

AN ACT

RELATING TO THE CONSERVATION OF NATURAL RESOURCES; ENACTING THE SUSTAINABLE DEVELOPMENT TESTING SITE ACT; PROVIDING FOR THE APPROVAL OF AREAS TO BE USED FOR NONINDUSTRIAL RESEARCH AND TESTING DESIGNED TO REDUCE THE CONSUMPTION OF AND DEPENDENCE ON NATURAL RESOURCES BY RESIDENTIAL DEVELOPMENT; PROVIDING THAT SPECIFIED COUNTY CODES, ORDINANCES, RULES AND PERMITS ARE NOT APPLICABLE TO CERTAIN RESEARCH ACTIVITIES WITHIN AN APPROVED AREA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Sustainable Development Testing Site Act".

Section 2. DEFINITIONS.--As used in the Sustainable Development Testing Site Act:

A. "permittee" means a person who holds a testing site permit;

B. "planning commission" means a county planning commission appointed pursuant to Section 4-57-1 NMSA 1978; provided that, if no county planning commission has been appointed pursuant to that section, "planning commission" means the board of county commissioners;

C. "sustainable development" means a live-in environment composed of structures and systems that inherently produce utilities and life-support systems free of existing

conventional grids and disposal systems. "Sustainable development" includes:

(1) the inherent provision of on-site energy needs via renewable resources;

(2) the inherent provision of water needs while minimizing the withdrawals from ground water and surface water systems in accordance with state water law and the rules and policies of the state engineer;

(3) the inherent provision of sewage treatment needs with zero discharge;

(4) the reuse of materials discarded by modern society; and

(5) the development of organic foods and fuel;

D. "sustainable development research" means activities conducted at a sustainable development testing site that test ideas, concepts or inventions designed to lead ultimately to sustainable development;

E. "sustainable development testing site" means an area that is:

(1) two acres or less in size;

(2) situated wholly outside the planning and platting jurisdiction of a municipality; and

(3) subject to a testing site permit and existing federal laws and regulations; and

F. "testing site permit" means a permit, issued by a planning commission, that designates an area as a sustainable development testing site and specifies:

(1) the sustainable development research that can be conducted within the site by the permittee; and

(2) the county codes, ordinances, rules or permits that are not applicable to the permittee and the research.

Section 3. APPLICATION FOR TESTING SITE PERMIT--
EVALUATION--NOTICE OF PUBLIC HEARING.--

A. A person desiring a testing site permit shall submit an application to the planning commission for the county in which the proposed sustainable development testing site is located. The application shall include:

(1) a detailed description of the sustainable development research that will be conducted on the sustainable development testing site, including an explanation of the ideas, concepts and inventions that will be tested;

(2) a schematic layout of the sustainable development testing site;

(3) the number of inhabitants and employees that are expected to occupy the sustainable development testing site;

(4) a water budget detailing the anticipated indoor and outdoor water use for the sustainable development

testing site;

(5) an assessment of the county codes, ordinances, rules or permits relating to construction or building requirements, occupancy, zoning or subdivisions that are not practicable for the specific sustainable development testing site and that may inhibit the proposed sustainable development research and an explanation of how the sustainable development testing site will not be damaged if the proposed sustainable development research at the site is allowed;

(6) an application fee, set by the planning commission, equal to the estimated costs of evaluating the application, holding the public hearing and administering the permit;

(7) other information as may be required by rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act or by rule of the planning commission or ordinance of the county; and

(8) copies of all required state permits, including the approval of the wastewater treatment and disposal technology on an experimental basis.

B. Upon receipt of a complete application, the planning commission shall:

(1) forward a copy of the application to the office of the state engineer and to the department of environment;

(2) set a date for a public hearing on the application; and

(3) publish in a newspaper of general circulation in the county an announcement of its receipt of the application, a notice of the public hearing and information concerning where an interested person can obtain a copy of the application.

C. The department of environment and the office of the state engineer shall, prior to the hearing, evaluate the application and the proposed sustainable development research to be performed at the proposed sustainable development testing site and submit comments to the planning commission.

Section 4. APPLICATION FOR TESTING SITE PERMIT--PUBLIC HEARING--DECISION.--

A. At the public hearing for a testing site permit application pursuant to Section 3 of the Sustainable Development Testing Site Act, the planning commission shall hear comments from all interested persons, federal, state or local agencies and, if appropriate, responses from the applicant.

B. Following the hearing, the planning commission shall, in writing, make its decision. The planning commission may issue a testing site permit if:

(1) the state engineer and the department of environment have determined that the sustainable development

testing site or sustainable development research proposed to be conducted at the site will not damage land, water or air adjacent to the site or will not permanently damage the area of the site;

(2) no existing county codes, ordinances, rules or permits, other than those identified in the permit, will be violated by the proposed sustainable development research at the sustainable development testing site;

(3) the applicant has complied with rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act;

(4) the proposed sustainable development research at the sustainable development testing site is beneficial to sustainable development;

(5) the sustainable development testing site and proposed sustainable development research are otherwise beneficial to the county and to the state; and

(6) the applicant has provided a cash bond, an irrevocable letter of credit or any other surety, including insurance, satisfactory to the planning commission, in the amount of one hundred thousand dollars (\$100,000), to secure payment for damage caused by the sustainable development testing site.

