

## Middle Pecos Groundwater Conservation District

Minutes of October 21, 2008

On this the 21<sup>st</sup> day of October, 2008, a Regular Session of the Middle Pecos Groundwater Conservation District, of Pecos County, Texas, met in the Courtroom of the Pecos County Courthouse, Fort Stockton, Texas located at 103 West Callaghan with the following members present, to-wit:

John Dorris	Vice President, Precinct 3
Brad Newton	Secretary/Treasurer, Fort Stockton
Jack McIntyre	Precinct 1
Lynn Holland	Precinct 3
Bart Reid	Precinct 4
S. Evans Turpin	Iraan

Absent board members: M. R. Gonzalez, Alvaro Mandujano, Jr., Houston McKenzie, Merrell Daggett and Glenn Honaker

Others Present: Paul Weatherby/General Manager, Melissa Mills/Office Manager, Mike Gershon and Jason Hill of Lloyd Gosselink – MPGCD's attorney firm, Bob Varmette/Fort Stockton Pioneer, Jeff Williams, Delvin Thurman of Smith & Rives, PC – Auditor for MPGCD for 2006/2007 year, Doug May, Dr. Duke, and Rick Sosa with Sandridge.

**Call to Order.** The meeting was called to order at 1:00 pm by President Pro-tem John Dorris.

**I. Consider and/or act upon minutes of September 16, 2008.** Upon review of the minutes, Evans Turpin made a motion to approve the minutes with corrections to be made to item #7 that the meetings in Austin were with the staff of the representatives mentioned which was seconded by Lynn Holland and the motion carried unanimously.

**II. Comments from Public and Media (limit 5 minutes per person).** There were no comments from the public.

### **III. Consider and/or act upon the Account Payable, Treasurer's Report and Line Item Transfers.**

Mr. Weatherby reported to the board that all accounts at Pecos County State Bank were fully insured.

Lynn Holland made a motion to approve the account payable which was seconded by Bart Reid. The treasurer's report was unanimously approved with a motion by Bart Reid and seconded by Jack McIntyre.

#### **IV Consider and/or act upon Resolution reference MPGCD electing to become Eligible to Participate in Tax Abatement Agreements**

Mike Gershon, legal representative for MPGCD, presented a resolution that he had drawn up per the Board's request. Basically the resolution states that MPGCD will evaluate tax abatement requests as they come before the Board pursuant to the criteria outlined in the resolution.

Lynn Holland motioned to adopt the Resolution, seconded by Evans Turpin, and the Board unanimously approved the motion.

#### **V Consider and/or act upon Policy, Guidelines, and Criteria for Tax Abatements**

Mike Gershon, legal representative for MPGCD, presented "Guidelines and Criteria For Tax Abatement" to be considered by the Board. The guidelines recognize that Pecos County will always be involved, but decisions of other taxing units to grant or deny tax abatement do not bind the MPGCD. The Guidelines shall be reviewed every two years. A copy of the "Guidelines and Criteria For Tax Abatement" are attached as *Attachment A*.

Following discussions, Lynn Holland made a motion to adopt the "Guidelines and Criteria For Tax Abatement" as policy. Motion seconded by Jack McIntyre. Vote to accept: unanimous.

#### **VI. Consider and/or act upon Accepting Sandridge Tax Abatement Application**

Paul Weatherby introduced Rick Sosa who represents Sandridge. Mr. Weatherby directed the Board's attention to a letter received from Mary Vaughn, the tax manager at Sandridge. The letter explains that there will be two packages containing the Applications and draft Agreements for Property Tax Abatement. The total Project assets have been split into two applications and agreements, because the Century Plant will be conveyed to OXY USA Inc., upon completion of construction and at that time the tax abatement agreement for that portion of the Project assets will need to be assigned to OXY.

Rick Sosa took the floor. The Century Plant is an \$812,000,000 investment being built on Highway 285 along Puckett Road. High grade CO<sub>2</sub> gas from the Pinion Field will be sent to the Century Plant through 24" pipelines. At that point, they separate the methane and CO<sub>2</sub>. Note that neither of the pipelines are part of the abatement.

