

SPECIAL CITY COUNCIL MEETING AGENDA

Monday, May 24, 2021 at 1:00 PM

Mayor
Ken Miyagishima

Mayor Pro-Tem
Kasandra Gandara

Councilors
Tessa Abeyta-Stuve
Gabriel Vasquez
Johana Bencomo
Gill Sorg
Yvonne Flores

Remotely via Zoom



**CITY HALL
P.O. BOX 20000
LAS CRUCES, NM 88004**

**700 N. Main St.
PHONE (575) 541-2067**

**Individuals may view meetings live at
lascruces.civicweb.net**

The health, safety and well-being of our residents and businesses are a top priority for City Council and the leadership in Las Cruces. As such, and consistent with and in support of the direction from Gov. Michelle Lujan Grisham and the New Department of Health public health order the Special Council Meeting will be held via video conference. In an effort to seek public input we ask that if you have comments/concerns/questions please e-mail your Councilor as follows:

District 1 – kgandara@las-cruces.org
District 2 – tstuve@las-cruces.org
District 3 – gvasquez@las-cruces.org
District 4 – jbencomo@las-cruces.org
District 5 – gsorg@las-cruces.org
District 6 – yflores@las-cruces.org
Mayor – mayor@las-cruces.org

If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at [541-2115/V](tel:541-2115).

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1. **CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)**
2. **RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION**

- 2.1. **RESOLUTION NO. 21-175: A RESOLUTION RENEWING THE MAYOR'S EMERGENCY PROCLAMATION AND CLARIFYING THE REQUIREMENTS REGARDING MASKS.**
[Resolution No. 21-175 - Pdf](#)

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On April 7, 2020, Mayor Kenneth Miyagishima issued an Emergency Proclamation, which was extended and approved by the City Council on April 10, 2020 and again on April 24, 2020. The Emergency Proclamations support and reiterate Governor Michelle Lujan Grisham's Executive Orders regarding COVID-19.

On May 21, 2021, Mayor Kenneth Miyagishima issued another Emergency Proclamation, which will expire in three days on noon May 24, 2021 pursuant to LCMC 1997, Section 9-38(B). This action was taken to assert that the City of Las Cruces remains in a state of public health emergency, and shall continue to implement and follow the guidelines issued in the Executive Order 2021-01 and the Public Health Order issued on May 14, 2021. It requires individuals to wear facial coverings in accordance with All Together New Mexico COVID Safe Practices when entering all City of Las Cruces facilities, including Community of Hope, public transportation such as Dial-a-Ride and Transit, and the Las Cruces International Airport.

The Emergency Proclamation asserts that the City shall continue to follow and implement the Reopening Metrics and Baseline Directives issued in the May 14, 2021, New Mexico Department of Health Public Health Order, except that face coverings will be required in all City of Las Cruces public facilities. However, fully vaccinated individuals are not required to wear a face covering unless otherwise recommended by the latest official guidance from the CDC, in which case they must follow that guidance. The May 14, 2021 Public Health Order states in part "Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when: eating or drinking; exercising outdoors alone or with members of the same household; attending a small, outdoor gathering of fully vaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. Notwithstanding the foregoing, fully vaccinated individuals are not required to wear a mask unless otherwise recommended by the latest official guidance from the Centers for Disease Control (CDC)." Based on the May 14, 2021 Public Health Order, the City of Las Cruces is currently categorized at the Turquoise Level. Mass gatherings of more than one hundred fifty (150) people are prohibited; facial coverings are not required when attending a small outdoor gathering of twenty (20) or fewer individuals who are fully vaccinated. The City will require facial coverings for outdoor City-sponsored activities in accordance with the May 14, 2021, Public Health Order.

This Emergency Proclamation also provides for the allocation of resources to facilitate compliance with the Governor's Executive Orders, the State of New Mexico Emergency Public Health Orders, and the City of Las Cruces Emergency Proclamations to include the enforcement of wearing face masks.

The proposed resolution extends the term of the Emergency Proclamation by seven (7) days to expire on May 28, 2021. The term of this extension to the Emergency Proclamation is to run concurrent with the New Mexico Governor's Executive Order 2021-01 (Attachment "A") issued on April 30, 2021, which extends the declared state of public health emergency to address the pandemic to May 28, 2021.

