
From: Randy Erickson <torandyerickson@gmail.com>
Sent: Monday, November 13, 2017 4:47 PM
To: Sidney Hill
Subject: Comments on the Proposed Sandoval County Oil and Gas Ordinance
Attachments: Sandoval County Citizens Oil and Gas Proposed Ordinance v5.pdf; Some major provisions of the Citizens Ordinance.pdf; ATT00001.txt

Mr Hill,

Please find attached a copy of the "Citizens' Ordinance" and a document describing some of the major provisions of that Ordinance. These for consideration in the proposed Sandoval County Oil and Gas Ordinance by the County Commission Thursday, November 16, 2017.

Sincerely,

Randy Erickson
15 Tres Vidas Ridge
Placitas, NM
(505) 730-8195

BOARD OF COUNTY
COMMISSIONERS OF
SANDOVAL COUNTY, NEW
MEXICO ORDINANCE NO. _____

AN ORDINANCE, AMENDING ORDINANCE NO. 10-11-18.7A
COMPREHENSIVE ZONING ORDINANCE OF SANDOVAL COUNTY, FOR
THE SURFACE LAND REGULATION OF OIL AND GAS ACTIVITIES;
ESTABLISHING DESIGN AND OPERATIONAL STANDARDS FOR OIL AND
GAS FACILITIES; AND FURTHER PROVIDING FOR VARIANCES, RELIEF,
APPEALS, THE ENFORCEMENT OF THIS ORDINANCE AND OTHER
RELATED MATTERS.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
SANDOVAL COUNTY, NEW MEXICO:

ARTICLE I. GENERAL.

Section 1.1. Short Title. This Ordinance shall be officially cited as the
“Sandoval County Oil and Gas Ordinance”.

Section 1.2. Statutory Authority. Applicability.

This Ordinance is promulgated pursuant to the authority set forth in Art. X and
XIII of the New Mexico Constitution (1912); N.M.S.A. 1978, § Section 4-37-1
(1975), N.M.S.A. 1978, §§ Sections 3-21-1 et seq., N.M.S.A. 1978, §§ Sections
3-19-1 et seq.; N.M.S.A. 1978, §§ Sections 3-18-1 et seq., and N.M.S.A. 1978,
§§ 19-10-4.1, 4.2 and 4.3 (1985). This Ordinance constitutes an exercise of the
County’s independent and separate but related police, zoning, planning and
public nuisance powers for the health, safety and general welfare of the County
and applies to all areas within the exterior boundaries of the County that lie
outside of (1) the incorporated boundaries of a municipality; (2) any tribal trust
lands owned by the Pueblo of Laguna, the Pueblo of Sandia, the Pueblo of
Santa Ana, the Pueblo of San Felipe, the Pueblo of Cochiti, the Pueblo of Santa
Domingo, the Pueblo of Zia, the Pueblo of Jemez, the Navajo Nation/Ojo Encino
Chapter, and the Jicarilla Apache Nation; (3) lands owned by the state of New
Mexico; and (4) lands owned by the United States, including, but not limited to,
lands that are managed by the Forest Service and the Bureau of Land
Management. Additionally, this Ordinance does not apply to the construction
and operation of Oil or Gas Facilities where the mineral right(s) associated with
such Facilities are owned partially or in their entirety by the United States
government, the State of New Mexico, or a Tribe or Pueblo.

Section 1.3. Conflicts. Sandoval County (“the County”) is the primary

authority of surface land development within the County's planning and zoning jurisdiction. The County recognizes the primary authority of various other state and federal agencies to regulate oil and gas operations and development and their role balancing and protecting the interests of mineral interest owners, protecting correlative rights, and overseeing subsurface activities related to oil and gas resource development and extraction.

Section 1.4. State and Federal Preemption.