The second part of the application deals with the infrastructure and gathering fields that are required to support that Plant. Sandridge currently has 3 plants in the area, the Grey Ranch Plant, the Mitchell Plant and the Pikes Peak Plant. The new plant is equal to double the combined volume of all three. This plant will be the most high-tech, efficient plant in the country. Sandridge is working with OXY, Inc. because they are interested in the CO<sub>2</sub> side, and we are interested in the methane side. The two companies are building the plant together.

The other side of it is the Sandridge portion. This includes all of the construction and upgrades to the Grey Ranch Plant and Pikes Peak Plant to increase their volumes, all the compression required for getting the gas out of the wells and up to the high

pressure pipelines and delivered to all the plants. Not included are the reservoirs from the wells all the way to the internals of the plant. The applications are separate because one will be conveyed to Oxy, Inc., and one will remain as Sandridge ownership until the end of each agreement. Sandridge is in a 30 year agreement with Oxy, Inc., to bring gas out of the Pinion Field, and we will drill 40 – 50 wells per year to get the gas required.

The drilling for oil and gas is not being abated. The drilling alone is a very taxable number and is far greater than what we are looking at now. Today we are proposing a tax abatement for the infrastructure and the plants. As presented, the Century Plant/Oxy tax abatement is a Payment In Lieu Of Taxes (PILOT), the first year payment is \$25,000, and the following 9 years will be \$5,000 each year. The Sandridge tax abatement is proposed at 100%. Without the abatement the peak year of tax will be 2013 with an estimated tax assessment of \$52,000. Sandridge wants to be a good corporate partner.

A motion to accept the Sandridge Tax Abatement Application for consideration was made by Brad Newton, and seconded by Evans Turpin. Motion carried unanimously.

## **VII Consider and/or act upon Adopting Sandridge Tax Abatement**

Attorney Mike Gershon directed the Board's attention to the Century Plant agreement on page 4, section 11. The paragraph below the 10<sup>th</sup> year of abatement currently reads as *"In the event that the actual costs for regulating and monitoring the new Facility are less than the payment in lieu of taxes amount listed above for any given year, Company agrees that the payment in lieu of taxes will be an amount equal to the actual costs incurred by the District."*

The MPGCD Board discussed this in length, and instructed Mr. Gershon to strike the sentence from the agreement. Regarding the same paragraph, the Board instructed Mr. Gershon to add the following: The PILOT is a minimum payment of \$25,000 for the first year, and minimum of \$7,500 for each of the next 9 years. In the event the actual expenses exceed the minimum payment due for the year, the overage will be presented to Sandridge for collection.

Bart Reid made a motion to accept the Oxy, Inc/Century Plant tax abatement with the modified language previously instructed to be modified by the Board to Mr. Gershon. The motion was seconded by Brad Newton. Motion was unanimous.

Bart Reid made a motion to accept the Sandridge tax abatement as written, seconded by Brad Newton. Motion unanimously passed.

Recess called at 2 pm. Reconvened at 2:50 pm

## **VIII Consider and/or act upon Audit**

Delvin Thurman with Smith and Rives, PC, Certified Public Accountants presented the audit for the year ended September 30, 2007. MPGCD receives an unqualified opinion which is the best opinion you can receive.

The only finding relates to the compliance requirement regarding signing checks.

The Texas Water Code requires that checks be signed by (1) a majority of the board, or (2) a person authorized by Board resolution. Currently, the General Manager has been given permission, only through the minutes, to sign checks for payroll and checks under \$750. All other checks are signed by him and a Director. The District concurs with the recommendation and will make appropriate changes. A resolution will be drafted for the next regular meeting.

There were procedural things that are not findings. They are on separate sheets from the audit. Mr. Thurman explained these as well. The audit with all related documents is on file in the MPGCD office.

Lynn Holland made a motion to accept the audit for the year ending 09-30-2007. Seconded by Evans Turpin. Motion unanimous.

