a copy of the order by certified mail with return receipt to the applicant's address on the variance or special use permit.
- C. Hearing for show cause.
 - 1. At the public hearing on the order to show cause, the applicant, and the complainant, if there is one, may present testimony, question witnesses, and be represented by attorneys. If the hearing is pursuant to a complaint, the complainant must also be present.
 - 2. After the conclusion of discussion and public testimony, the possible actions that the board may take include taking no action on the permit, revocation, or modification of permit conditions of approval, limited suspension, and continuance with the concurrence of the applicant.
- D. Appeal of show cause determination. A show cause decision from the board is final. Any further appeal of the board's decision must be in the court of competent jurisdiction within the time frames established by NRS Section 278.

17.03.200 ADMINISTRATIVE PERMIT.

- A. Purpose. The purpose of administrative permits is to provide for the method of reviewing proposed uses which possess characteristics that have the potential to adversely affect other land uses, transportation, or facilities in the vicinity. The planner may require conditions of approval necessary to eliminate or reduce any adverse effects of a use.
- B. Applicability. This section authorizes the planner to review and render final decisions on Land Use matters and development proposals identified within this section as requiring an administrative permit pursuant to the provisions of this section.
- C. Permit required. An administrative permit is required in the following cases:
 - 1. Small operations exploration and mining.
 - 2. Transmission Projects designed to operate at 200kV or more.
 - 3. Renewable energy generation projects qualifying for expedited permit process.
- D. Process. Applications for administrative permits may be initiated by the property owner or the property owner's authorized agent. Applications must be filed with the planning department. A request for an administrative permit must include a site plan which clearly delineates the location and characteristics of the proposed use. No administrative permit will be processed until the planner determines the application is complete.
- E. Decision. This ordinance delegates certain authority for making decisions relating to various development applications, uses and similar approvals to the planner. The planner must review all complete applications, make necessary findings, and render a decision on the application. The planner may refer the application to the county commissioners for its review and recommendation to the board prior to rendering a decision on the application.
- F. Findings. In approving an administrative permit, the planner must make the findings shown in Section 17.03.150.D.
- G. Notification and appeal of decision by planner. The planner must notify the applicant within ten working days of the decision. The decision of the planner may be appealed to the board by the applicant or any aggrieved party pursuant to Section 17.03.130 (Appeal Procedure).
- H. Planner shall report any administrative permits issued along with findings to the board.

Section 17.10 DEFINITIONS

17.10.020 DEFINITIONS GENERALLY.

For the purpose of this ordinance certain terms and words are defined as follows in this section. When consistent with the context, words used in the present tense include the future; words in the singular include those in the plural and the plural the singular; any words of gender include the opposite gender; "building" includes "structure," the word "shall" is mandatory, not discretionary, the word "person" includes "firm," "association," "corporation," "partnership," and "natural person"; the word "used" includes the words

"arranged," "designed," or "intended to be used"; and the word "construct" includes the words "erect," "reconstruct," "alter," "move-in" and "move-upon."

For the purpose of this ordinance terms and words shall have the meaning as defined in the Nevada Revised Statutes or Merriam-Webster dictionary

17.12 GENERAL PROVISIONS

17.12.010 PURPOSE AND INTENT

The regulations set forth in this section define, modify, or further restrict, where applicable the Land Use regulations of this ordinance.

17.12.011 APPLICABILITY

The regulations set forth in this section apply to. Any proposed project, located within Esmeralda County, for which construction and installation of improvements contemplated by Plan of Operations, or Plan of Development has not commenced, as of the date of adoption of this ordinance.

17.12.011 TRANSITIONAL PROJECTS

Proposed land use projects where Esmeralda County is a cooperating agency in the N.E.P.A. process and all steps prescribed in the Application Process and Application Review sections of this Ordinance have been completed shall have their application considered complete and accepted and eligible for a public hearing in compliance with Nevada Revised Statutes 278.260. Deposit requirement for an application under this Ordinance is waived in favor of maintaining any existing reimbursement scenarios. Applicant will be responsible to pay for the advertising and notification costs associated with the public hearing requirements as stated in this Ordinance.

Land use projects for which a Development Agreement with Esmeralda County exists are hereby granted a special use permit subject to the conditions in the Development Agreement while said agreement remains in force

17.12.014 USES ALLOWED.

The following regulations apply to allowed uses:

- A. Uses not listed as requiring a special use permit are allowed.
- B. Any legally created use already established within an area prior to the passage of these regulations that is not an allowed use or is a permitted use only with a special use permit may be allowed to continue as a nonconforming use if its area is not expanded, or, operations altered.

17.12.018 USES PERMITTED SUBJECT TO A SPECIAL USE PERMIT.

Uses listed as requiring a special use permit are considered as special exceptions. Any special permitted use must meet with the regulations for special use permits and any conditions imposed by the board. In addition to the special use permit, all necessary federal, state, and county permits and licenses are required.

- A. Mining and extraction
- B. Renewable Energy Projects not qualifying for the expedited approval process
- C. Aboveground Utility Projects designed to operate at 200kV or more.

17.12.100 GENERAL PROVISIONS FOR ALL ZONES.

This section applies to all zones unless otherwise stated:

- A. Noise, smoke, odor, gases, weeds, or other noxious nuisances must be controlled so as not to become objectionable, or adversely affect the properties in the vicinity, and must not be detrimental to the public health, safety, and welfare.

17.13.100 SEVERABILITY:

If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

17.13.101 CONSTITUTIONALITY:

If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the ____ day of _____, 2025.

Proposed on the ____ day of _____, 2025

Proposed by: Commissioner

Adopted on the ____ day of _____, 2025

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY:
