

# **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.