This Ordinance does not replace, alter or amend any Federal and State statutes applicable to the oil and gas industry, including but not limited to the statutes listed below. This list includes, but is not limited to:

- (A) The Surface Owners Protection Act, N.M.S.A. 1978, §§ 70-12-1 et. seq.;
- (B) The Oil and Gas Act, N.M.S.A. 1978, §§ 70-2-1 et seq.;
- (C) The Water Quality Act, N.M.S.A. 1978, §§ 74-6-1 et seq.;
- (D) The Solid Waste Act, N.M.S.A. 1978, §§ 74-9-1 et seq.;
- (E) The Rangeland Protection Act, N.M.S.A. 1978, §§ 76-7B-1 et seq.;
- (F) The Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§ 11001 et seq.;
- (G) The New Mexico Public Health Act, N.M.S.A. 1978 §§ 24-1-1 et seq.;
- (H) The Wildlife Conservation Act, N.M.S.A. 1978, §§ 17-2-37 et seq.;
- (I) The Cultural Properties Act, N.M.S.A. 1978, §§ 18-6-1 et seq.;
- (J) The National Historic Preservation Act, 16 U.S.C.A §§ 470 et seq.;
- (K) The Uniform Trade Secret Act N.M.S.A. 1978, §§ 57-3A-1 et seq.;
- (L) The Prehistoric and Historic Sites Act, N.M.S.A. 1978, §§18-8-1 et seq.;
- (M) The Cultural Properties Protection Act, N.M.S.A. 1978, §§ 18-6A- 1 et seq.;
- (N) The Archaeological Resources Protection Act, 16 U.S.C.A. § 470 aa et seq.;
- and
- (O) The Energy Policy Act, 42 U.S.C.A. § 6201 et. seq.
- (P) The Clean Water Act 33 U.S.C.A §1251 et seq. ; and
- (Q) The Occupational Safety and Health Act, 1970, U.S.C.A. 651 et seq.
- (R) The New Mexico Night Sky Protection Act, N.M.S.A. 1978, 74-12-1 through 74-12-11.

Section 1.5. Scope

This Ordinance is intended to address oil and gas exploration, drilling, production, transportation, abandonment and remediation within the County zoning jurisdiction as described above.

In the event that lands under State, Federal, or Tribal ownership are conveyed to private ownership, following the adoption of this Ordinance, such lands are subject to the provisions of this Ordinance.

Nothing herein shall be deemed to waive the requirement of the Applicant to apply for, and receive, all other applicable permits and authorizations from other regulatory agencies.

Section 1.6. Purpose

This Ordinance is a zoning and public nuisance ordinance enacted to protect and promote the health, safety and general welfare of present and future residents of the County while at the same time providing for the responsible and economically viable extraction of oil and gas minerals. This Ordinance is a police power, public nuisance and land use regulation designed to establish separate land use, environmental, traffic, cultural, historical and archeological, emergency service and preparedness, health and safety, and other standards to protect from any possible adverse public nuisance effects and impacts resulting from oil and gas exploration, drilling, extraction (production) or transportation in the County.

Section 1.7. Findings

All forms of development have the potential to negatively impact County resources and the environment through the introduction of contaminants and surface disturbance, which can lead to habitat degradation, fragmentation, and loss as well as degraded qualities of air, soil, and water. Considering oil and gas activities as a form of development, the County designs this Ordinance as a means to allow for the economically feasible development of oil and gas resources, which benefits the economy of the County, while ensuring the minimum possible impact on the environment and fulfilling the County's interest of protecting the health and welfare of County residents.

The Board of County Commissioners hereby finds, declares, and determines that this Ordinance:

- (A) Promotes the health, safety, and welfare of the County, its residents, and its environment by regulating adverse public nuisance impacts and effects resulting from the exploration, drilling, operation and transportation of oil and gas;
- (B) Protects traditional communities and traditional lifestyles, as defined in the Sandoval County Comprehensive Plan, within the County;
- (C) Prevents the occurrence of adverse public nuisance effects and impacts resulting from the abandonment of oil and gas activities within the County;
- (D) Protects the rights of Surface Property Owners.
- (E) Allows for the responsible and economically feasible development of oil and gas mineral resources;
- (F) Protects the County's unique and irreplaceable historic, cultural and archaeological, water and other natural resources;
- (G) Implements the goals and objectives of, and is otherwise in accordance with, the County's Comprehensive Plan; and
- (H) Attains the foregoing objectives while also promoting the efficient and

appropriate regulation of the oil and gas industry in the County.

ARTICLE II. DEFINITIONS.

Section 2.1. RULES OF INTERPRETATION.

(A) Words, phrases, and terms defined in this Ordinance shall be given the meanings set forth below. Words, phrases, and terms not defined in this Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning.