#### **IX. Consider and/or act upon Progress Reports, Well Registrations, Production Permits, Drilling Permits, Data Loggers, Water Analysis, Notice of Intent to Drill Request**

Paul Weatherby reported the following:

1. Registrations and Notice of Intent to Drill are still coming in to the office.
2. Data Loggers continue to be installed, and eventually we should have around 25. Randy Williams is being consulted about the placement of the data loggers.
3. Monitor wells show that the water table is fine.
4. Paul Weatherby will attend a Region F meeting on Oct. 27 in Big Springs. The meeting is pertaining to the irrigation survey. Pecos County has been drastically under reported. Paul has been talking to the Texas Water Development Board and Region F to correct the total irrigation amounts. Their records did not reflect over 1,000 acres of grapes, 2,000 acres of pecan trees, and 2,000 acres of alfalfa. The under reporting hurts Pecos County in the over all picture of water needed/used in Pecos County. Under reporting of the water needed for Pecos County makes our area attractive to water marketers, industries and developers.
5. October 28 & 29 Weatherby, Gonzalez, Holland and Dorris will attend a Texas Alliance of Groundwater Districts (TAGD) meeting in Austin. The meeting will cover groundwater legislation.
6. On November 20<sup>th</sup>, Mr. Weatherby will attend a Groundwater Hydrology conference in Austin.

#### **X. Consider and/or act upon Groundwater District (s) Correspondence**

TAGD has sent out an email asking for monetary support for the cost of a brief to support the Rolling Plains GCD v. Aspermont suit.

This is the case where a District sued to obtain payment for statutorily authorized fees as well as penalties for late payment. The City claimed (and won at the appellate court level) governmental immunity from suit, making all political subdivisions immune from enforcement or collection actions by any entity. Rolling Plains filed a petition with the Supreme Court, and the Court ordered the City to

respond by October 13, 2008. Rolling Plains then has 2 weeks to submit a reply brief. The Supreme Court may then 1) deny the petition, 2) grant the petition, or 3) request full briefing without granting the petition.

This is a vote to have TAGD submit a letter brief supporting the Rolling Plains District. This letter brief would carry the weight of having a statewide membership of districts support the Rolling Plains GCD, and the impact of not having this case heard impacts every district's ability to enforce regulations, and collect fees from municipalities, and other government agencies.

An agenda item will be placed on the November 18<sup>th</sup> agenda for a vote from our Board.

Mr. Weatherby reported that MPGCD will be supporting a *Conservation Newsletter* that is sent out to 3<sup>rd</sup> and 5<sup>th</sup> grades in Pecos County. Sponsorship is \$350 twice a year.

Mr. Weatherby introduced Jason Hill with Lloyd Gosselink law firm. Mr. Hill specializes in working with abandoned/orphaned oil and gas wells. The reason we would consult with him is to research wells that could possibly cause water contamination. I have currently had him look into the leaking well at Neill Woodward's.

**XI. Consider and/or act upon Agenda for next meeting**

September 9, 2008 minutes. Audit Engagement Letter. Resolution for Check Signatures. Suspension of December 16, 2008 Board Meeting.

**XII. Adjourn:** Brad Newton made a motion to adjourn, seconded by Bart Reid.. The motion carried, and the meeting adjourned at 3:41 pm.

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Brad Newton, Secretary/Treasurer

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John Dorris, President Pro Tem

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Date Approved

## Attachment A

# **MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT GUIDELINES AND CRITERIA FOR TAX ABATEMENT**

### **I. Purpose of Guidelines and Adoption of Pecos County's Guidelines and Criteria and Additional District-Specific Guidelines and Criteria**

The Middle Pecos Groundwater Conservation District (the "District") is committed to managing and protecting the groundwater resources of the District. The District was created to help maintain a sustainable, adequate, reliable, cost effective and high quality source of groundwater to promote the vitality, economy and environment of the District. The District works with and for the citizens of the District and cooperates with other local, regional and state agencies involved in the study and management of groundwater resources to accomplish these objectives. With these goals in mind along with the statutory mandate set forth in the District's enabling legislation and Chapter 36 of the Texas Water Code, the District considers tax abatement requests and bases its decisions whether to grant or deny such requests on the criteria set forth in these guidelines.