SUPPORT INFORMATION:

[Exhibit "A" - Emergency Proclamation 2021-01 - Final \(Ex A\)](#)

[Attachment A Executive Order](#)

[Attachment B Public Health Order](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

ANNUAL BUDGET APPROVAL:

☐ Yes

☐ No

☒ N/A

Does this action amend the Capital Improvement Plan (CIP)?

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☐ Yes

☐ No

☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes

☐ No

☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote yes, this would approve the Resolution and allow the term of the Mayor's Emergency Proclamation 2021-01 to be extended as long as the Governor's Executive Order is in place or unless rescinded by separate, future resolution of the City Council.

2. Vote no, this would not approve the Resolution nor would the term of the Mayor's Emergency Proclamation 2021-01 be extended.

3. Vote to amend - is not an option, as the Council may only extend or not extend the Mayor's Emergency Proclamation 2021-01 as presented in accordance with the Municipal Code.

4. Vote to table - is not an option, as the Council must act on whether to extend or not extend the Mayor's Emergency Proclamation 2021-01 as presented in accordance with the Municipal Code.

RESOLUTION 21-175

A RESOLUTION RENEWING THE MAYOR'S EMERGENCY PROCLAMATION AND CLARIFYING THE REQUIREMENTS REGARDING MASKS.

The City Council is informed that:

WHEREAS, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans can spread via droplets from person to person; and

WHEREAS, on March 11, 2020 the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a "Pandemic"; and

WHEREAS, on March 11, 2020, Governor Michelle Lujan Grisham proclaimed a public health emergency and invoked all powers under the All Hazards Emergency Act (§§12-10-1 through 12-10-10, NMSA 1978); and

WHEREAS, on April 30, 2021, Governor Michelle Lujan Grisham issued Executive Order 2021-012 Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-004, Other Powers Invoked in That Order, and all Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public Health Emergency; and

WHEREAS, on May 14, 2021, the Secretary of the State of New Mexico Department of Health, Tracie Collins M.D., issued the Public Health Emergency Order Clarifying that Current Guidance Documents Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Orders to Impose County-to-County Restrictions Due to COVID-19; and

WHEREAS, on March 27, 2020 the City Council passed the Emergency Declaration Ordinance, LCMC 1997, Art. III Sections 9-35 through 9-41, which provides the Mayor and Mayor Pro Tem the authority to take immediate action for the protection of life and property, and for the preservation of public peace, safety, health, welfare, and for the continuity of efficient government operations and allows the City Council to authorize limited action in response to an emergency situation; and

WHEREAS, on May 21, 2021, Mayor Kenneth Miyagishima issued another Emergency Proclamation, which will expire in three days at noon on May 24, 2021 pursuant to LCMC 1997, Section 9-38(B); and

WHEREAS, the purpose of the Emergency Proclamation is to assert that the City of Las Cruces remains in a state of public health emergency, and shall continue to implement and follow the guidelines issued in the Executive Order 2021-01 and the Public Health Order issued on May 14, 2021; requires individuals to wear facial coverings in accordance with All Together New Mexico COVID Safe Practices when entering all City of Las Cruces facilities, including Community of Hope, public transportation such as Dial a Ride and transit, and the Las Cruces International Airport; clarifying the requirements for wearing masks during indoor and outdoor activities; and allocates resources for the enforcement of mask directives; and

WHEREAS, the City Council wishes to extend the Proclamation for an additional seven (7) days until May 28, 2021 pursuant to LCMC 1997, Section 9-38(C) and to run concurrent with the Governor of the State of New Mexico's Executive Order 2021-012.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

Agenda Item #2.1.

THAT the Emergency Proclamation (Exhibit "A") issued by Mayor Miyagishima on May 21, 2021 is hereby extended by seven (7) days, expiring on May 28, 2021 pursuant to LCMC 1997, Section 9-38(C).

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

Agenda Item #2.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



Office of the Mayor

KENNETH D. MIYAGISHIMA
MAYOR

CITY OF LAS CRUCES

CITY OF LAS CRUCES PROCLAMATION OF EMERGENCY 2021-01

WHEREAS, pursuant to LCMC Art. III, Sec. 9-35, Emergency Declaration Ordinance, the Mayor has the authority to proclaim that a state of emergency exists in the municipality, after consultation with the emergency manager, chief of police, or fire chief; and

WHEREAS, such proclamation allows the Mayor to prohibit and/or require certain actions to maintain the public peace, health, welfare, or safety, and if desired, to request that the Governor of New Mexico proclaim a state of emergency pursuant to the Riot Control Act; and