(B) The text shall control captions, titles, and maps.

(C) The word “shall” is mandatory and not permissive; the word “may” is permissive and not mandatory.

(D) Words used in the singular include the plural; words used in the plural include the singular.

(E) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(F) Within this Ordinance, sections prefaced “purpose” and “findings” may be included. Each purpose statement is intended as an official statement of legislative purpose or findings. The “purpose” and “findings” statements are legislatively adopted, together with the formal text of the Ordinance. They are intended as a legal guide to the administration and interpretation of the Ordinance and shall be treated in the same manner as other aspects of legislative history. Additionally, such purposes and findings shall be considered part of the County’s Comprehensive Plan.

(G) In their interpretation and application, the provisions of this Ordinance are considered minimal in nature.

(H) In computing any period of time prescribed or allowed by this Ordinance, the day of the notice or final application, after which the designated period of time begins to run, is not to be included. Further, the last day is to be included unless it is a Saturday, Sunday or holiday recognized by the State of New Mexico or the federal government, in which event the period runs until the next day that is not a Saturday, Sunday or such holiday.

Section 2.2. Incorporation by Reference. For purposes of defining the terms used in this Ordinance, the County hereby adopts the definitions used by the New Mexico Oil Conservation Division, which are provided in 19.15.2.7 NMAC.

Instead of by reference, we recommend spelling out the applicable OCD definitions as well as include other specific county zoning definitions that need to be part of this ordinance including “Oil or Gas Facility.”

“Pollution.” The contamination or other degradation of the physical, chemical or biological properties of land, water or air, including a change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance onto the

land or into the water or air that will, or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wildlife, birds, fish or other aquatic life. (Source for definition) SOPs and August 2017 draft)

ARTICLE III. ZONING ORDINANCE AMENDMENT.

Section 3.1. Amending Comprehensive Zoning Ordinance.

- A. The Sandoval County Board of County Commissioners hereby amends Ordinance No. 10-11-18.7A, Comprehensive Zoning Ordinance of Sandoval County, to establish Oil and Gas exploration and production, and the structures and facilities associated with that use, as a Special Use under Section 10 SU – Special Use District
- B. Section 10 D 13 of the Comprehensive Zoning Ordinance is amended as follows: Oil and gas exploration and production, and the structures and facilities associated with that use provided such use complies with the requirements of Section 10 (2) of the Comprehensive Zoning Ordinance:

ARTICLE IV. PERMIT REVIEW.

Section 4.1 The County hereby establishes a Permit review procedure for applications for oil and gas exploration and production, and the structures and facilities necessary for that use.

Section 4.2. The process of application for a Special Use Permit for review by the Planning and Zoning Commission and approval by the Board of County Commissioners is established in Section 19. Amendments of the Sandoval County Comprehensive Zoning Ordinance.

Section 4.3. Each permit may authorize the drilling of only one (1) well as identified by its API well number. For the purposes of this Ordinance, a “well” is defined as a boring into the earth that is designed to bring petroleum hydrocarbons to the surface.

Section 4.4. When a permit has been issued for the drilling of a well, such permit shall constitute sufficient authority for drilling, operation, production, including necessary facilities, gathering lines and only those other elements listed on the site plan under Article V. Section 4 by the permittee and its employees, agent and contractors.

Section 4.5. It is unlawful and an offense for any person acting either for himself or herself or acting as agent, employee, independent contractor or servant for any person to knowingly drill any oil and gas well within the County without a County well drilling permit.

Section 4.6. If it is necessary for the County to hire consultants to assist in the review of an oil and gas permit application, consultants' fees shall be assessed to the applicant.

Section 4.7. Notification Requirements.

A. Notification of the time and place of any public hearing held pursuant to this Section shall be published in a newspaper of general circulation in the County at least fifteen (15) days prior to the hearing. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish; and posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located. (NM Solid Waste Act requirement 74-9-22)

B. In addition, notice of the public hearing shall be mailed by certified mail, return receipt requested, to:

1. The applicant(s);
2. The owner(s), as shown by the records of the County Treasurer, of the land for which the approval is requested, if different from the applicant(s)
3. The owners, as shown by the records of the County Treasurer, of land within three-thousand (3,000) feet, excluding public right-of-way, of the land for which the approval is requested. If any notice is returned undeliverable, the County shall attempt to discover the addressee's most recent address and shall remit the notice by certified mail, return receipt requested.
4. All government and Native American Nation/Pueblo agencies within three (3) miles of subject site are notified by the County of any request for Oil and Gas Exploration and Production. Incorporated municipalities within five (5) miles of the subject site, are also notified by the County. Additionally, any other municipality or agency which files a request for notification shall be notified by the County.