The District seeks to streamline the tax abatement application and review process for all applicants, and recognizes that applicants must adhere to the application process required by other taxing units, including Pecos County (the "County"). To ensure an efficient though comprehensive application process, applicants requesting tax abatement from the District shall provide the same application submitted to the County and shall supplement the County's application with information addressing the additional criteria set forth in these guidelines relating exclusively to the District. Unless otherwise set forth in these guidelines, the District's guidelines and criteria regarding tax abatement requests shall be the same as the County's guidelines and criteria for tax abatement. For convenience of reference, the County's tax abatement guidelines and criteria are attached to this document and labeled Appendix A (referred to as "County guidelines") and, except where otherwise noted or where inconsistent, are herein incorporated by reference.

All applications requesting tax abatement from the District shall be considered on an individual basis with regard to both the applicant's qualification for abatement and the amount of the abatement. The decisions of other taxing units, including the County, to grant or deny tax abatement do not bind the District, and the District shall evaluate all requests within the context of the District's management plan, rules, and statutory mandate.

### **II. Definitions**

Applicable definitions are those set forth in the County guidelines, Section II. In addition to the County's guidelines, all definitions applicable exclusively to the District are set forth in the District's rules.

### **III. Guidelines and Criteria Related to the District**

Improvements eligible for abatement are the same as those set forth in the County

guidelines, Section III.

In addition to the factors set forth in the County's guidelines, requests for abatement will be evaluated according to factors relevant exclusively to the District, including, but not limited to, the following:

- (1) **Impact to Groundwater Resources.** The development's potential impact to the major and minor aquifers and groundwater resources within the District's boundaries; potential effects on continued water availability; potential contamination related to the proposed developments; and/or the costs associated with protecting the groundwater resources within the District.
- (2) **Economic Impact.** The development's potential economic impact on the District; the estimated amount of projected payment if there were no tax abatement; and/or the potential costs associated with regulating and monitoring the development.

#### **IV. Abatement Authorized**

**Authorization applicable to the District shall be governed by the criteria set forth in Section III of these guidelines and the County guidelines, Section IV, with the exception that the District may grant abatement for any amount in the District's discretion, or may enter an agreement for a payment in lieu of taxes (a "PILOT" agreement).**

#### **V. Abatement Application**

In addition to the County's application requirements, applications submitted to the District shall be supplemented with separate documentation addressing the factors and criteria relating exclusively to the District, as set forth in Section III of the District's guidelines. Applicants shall use the same application as that submitted to the County, and shall affix thereto the supplemental documentation addressing the additional information required by the District.

#### **VI. District Review and Final Determination**

- (a) The District's General Manager may consult with the County's designated economic development coordinator to determine if any considerations presented through the County's notice and hearing process to establish a reinvestment zone are applicable to the District. Upon designation of a reinvestment zone by the County, the District shall process and review the tax abatement application.
- (b) The District's Board of Directors shall take action during a properly noticed board meeting to approve or deny the application for tax abatement in full or in part, or to authorize an agreement providing for payment in lieu of taxes. The District may adopt in whole or in part a tax abatement agreement executed by the County, or may grant or deny a tax abatement request with terms that differ from the abatement granted by other taxing units, including the County, or may enter into an agreement for a payment in lieu of taxes.
- (c) The District is subject to notice requirements of the Texas Open Meetings Act,

and not the special notice requirements and hearing requirements set forth in the County's guidelines.

- (d) In addition to the factors and criteria set forth by the County guidelines, the District shall evaluate those factors and criteria applicable exclusively to the District, as set forth in Section III of these guidelines, when making decisions on all tax abatement applications.
- (e) The District shall take action on the application within sixty (60) days after receipt of the application, subject to the designation of a reinvestment zone by the County. The District's General Manager shall notify the applicant of the decision to grant or deny the request.