WHEREAS, Governor Michelle Lujan Grisham issued Executive Order 2021-012 Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-004, Other Powers Invoked In That Order, and All Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public Health Emergency; and

WHEREAS, on May 14, 2021, the Secretary of the State of New Mexico Department of Health, Tracie Collins M.D., issued the Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Orders to Impose County-to-County Restrictions Due to COVID-19; and

WHEREAS, on April 7, 2020, an Emergency Proclamation was issued by Mayor Kenneth Miyagishima, and was extended and approved by the City Council on April 10, 2020 and again on April 24, 2020; and

WHEREAS, the Emergency Proclamations support and reiterate Governor Michelle Lujan Grisham's Executive Orders tied to the public health emergency created by the novel coronavirus disease which has been referred to as "COVID-19"; and

WHEREAS, the Governor's Executive Orders, the Emergency Public Health Orders, and the City of Las Cruces Emergency Proclamations have been implemented as emergency measures intended to slow the spread of COVID-19 and to reduce the potentially devastating effects of the disease; and

NOW THEREFORE, I, Kenneth Miyagishima, Mayor of the City of Las Cruces, New Mexico, hereby invoke LCMC Sections 9-35 through 9-41, to preserve the peace, health, welfare, and safety in the City of Las Cruces, consistent with the above guidance and information. In particular, I am invoking the following actions:

I. I order the following:

- a. The City of Las Cruces remains in a state of public health emergency and shall continue to implement and follow the guidelines issued in the Executive Order 2021-012 and Public Health Order issued on May 14, 2021.

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b. That individuals entering all City of Las Cruces facilities, including Community of Hope, public transportation such as Dial a Ride and transit, and the Las Cruces International Airport, shall wear facial coverings in accordance with All Together New Mexico COVID Safe Practices.

c. Indoor Face Covering Requirements

i. The City shall continue to follow and implement the Reopening Metrics and Baseline Directives issued in the May 14, 2021, New Mexico Department of Health Public Health Order, except that face coverings will be required in all City of Las Cruces public facilities. Fully vaccinated individuals are not required to wear a face covering unless otherwise recommended by the latest official guidance from the CDC, in which case they must follow that guidance.

d. Outdoor Face Covering Requirements

i. The City shall continue to follow and implement the Reopening Metrics and Baseline Directives issued in the May 14, 2021, New Mexico Department of Health Public Health Order.

ii. The May 14, 2021 Public Health Order states in part; "Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when: eating or drinking; exercising outdoors alone or with members of the same household; attending a small, outdoor gathering of fully vaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. Notwithstanding the foregoing, fully vaccinated individuals are not required to wear a mask unless otherwise recommended by the latest official guidance from the Centers for Disease Control (CDC)."

iii. Based on the May 14, 2021 Public Health Order, the City of Las Cruces is currently categorized at the Turquoise Level. Mass gatherings of more than one hundred fifty (150) people are prohibited; facial coverings are not required when attending a small outdoor gathering of twenty (20) or fewer individuals who are fully vaccinated. The City will require facial coverings for outdoor City-sponsored activities in accordance with the May 14, 2021, Public Health Order.

e. The City of Las Cruces shall allocate resources that will facilitate safe compliance with the Governor's Executive Orders, the State of New Mexico Emergency Public Health Orders, and the City of Las Cruces Emergency Proclamations. This includes the enforcement of face covering requirements at City facilities.

II. Effective Date.

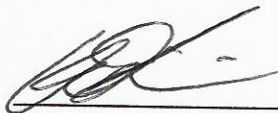
I hereby declare that this Proclamation will become effective on May 21, 2021 at 5:00 p.m. and direct the City Manager to disseminate the contents hereof to the public by appropriate news media, government media and website, and other means available.

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III. Term.

This Proclamation of Emergency may be extended for such additional periods of time as determined necessary by Resolution of the Governing Body of the City of Las Cruces, New Mexico.

DONE at Las Cruces, New Mexico this 21st day of May 2021, at the hour of 3:55 p.m. (MST).