C. Posting Of Applications.

The County shall post applications, within twenty-four (24) hours of

receipt, for review of oil and/or gas facilities within the County's jurisdiction, on the County's Planning and Zoning Web Page, and shall provide paper copies of applications for viewing in the County's Planning and Zoning Division Office within the time frame noted above. (SOP, p 16)

Section 4.8. Permit Conditions

- A. Permits shall be for a period of two years.
- B. If the site is inactive for two years the permit shall be null and void.
- C. Renewals of permit shall be granted to operators of active wells and who have no outstanding violations.

Section 4.9. Change of Operator

A. If a permitted facility undergoes a change of Operator or a change of Operator name, the new Operator shall notify the Director and provide updated emergency and other contact information within 10 days of the change. The new operator shall submit a copy of the applicable NMOCD permits to the County within ten (10) business days of the permit being approved by the NMOCD.

B. The new Operator shall submit application information required under Article V Section 5 and Section 6. Based on that information the County may require the new Operator to file a new Permit.

ARTICLE V. PERMIT APPLICATION.

The operator is required to submit an application for a special use permit that includes but is not limited to the following information:

Section 5.1. Applicant Information. The name and contact information of

- A. operator and any contractors known as of the date of the Application and
- B. property owner(s) and
- C. lease owner(s) and mineral rights owner(s). The County shall be notified if any changes to the applicant information occurs. For the purposes of this Ordinance, "applicant" is defined as surface land owner, mineral rights owner or lessee and/or operator who applies for a Permit.

Section 5.2. An approved NMOCD C-101 and C-102 APD (Application for Permit to Drill). An approved NMOCD Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport) from the NMOCD, including all materials submitted to NMOCD shall be submitted to the County.

Section 5.3. Scope of Operations. A brief description of the scope of operations

contemplated by the operator, including the estimated depth of the proposed well and any necessary facilities, and the estimated commencement date of the operations.

Section 5.4. Site Plan. The proposed site plan for the well the location of tanks, compressors, dehydrators and other equipment and facilities, gates pump stations, tank batteries, pipelines, gathering lines, including the proposed location of and off-site routing of any gathering lines, a diagram of the permanent location/footprint and the GPS location of well. In order to allow for the county's post abandonment monitoring and remediation the application shall include a 20 foot access easement to the proposed well and a 30 foot radius easement around the well. Within ten days of the commencement of drilling, the applicant/operator shall update the draft to "as built" and file it with the office of the Sandoval County Clerk.

Section 5.5. Property Details. The legal property description and a map or plat depicting

1. the location of the proposed well and/or facility equipment;
2. occupied dwellings, schools, churches, hospitals, clinics, assisted living homes or cemeteries, parks and recognized open space, archeological sites, wildlife habitat, acequias within one mile for a single well;
3. fresh water supply wells and subsurface fresh water storage reservoirs within one mile of the proposed well and
4. a one mile distance of the proposed well from any public roads.

Section 5.6. Environmental compliance history. Applicant must provide a list, certified by an officer of the company, of facilities where applicant has had a permit suspended or revoked or paid an administrative fine for violations of environmental laws or regulations both in and out-of-state during the past five years and whether any of these violations are still outstanding.

Section 5.7. Financial solvency. Applicant must demonstrate financial solvency. If the applicant is a subsidiary of another company, applicant must also demonstrate the financial solvency of the parent company. The information provided must be certified by an officer of the company.

Section 5.8. The following reports must be provided conducted by independent expert consultants paid for by the applicant and approved by the Director.

- A. A report describing the hydrology, geology and seismology of the area to be drilled.