## **VII. Agreement**

- (a) After consideration of all the factors and criteria and upon approval of the tax abatement application, the District shall take formal action on a tax abatement application and execute an agreement with the applicant, which shall include the same information as required by the County guidelines, Section VII.
- (b) An agreement shall be executed within sixty (60) days after District approval of the tax abatement request.
- (c) All agreements executed by the District shall conform with Texas Property Tax Code, Chapter 312.

## **VIII. Recapture and Cancellation of the Agreement**

In addition to the criteria set forth by the County guidelines, Section VIII, the agreement executed by the District shall be revoked and all taxes previously abated by virtue of the agreement will be recaptured and paid to the District within sixty (60) days of the termination if the District finds that the applicant:

- (1) is in violation of the agreement executed by the County; or**
- (2) is adversely affecting the groundwater resources within the District; or**
- (3) conducts activities inconsistent with the District's goals; or**
- (4) is in violation of the terms and conditions of the abatement agreement executed by the District.**

## **IX. Administration**

**Administration applicable to the District shall be governed by the criteria set forth in the County guidelines, Section IX.**

## **X. Assignment**

**Assignments applicable to the District shall be governed by the criteria set forth in the County guidelines, Section X.**

## **XI. Sunset Provision and Agreement Modification**

- (a) Pursuant to Texas Property Tax Code, Chapter 312, these guidelines and criteria are effective upon the date of their adoption and will remain in effect for two (2) years.**
- (b) The agreement executed by the District may be modified by the parties to the agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was approved and executed. The original agreement may not be modified to extend beyond 10 years from the date of the original agreement.

## **XII. Severability and Restrictions**

- (a) If any one or more of the provisions contained in these guidelines shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and these guidelines shall be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained herein.
- (b) Any property that is owned or leased by a member of the Board of Directors of the District is ineligible from receiving tax abatement from the District; provided, however, that property subject to an agreement in effect before the person becomes a member of the Board of Directors is not ineligible for tax abatement.

# APPENDIX A

## PECOS COUNTY GUIDELINES AND CRITERIA FOR TAX ABATEMENT

## PECOS COUNTY

### GUIDELINES AND CRITERIA FOR TAX ABATEMENT

#### I. PURPOSE

Pecos County, herein referred to as "the County," is committed to the promotion of quality development in all parts of the County and to improving the quality of life for its citizens. In order to help meet these goals, the County will consider recommending tax abatement to stimulate growth and development. Any such incentive shall be provided in accordance with the procedures and criteria outlined in this document. However, nothing in these guidelines shall imply or suggest, or be construed to imply or suggest, that the County is under any obligation to provide any incentive to any applicant. All such applications for tax abatement shall be considered on an individual basis with regard to both the qualification for abatement and the amount of any abatement.

#### II. DEFINITIONS

The Glossary attached to the County's is a list of words with their definitions that are found in this document, and the Glossary is incorporated herein by reference.

#### III. GUIDELINES AND CRITERIA

Improvements eligible for abatement include the following:

- Aquaculture/agriculture facility,
- Distribution center facility,
- Manufacturing facility,
- Office building,
- Regional entertainment tourism facility,
- Renewable power facility and fixtures,

Research facility,  
Historic building in a designated area, or  
Other basic industry.

Requests for abatement will be evaluated according to factors including, but not limited to, the following:

- (1) Jobs. Projected new jobs created, including the number and type of new jobs, the number and type of jobs retained, the average payroll, and the number of local persons hired.
- (2) Fiscal Impact. The amount of real and personal property value that will be added to the tax roll for both eligible and ineligible property, any County financed infrastructure improvements that will be required by the facility, any infrastructure improvements proposed to be made by the facility, and the compatibility of the project with the County's master plan for development.
- (3) Community Impact. The pollution, if any, as well as other potential negative environmental impact on the health and safety of the community resulting from the proposed project; whether the project will revitalize a depressed area; potential business opportunities for local vendors; alternative development possibilities for the proposed site; the impact on other taxing entities; and/or whether the improvement is expected to solely or primarily have the effect of transferring employment from one part of Pecos County to another.