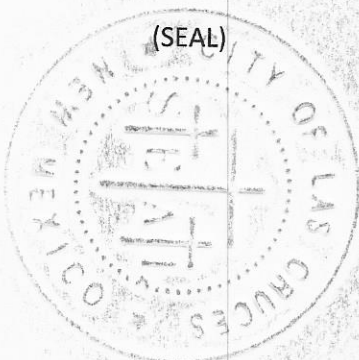
KENNETH MIYAGISHIMA, MAYOR
City of Las Cruces, New Mexico

ATTEST:



CHRISTINE RIVERA, CITY CLERK

(SEAL)





State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2021-012

RENEWING THE STATE OF PUBLIC HEALTH EMERGENCY INITIALLY DECLARED IN EXECUTIVE ORDER 2020-004, OTHER POWERS INVOKED IN THAT ORDER, AND ALL OTHER ORDERS AND DIRECTIVES CONTAINED IN EXECUTIVE ORDERS TIED TO THE ONGOING PUBLIC HEALTH EMERGENCY

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization ("WHO"). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as "COVID-19."

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of April 29, 2021, the Centers for Disease Control and Prevention ("CDC") reported over 31 million people have been infected in the United States, with over 570,000 related deaths, and the New Mexico Department of Health has reported 197,447 positive COVID-19 cases and 4,058 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states subsequently

declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State's response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, hereby ORDER and DIRECT:

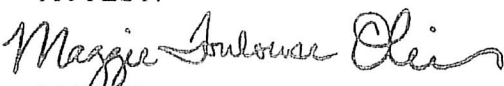
1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, and 2021-011 shall be renewed and extended through May 28, 2021.
2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.
3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including

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any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect April 30, 2021, and shall remain in effect until May 28, 2021, unless renewed, modified, or rescinded.

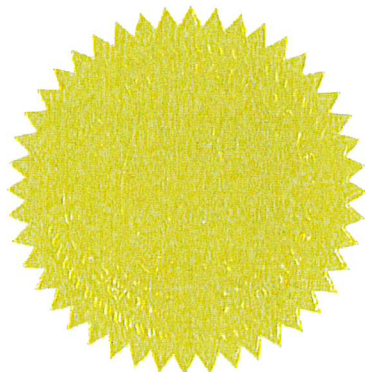
ATTEST:


MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 30TH DAY OF APRIL 2021

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO


MICHELLE LUJAN GRISHAM
GOVERNOR





MICHELLE LUJAN GRISHAM
Governor

DR. TRACIE C. COLLINS, M.D.
Cabinet Secretary

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
SECRETARY TRACIE C. COLLINS, M.D.**

May 14, 2021

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). Continued social distancing and self-isolation measures are necessary to protect public health given the devastating effects that are now resulting from the rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:
 - A. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19;
 - B. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division;

OFFICE OF THE SECRETARY

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- C. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;
- D. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19; and
- E. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for All COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine.

3. The April 28, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 28, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 32.8 million and confirmed COVID-19 infections in New Mexico have risen to over 200,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 583,000 Americans and over 4,113 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, vaccination, social distancing, and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state

government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Tracie C. Collins, M.D., Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

DEFINITIONS

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Bars and clubs" means any business, other than those specifically defined as a "food and drink establishment," that typically or actually generates more than half of its revenue from the sale of alcohol for on-premises consumption, as well as adult entertainment venues, nightclubs, and dance clubs, regardless of the source of their revenue.

(2) "Close-contact businesses" include barbershops, hair salons, tattoo parlors, nail salons, spas, massage therapy services, esthetician clinics, and tanning salons.

(3) "COVID-Safe Practices" ("CSP's") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers." This document may be obtained at the following link: <https://cv.nmhealth.org/covid-safe-practices/>.

(4) "Essential businesses" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

- c. Childcare facilities;
- d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable food and drink products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;
- f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, self-storage facilities, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;
- i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;
- j. Media services;
- k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;
- l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- m. Hardware stores;
- n. Laundromats and dry cleaner services;
- o. Crematoriums, funeral homes, and cemeteries;

p. Banks, credit unions, insurance providers, licensed check cashing businesses, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics and other businesses that store, transport, or deliver groceries, food, materials, goods, or services directly to residences, retailers, government institutions, or essential businesses.

(5) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; "distillers" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and "wineries" are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(6) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(7) "Large entertainment venues" mean any publicly or privately owned venue typically or actually used to host large audiences for the purposes of entertainment or amusement, including, but not limited to: convention centers, concert venues, movie theaters, performance venues, professional or semi-professional sports venues, racetracks, and theaters.

(8) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. "Mass gathering" does not include the presence of any number of individuals where those individuals regularly reside or individuals who are public officials or public employees in the course and scope of their employment.