C. A testing site permit shall include:

(1) the specific sustainable development

research that may be conducted at the sustainable development testing site;

(2) the maximum number of structures that may be constructed;

(3) the maximum number of individuals that may inhabit the sustainable development testing site;

(4) the specific county codes, ordinances, rules and permits relating to construction or building requirements, occupancy, zoning or subdivisions otherwise applicable to the permittee and the permittee's sustainable development research on the sustainable development testing site but that do not apply to the permittee and research conducted pursuant to the permit; and

(5) other restrictions on the sustainable development testing site and the permittee's activities as required by rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act or as determined by the planning commission.

D. For each testing site permit issued, the board of county commissioners shall designate a nonelected member of the planning commission or a member of the planning commission's staff to monitor the activities conducted pursuant to the permit, share information with appropriate state agencies and represent the county in interpreting the terms and conditions of the permit. The designee or a

successor shall serve during the life of the permit and any renewal thereof.

E. The permit shall be filed and recorded in the records of the county clerk for the county in which the sustainable development testing site is located in the same manner as deeds of real estate are filed and recorded.

F. A testing site permit shall be issued for a term specified by the planning commission, not to exceed five years, subject to renewal for a second five-year period with no renewal after the second five-year period.

Section 5. TESTING SITE PERMIT--EFFECT.--As long as a testing site permit is in effect:

A. the permittee, when conducting sustainable development research that is specified in the testing site permit, shall comply with all applicable laws and rules except those county codes, ordinances, rules or permits specified in the permit as inapplicable to the permittee and the research;

B. nothing in the Sustainable Development Testing Site Act or the testing site permit shall be deemed to allow the permittee to appropriate or otherwise use underground or surface water without first obtaining a water rights permit or approval from the state engineer. New appropriations of water and water rights transfers shall in no event be exempted from state water law and the rules of the state engineer;

C. employees and agents of the state or the county

may, at all reasonable times, enter the sustainable development testing site for the purpose of inspecting the site and activities conducted on the site to ensure that conditions specified in the testing site permit are being met;

D. the permittee shall annually, no later than the anniversary date of the testing site permit, submit a report to the planning commission, the department of environment, the state engineer, the energy, minerals and natural resources department and the construction industries division of the regulation and licensing department describing the sustainable development research conducted during the preceding twelve months and summarizing the results. The report shall also include all required monitoring data for soil, water, including water quality and quantity, and air. All information contained in the report and all other information learned from activities pursuant to the testing site permit shall be made available to the public;

E. the planning commission may revoke the testing site permit if it finds, after a public hearing, that:

(1) the permittee has violated a testing site permit provision, a provision of the Sustainable Development Testing Site Act or a rule adopted pursuant to Section 8 of that act; or

(2) the sustainable development testing site has not complied with a permit provision, ordinance, rule,

regulatory policy or other associated administrative action of the state engineer, the department of environment or another state or federal agency; and

F. a permittee may apply to have a testing site permit amended by submitting a new application pursuant to Section 3 of the Sustainable Development Testing Site Act; provided that, if the planning commission determines that the proposed amendment will not substantially alter the sustainable development research or other activities conducted at the sustainable development testing site, it may waive the requirements of that section for notice and public hearing.

Section 6. EXPIRATION OF TESTING SITE PERMITS.--Upon the expiration of the term of a testing site permit or any renewal thereof:

A. all activities within the area of the sustainable development testing site shall comply with all applicable laws, ordinances or rules, including permitting requirements; and

B. the permittee may provide the wastewater treatment and disposal technologies to the wastewater technical advisory committee for review and, if appropriate, for listing by the department of environment as approved for use.

Section 7. SALE OF LAND WITHIN A SUSTAINABLE DEVELOPMENT TESTING SITE.--Land within a sustainable

development testing site shall not be sold in whole or in part unless:

A. the subsequent owner obtains a testing site permit pursuant to the provisions of the Sustainable Development Testing Site Act; or

B. the owner or subsequent owner enters into an agreement with the planning commission to bring the land and improvements within the sustainable development testing site into compliance with all county codes, ordinances, rules or permits that would be applicable to the site in the absence of a testing site permit.

Section 8. PROMULGATION OF RULES.--A county or planning commission may define a new category of rules applicable to sustainable development testing sites and promulgate rules for the category. A county or a planning commission may also promulgate rules or permit conditions applicable to a specific sustainable development testing site.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. _____