#### IV. ABATEMENT AUTHORIZED

- (a) Authorized Date. A facility shall be eligible for tax abatement if it has applied for such abatement prior to the commencement of construction: provided that such facility meets the criteria for granting tax abatement in reinvestment zones created by Pecos County pursuant to these Guidelines and Criteria. Property may be exempted from taxation under these guidelines for a period not to exceed the statutory limitations.
- (b) Creation of New Value. Abatement may only be granted for the additional value of or increase in value to eligible improvements made subsequent to the filing of an application for tax abatement and specified in the abatement agreement between the County and the property owner or lessee and lessor, subject to such limitations as the Tax Abatement Statute and these Guidelines and Criteria may require.
- (c) New and Existing Facilities. Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion. If the modernization project includes replacement of a facility existing at the time of application, the abated value shall be the value of the new unit(s) less the value of the old unit(s).
- (d) Eligible Property. Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, and office space

and related fixed improvements necessary to the operation and administration of the facility.

- (e) Ineligible Property. The following types of property shall be fully taxable and ineligible for abatement:

land,  
animals,  
inventories,  
supplies,  
tools,  
furnishings, and other forms of movable personal property (except as provided below),  
vehicles,  
vessels,  
aircraft,  
housing or residential property,  
hotels/motels,  
fauna,  
flora,  
retail facilities,  
except when housed in an historic structure, within the designated downtown district,  
any improvements including those involved in the production, storage or distribution of natural gas or fluids that are not integral to the operation of the facility, and  
property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas. This provision shall not be interpreted to disallow abatement for property located in the Pecos County Industrial Park. Nor shall this provision be interpreted to disallow abatement where the eligible property to be abated may be located on or affixed to land owned by the State or a subdivision of the State, but is wholly owned by the party seeking the abatement.

Equipment constituting personal property located in the reinvestment zone shall remain eligible for abatement provided the equipment is awaiting installation to become a permanent part of a fixture located or to be constructed in the reinvestment zone that is or will be eligible for property tax abatement, including any replacement parts.

- (f) Owned/Leased Facilities. If leased property is granted abatement, the agreement shall be executed with the lessor and lessee. If the eligible property to be abated is located on or affixed to leased land, but is wholly owned by the party seeking the abatement, the agreement shall be executed only with the owner of the property to be abated.
- (g) Value and Term of Abatement. Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement. The value of new eligible properties shall be abated according to the

approved agreement between the applicant and the governing body. The governing body, in its sole discretion, shall determine the amount of any abatement.

The abatement may be extended from the date of the initial agreement by modification provided the statutory requirements for modification are met.

- (h) Construction in Progress. If a qualifying facility has not been placed in service as of January 1 following execution of the abatement agreement, the taxpayer may apply for a one-year extension of the term of abatement. Said extension must be applied for prior to the end of the calendar year in which the abatement agreement is executed.
- (i) Taxability. From the execution of the abatement contract to the end of the agreement period, taxes shall be payable as follows:
  - (1) The value of ineligible property as provided for in Part IV(e) shall be fully taxable.
  - (2) The base year value of existing eligible property, meaning the value of the property for the year in which the abatement agreement is executed, shall be fully taxable.
  - (3) The additional value of eligible property shall be taxable as provided for by the applicable abatement agreement between the owner and the County.

## V. APPLICATION FOR TAX ABATEMENT

- (a) Any present or potential owner of taxable property in Pecos County may request the creation of a reinvestment zone and tax abatement by filing a written request with the County.
- (b) The application shall consist of a completed application form accompanied by:
  - (1) a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken;
  - (2) a descriptive list of the improvements that will be a part of the facility;
  - (3) a map and property description or a site plan;
  - (4) a time schedule for undertaking and completing the planned improvements;
  - (5) for modernized facilities, a statement of the assessed value of the facility, separately stated for real and personal property, for the tax year immediately preceding the application; and