- B. A report identifying whether the site is located in a key conservation area, as mapped and defined by the NM Department of Game and Fish and the US Fish and Wildlife Service. Analysis of how the development may impact wildlife and habitat in the area.
- C. A report describing rangeland quality in the area of the site. (Rio Arriba p 41)
- D. A report describing existing historical, archeological or cultural sites listed in the Register of Cultural Properties of the New Mexico Historic Preservation Division and that are located in the area of the well site.
- E. The reports may include proposed measures to address any potential problems that may arise in the area.

Section 5.9. Noise Control Plan

- A. Applicant must provide a noise control plan identifying the type, frequency and maximum level of noise to be emitted at different times during construction, maintenance and operations of the oil and gas facility and proposed mitigation measures. Noise from the permitted oil and gas facility operation shall not exceed 45 decibels where it crosses any adjacent property line.
- B. Any facilities outside the well pad are subject to the same setbacks and noise requirements as the well pad.
- C. Applicant may apply for a variance if the operator needs to exceed this level for a specified number of days and hours due to drilling, completion and production requirements. In addition to the variance criteria described in Article VIII of this Ordinance the applicant shall demonstrate that the noise level requirement of 45 decibels is not technically feasible.

Section 5.10. Road Plan.

- A.** The applicant shall submit an Oil and Gas road route plan that identifies existing roads designed and constructed for oil and gas related truck traffic during different phases of the construction, drilling and production operations as well as identify new roads.
- B.** The Road Plan shall also include a traffic impact study during the different phases of oil and gas construction, drilling, completion and production.
- C.** 1. The Planning and Zoning Division Director or designee shall convey the Road Plan to the Public Works Department Director or designee for review. The Public Works Department Director or designee may require modification of affected County roads consistent with county standards at the applicants' expense.

2. The Public Works Department Director or designee shall issue a

determination to accept or deny the Road Plan within 30 days. The applicant may file for a Variance on the determination of the Public Works Director or designee to the Planning and Zoning Commission.

3. In the event that the Public Works Department Director or designee does not provide a determination on the submitted Road Plan to the applicant within 30 days, via electronic email and/or certified mail/return receipt, the Road Plan shall be deemed approved.

4. The County may require the applicant to provide a cash bond security, a letter of credit, escrow deposit or other method acceptable to the County, and/or Road Improvement Agreement for use of County roads

Section 5.11. Emergency Response Plan.

A. The applicant shall submit an Emergency Response Plan identifying all fire, police, and emergency response services in the County that are closest to the well site as well as a description of standard operating procedures, including applicable health, safety and environment protocols, used by the operator in the event of emergencies. The Emergency Response Plan must include a section for fire protection and the types of potential circumstances when the permittee will call emergency responders.

B. The applicant shall provide to the County a vicinity map with these facilities indicated, and a document narrative of information that includes contact information, address, directions, and distance to each facility. The applicant shall provide documents indicating letters of approval from local fire, police and emergency response services including financial arrangements with these facilities.

C. Any specialized training and equipment needed to support county emergency services shall be paid for by the operator/applicant.

D. Applicant shall provide a hydrogen sulfide contingency plan to municipalities, unincorporated areas, tribes located within a 1 mile radius of the well site for their review and approval in accordance with the American Petroleum Institute's RP-49 "Recommended Practices for Drilling and Well Servicing Operations Involving Wells Containing Hydrogen Sulfide."

E. The Planning and Zoning Division Director or designee shall convey the Emergency Response Plan to be reviewed and approved by the Fire Department Fire Chief, and by municipal and other agencies where needed. The Fire Department Fire Chief or designee shall issue a determination to accept or deny the Emergency Response Plan within

30 days. The applicant may file for a Variance on the determination of the Fire Department Fire Chief or designee to the Planning and Zoning Commission.

F. In the event that the Fire Department Fire Chief or designee does not provide a determination on the submitted Emergency Response Plan to the applicant within 30 days, via electronic email and/or certified mail/return receipt, the Emergency Response Plan shall be deemed approved.

Section 5.12. Proof of Bond. Applicant must provide certification that OCD's financial assurance requirements, as set forth in 19.15.5 NMAC, have been satisfied.

Section 5.13. SOPA Documentation.