(9) "Maximum capacity" means the maximum number of individuals allowed within a specified location, as determined by the relevant fire marshal or fire department. If the relevant fire marshal or fire department does not make such a determination, maximum capacity shall be determined by dividing the total square footage of floor space unoccupied by obstructions such as equipment and displays by thirty-six (36).

(10) "Places of lodging" means hotels, motels, RV parks, and short-term vacation rentals.

(11) "Recreational facilities" means any publicly or privately owned facility typically or actually used for recreational activities capable of bringing persons within close proximity of one another, including, but not limited to: aquariums, amusement parks, arcades, basketball courts, baseball fields, bowling alleys, botanical gardens, family entertainment centers, football fields, go-kart courses, golf courses, guided raft and balloon tours, ice-skating rinks, museums with interactive displays or exhibits, miniature golf courses, ski areas, soccer fields, swimming pools, tennis courts, trampoline parks, youth programs, and zoos.

(12) "Retail space" means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following "essential businesses" identified in the categories above: (1)d, (1)k, (1)m, and (1)n.

THE "RED TO GREEN" FRAMEWORK

I DIRECT that the State shall continue to reopen according to the following county-by-county framework:

SUMMARY

This Order sets out the "Red to Green" framework, which includes four levels of operations that are based on a county's ability to satisfy specified metrics: Turquoise Level, Green Level, Yellow Level, and Red Level. The Department of Health maintains the official map displaying each county's current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. A county shall remain at a given operating level so long as it continues to satisfy the specified metrics for that level. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level's restrictions within 48 hours of the map's update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level's restrictions immediately upon the map's update. Notwithstanding the foregoing, counties which have reached Turquoise Level may operate at that level's restrictions for a minimum of four weeks, and their map status shall only be updated once every four-week period.

REOPENING LEVEL METRICS

Counties shall be categorized according to one of the following levels:

- (1) Turquoise Level – Counties seeking to operate at this level must satisfy ALL of the following metrics for the most recent 14-day reporting period or TWO of the metrics for the TWO previous 14-day reporting periods:
 - (a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;
 - (b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and
 - (c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

- (2) Green Level – Counties seeking to operate at this level must satisfy TWO of the following metrics for the most recent 14-day reporting period:
 - (a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;
 - (b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and
 - (c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.
- (3) Yellow Level – Counties seeking to operate at this level must meet ONE of the following metrics for the most recent 14-day reporting period:
 - (a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;
 - (b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and
 - (c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.
- (4) Red Level – All other counties shall operate at the Red Level.

REQUIREMENTS FOR EACH LEVEL

Turquoise Level – Turquoise Level counties are subject to the following requirements:

- (1) Except as provided in the following paragraph, all “mass gatherings” of more than one hundred fifty (150) individuals are prohibited.
- (2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:
 - a. All “essential businesses,” excluding those defined as a “retail space,” may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.
 - b. “Essential businesses” identified as a “retail space” may operate up to 75% of the maximum capacity of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.
 - c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 75% capacity.
 - d. “Large entertainment venues” may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.

- e. "Recreational facilities" may operate up to 50% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.
- f. "Bars and clubs" may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises. "Bars and clubs" shall comply with all other requirements applicable to "food and drink establishments."
- g. "Food and drink establishments" may not provide indoor dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 75% of the maximum capacity of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.
- h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 100% of maximum occupancy. All other "places of lodging" shall not operate at more than 50% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed fifteen (15) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.
- i. Any entity not identified above may operate up to 75% of the maximum capacity of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

Green Level – Green Level counties are subject to the following requirements:

- (1) Except as provided in the following paragraph, all "mass gatherings" of more than twenty (20) individuals are prohibited.
- (2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

- a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.
- b. "Essential businesses" identified as a "retail space" may operate up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.
- c. "Houses of worship" may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 50% capacity.
- d. "Large entertainment venues" may operate up to 25% of the maximum capacity of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.
- e. "Recreational facilities" may operate up to 25% of the maximum capacity of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.
- f. "Bars and clubs" may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. "Bars and clubs" shall comply with all other requirements applicable to "food and drink establishments."
- g. "Food and drink establishments" may not provide indoor dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified training offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate up to 50% of the maximum capacity of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.
- h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 75% of maximum occupancy. All other "places of lodging" shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New

Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

- i. Any entity not identified above may operate up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

Yellow Level – Yellow Level counties are subject to the following requirements:

- (1) Except as provided in the following paragraph, all “mass gatherings” of more than ten (10) individuals are prohibited.
- (2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:
 - a. All “essential businesses,” excluding those defined as a “retail space,” may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.
 - b. “Essential businesses” identified as a “retail space” may operate up to 33% of the maximum capacity of any outdoor or enclosed space on the premises.
 - c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 33% capacity.
 - d. “Large entertainment venues” may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the venue except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, “large entertainment venues” may operate up to 25% of the maximum capacity of any enclosed space on the premises for the limited purposes of recording and broadcasting entertainment, but shall in no event permit any live, in-person audience.
 - e. “Recreational facilities” may operate up to 33% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, pools may operate up to 33% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.
 - f. “Bars and clubs” may not operate.
 - g. “Food and drink establishments” may not provide indoor dine-in service unless they complete the NM Safe Certified training offered at <https://nmsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and

retaining contact tracing information for no less than three weeks. Those “food and drink establishments” that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may operate up to 33% of the maximum capacity of any enclosed space on the premises. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. Any “food and drink establishment” that is permitted to serve alcohol must close for in-person service by 10:00 p.m. and must remain closed until at least 4:00 a.m. but may continue to provide delivery service so long as no customers are permitted on the premises. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

- h. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other “places of lodging” shall not operate at more than 33% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.
- i. “Close-contact businesses” may operate but may not exceed the lesser of 33% of the maximum capacity of any outdoor or enclosed space on the premises or twenty (20) customers inside the building at any given time.
- j. Any entity not identified above may operate up to 33% of the maximum capacity of any outdoor or enclosed space on the premises.

Red Level – Red Level counties are subject to the following requirements:

- (1) Except as provided in the following paragraph, all “mass gatherings” of more than five (5) individuals are prohibited.
- (2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:
 - a. All “essential businesses,” excluding those defined as a “retail space,” may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.
 - b. “Essential businesses” identified as a “retail space” may operate up to 25% of the maximum capacity of any outdoor or enclosed space on the premises.
 - c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 25% capacity.
 - d. “Large entertainment venues” may not operate.

- e. "Recreational facilities" may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, amusement parks may not operate. Further, pools may operate up to 25% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.
- f. "Bars and clubs" may not operate.
- g. "Food and drink establishments" may operate up to 25% of the maximum capacity of any outdoor seating areas but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. Tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law. Any "food and drink establishment" that is permitted to serve alcohol must close for in-person service by 9:00 p.m. and must remain closed until at least 4:00 a.m. but may continue to provide delivery service so long as no customers are permitted on the premises.
- h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.
- i. "Close-contact businesses" may operate but may not exceed 25% of the maximum capacity of any outdoor or enclosed space on the premises or ten (10) customers inside the building at any given time.
- j. Any entity not identified above may operate up to 25% of the maximum capacity of any outdoor or enclosed space on the premises.

BASELINE DIRECTIVES

Regardless of a county's level, **I DIRECT** that the following baseline directives apply at all times and in all instances:

- (1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when: eating or drinking; exercising

outdoors alone or with members of the same household; attending a small, outdoor gathering of fully vaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. Notwithstanding the foregoing, fully vaccinated individuals are not required to wear a mask unless otherwise recommended by the latest official guidance from the Centers for Disease Control and Prevention ("CDC"). Further, fully vaccinated individuals shall not be required to socially distance from other individuals unless otherwise recommended by the latest official guidance from the CDC, in which case they must follow that guidance. Businesses, houses of worship, and other non-profit entities shall also follow the latest official guidance from the CDC regarding mask-wearing and social distancing, provided that nothing in this Order shall be construed as prohibiting any entity from imposing more stringent requirements.

(2) Any "food and drink establishment," "close-contact business," "place of lodging," "retail space," or other business (including "essential businesses" other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an "essential business" may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, "essential businesses" that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision; provided that fully vaccinated employees, other than those working in congregate care settings such as correctional facilities and long-term care facilities, shall not be required to be tested every two weeks.

(3) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP's. In the event the pertinent CSP's specify a reduced capacity limit, the CSP's limit shall control.

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in-person instruction contained in the New Mexico's Public Education Department's "Reentry Guidance" and "COVID-19 Response Toolkit for New Mexico's Public Schools," available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Private schools shall report to the New Mexico Public Education Department all cases of COVID-19-positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico's Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department's watchlist and closure list.