- (6) financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Upon receipt of a completed application, the County receiving such application shall notify in writing the presiding officer of the legislative body of each affected jurisdiction. Before acting upon the application, the County shall through public hearings as described below afford the applicant and the designated representative of any affected jurisdiction and any member of the public the opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on an agenda of the legislative body of the County to be posted at least twenty (20) days prior to the hearing.
- (d) The County shall approve or deny the application for tax abatement within sixty (60) days after receipt of the application. The presiding officer of the County shall notify the applicant of the approval or disapproval promptly thereafter.
- (e) Statutory Requirements: Not later than the seventh (7th) day before the date of the hearing, notice of the hearing must be: (1) delivered in writing to the presiding officer of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone, and (2) published in a newspaper of general circulation in the County. At the hearing, the Commissioners Court evaluates the application against the criteria described in these guidelines and decides by majority vote whether to designate the property for which the abatement is sought as a reinvestment zone. If the reinvestment zone is designated, the Commissioners Court shall pass an order to that effect. An order designating an area as a reinvestment zone is valid for five years from the date of designation. Once the area is designated as a reinvestment zone, the Commissioners Court may then arrange to consider for approval of the tax abatement agreement between the applicant and the county, which it may do at any regularly scheduled meeting, provided notice requirements are met. At least seven days prior to entering into a tax abatement agreement, the County must give written notice of its intent to do so to the presiding officer of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone, along with a copy of the proposed tax abatement agreement. At the regularly scheduled meeting, the Commissioners Court may finally vote by simple majority to enter into the tax abatement agreement, or to decline.
- (f) Expedited consideration of application. If the County determines that the application should receive expedited consideration, the Commissioners Court may combine the steps described in the preceding paragraph into a single, regularly scheduled meeting of the Commissioners Court, provided the County meets the procedural prerequisites for each step.
- (g) A request for a reinvestment zone for the purpose of abatement shall not be granted if the County finds that the request for the abatement was filed after commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion, or new facility.
- (h) Variance. Requests for variance from the provisions of Subsections (a) through

(e) of Part IV may be made in written form to the County Commissioners Court. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of the request for variance requires a three-fourths (3/4) vote of the County Commissioners Court.

## VI. PUBLIC HEARING

- (a) If, after a public hearing, the County Commissioners Court weighs the relevant factors listed in these guidelines and determines that granting the abatement is not in the best interests of the County, the Court shall deny the abatement.
- (b) Neither a reinvestment zone nor an abatement agreement shall be authorized if it is determined that:
  - (1) There would be a substantial and unreasonable adverse affect on the provision of government services or the overall tax base of the County.
  - (2) The applicant has insufficient financial capacity.
  - (3) Planned or potential use of the property would constitute a hazard to public safety, health, or morals.
  - (4) Planned or potential use of the property violates any other governmental codes or any applicable law.

## VII. AGREEMENT

- (a) After approval of the tax abatement application, the County shall formally pass a resolution and execute an agreement with the owner of the facility and the lessee involved, if any, which shall include:
  - (1) Estimated value to be abated and the base year value.
  - (2) Percent of value to be abated each year.
  - (3) The commencement date and the termination date of abatement.
  - (4) The proposed use of the facility, nature of construction, time schedule for undertaking and completing the planned improvements, map, property description, and improvements list.
  - (5) Contractual obligations in the event of default, including a provision for cancellation and recapture of delinquent taxes, provisions for administration and assignment as provided herein, and any other provision that may be required for uniformity or by state law.
  - (6) Performance criteria for continuation of the abatement.
  - (7) Amount of investment and average number of jobs involved for the period

of abatement.

- (8) A provision that the contract shall meet all of the requirements of Texas Property Tax Code Chapter 312.
- (b) Such agreement shall be executed within sixty (60) days after approval of the agreement.
- (c) The County shall make its own determination of abatement which shall not bind any other affected taxing entity.

#### VIII. RECAPTURE

- (a) In the event that the facility is completed and begins producing product or service, but subsequently discontinues production of product or service for any reason other than fire, explosion, or other casualty or accident or natural disaster for a period of more than one (1) year during the abatement period, then the agreement shall terminate and so shall the abatement of taxes for the calendar year during which the agreement is terminated. The taxes otherwise abated for that calendar year shall be paid to the County within sixty (60) days from the date of termination.
- (b) Should the County determine that the owner is in default of the agreement, the County shall notify the owner of the defect in writing at the address stated in the agreement, and if such defect is not cured within sixty (60) days from the date of such notice ("Cure Period"), then the agreement shall be terminated. Where cure of the proposed defect requires action undertaken over a period of time, the contract will not be considered to be in default if the performing party has undertaken efforts to cure the defect and is diligently pursuing those efforts.
- (c) In the event that the company or individual:
  - (1) allows its ad valorem taxes owed the County to become delinquent, and to remain delinquent for a period of thirty (30) days following notice of the delinquency without instituting proper legal procedures for their protest and/or contest; or
  - (2) violates in a way any of the terms and conditions of the abatement agreement and fails to cure same during the Cure Period;

the agreement shall be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination. A failure to abide by estimated timelines for construction will not be considered to be a material breach of this agreement, provided the owner makes a reasonable effort to meet the estimated timeline.

## IX. ADMINISTRATION

- (a) The Chief Appraiser of the Pecos County Appraisal District shall annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year the company or individual receiving the abatement shall furnish the designee of the County with such information as may be necessary to determine continued eligibility for abatement. Once the value has been established, the Chief Appraiser shall notify the County of the amount of assessment. Additionally, the County designee shall notify the County of the number of new or retained employees associated with the facility or generated by the abatement agreement. Once value has been established, the Chief Appraiser shall notify the affected taxing jurisdictions of the amount of the assessment.
- (b) The agreement shall stipulate that employees and/or designated representatives of the County will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to prevent unreasonable interference with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the owner in accordance with its safety standards.
- (c) Upon completion of construction the County shall annually evaluate each facility and report possible violations of the contract and/or agreement to the County.
- (d) All proprietary information acquired by the County for purposes of monitoring compliance with the terms and conditions of an abatement agreement shall be considered confidential.

## X. ASSIGNMENT

- (a) Abatement may be transferred and assigned by the owner to a new owner of the same property upon approval by resolution of the County Commissioners Court, subject to the financial capacity of the assignee and provided that the agreement is modified to substitute the assignee as a party to the agreement.
- (b) Any such modification shall not exceed the termination date of the abatement agreement with the original owner.
- (c) No assignment or transfer shall be approved if either the parties to the existing agreement or the proposed assignee is liable to the County for outstanding taxes or other obligations.
- (d) Approval shall not be unreasonably withheld. Upon a finding that the proposed assignee is capable of performing the obligations under the agreement, financially and otherwise, approval of the assignment will not be withheld.

## XI. SUNSET PROVISION

- (a) These guidelines are effective upon the date of their adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement contracts created pursuant to its agreements will be reviewed by the County to determine whether the goals of these guidelines and the Tax Abatement Statute have been achieved. Based on that review, these guidelines may be modified, renewed or eliminated. Such actions shall not affect existing contracts.
- (b) Prior to the date for review, as defined above, these Guidelines may be modified by a two-thirds (2/3) vote of the County Commissioners Court, as provided for by the laws of the State of Texas.

## XII. SEVERABILITY AND LIMITATIONS

- (a) In the event that any section, clause, sentence, paragraph, or any part of these guidelines is, for any reason, adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair, or invalidate the remainder of the guidelines.
- (b) Property that is in a reinvestment zone and that is owned or leased by a member of the County Commissioners Court is excluded from property tax abatement.
- (c) If this Guideline Statement has omitted any mandatory requirement of the applicable tax abatement laws of the State of Texas, then such requirement is hereby incorporated as a part of these guidelines.

XIII. These Guidelines and Criteria do not affect the County's right to enter into abatement agreements for property located within the City of Fort Stockton pursuant to the existing agreement between the County and the City, regardless of whether such abatement agreements meet the criteria announced by these Guidelines.