For all applications submitted for Oil and/or Gas Exploration and Production in Sandoval County, as provided in this SU-SOP/OG, applicants shall be required to provide proof of compliance with the Surface Owners' Protection Act ("SOPA"), N.M.S.A. 1978, § 70-12-1 (2007). SOPA compliance may be satisfied by the applicant's statement of compliance, with a copy of the Surface Use Agreement or a letter signed by the Surface Property Owner stating the Operator has complied with SOPA, or proof of bonding as required by SOPA.

Section 5.14. Air Quality Protection Plan.

In consultation with the Air Quality Bureau of the New Mexico Environment Department develop an Air Quality Performance Standard Plan that is in compliance with NMSA 1978, § 74 Article 2 "The Air Quality Control Act." The Plan shall include specific regulated compounds projected to be released during oil and gas operations. It also must describe the mitigating measures to be used to reduce air emissions should they exceed federal and state standards, which could be harmful to human health, to livestock and to wildlife. The Director may increase setback requirements based on the Plan.

Section 5.15. Water Usage and Sources.

A. Operator will take all measures necessary to avoid Pollution of surface water and ground water.

B. The applicant shall include certification signed by an officer of the company that it will comply with the requirements of NM OCD and NMED concerning the protection of waters.

C. The following information regarding water usage must be submitted as part of the application.

1. How much water will be used, the type of water to be used (fresh, effluent, or produced) and where the water is coming from (the source)

2. Approval from the appropriate agency must be provided for all sources of water
- D. Non potable water should be used whenever possible

Section 5.16. Storm Water Pollution Prevention Plan (SWPPP): the applicant shall provide documentation of approval of a SWPPP for the subject site.

Section 5.17. Post Production Terrain Management Plan: The Terrain Management Plan shall include a narrative describing clear goals for post-production land management and how those goals are to be achieved. A Terrain Management Plan shall address the restoration of all areas of the development where the surface was disturbed. The Terrain Management Plan shall include, but may not be limited to, the following information:

- A. A schedule and description of interim terrain management activities to be conducted following the completion of each phase of development within the Well Site; and
- B. A schedule and description of proposed final restoration activities to be completed upon the final NMOCD approved plugging and abandonment of the Oil or Gas Well and a discussion of how those restoration activities will impact the anticipated future uses of the property.
- C. All restoration activities described in the Terrain Management Plan shall include a Grading and Drainage Plan which shall include the following, where appropriate, but may not be limited to;
 1. Configuration of the reshaped topography and restored drainage;
 2. Soil treatments;
 3. Reseeding materials and revegetation methods;
 4. Backfill or grading requirements; and
 5. Soil stabilization techniques.
- D. The Terrain Management Plan must be submitted to the local Flood Control Authority and the Soil and Water Conservation Districts located near the well facility for their review.

Section 5.18. Grading and Drainage Plan to be reviewed and approved by the County Engineer prior to commencement of any oil drilling activities on the subject site. The applicant is liable for all financial costs related to County Engineer review services. The Grading and Drainage Plan shall demonstrate that the applicant shall not deposit, drain or divert into or upon any public highway, street, alley, drainage ditch, arroyo, storm drain, sewer, gutter, creek, stream, river, lake or lagoon, any oil or liquid containing any hydrocarbons, or any drilling mud, sand, water or saltwater, or in any manner permit, by any means, any of such substances to escape from any property owned, leased or controlled by such person. All such material shall be properly disposed of at a NM OCD-licensed facility.

Section 5.19. Waste Disposal Plan: Applicant must describe the type of waste

that will be generated on the site and how that waste will be properly disposed of. Agreements and permits from waste disposal facilities including land farms and injection wells approved by OCD must be included in the application. The Plan must demonstrate compliance with the provisions of Article VI.

ARTICLE VI. GENERAL PROVISIONS FOR OIL AND GAS FACILITIES

Section 6.1. Light Direction. Site lighting shall be directed downward and internally to avoid glare on public roads and buildings within seven hundred fifty (750) feet of the drill site. The applicant shall comply with the requirements of the Night Sky Protection Act, NMSA 1978, Sections 74-12-1 at seq (1999) (as amended).

Section 6.2. Visual Impacts. Oil and gas facilities observable from any public highway shall, to the extent reasonably practicable, be visually harmonious with the surrounding environment and painted with uniform, non-contrasting, non-reflective color tones similar to BLM Visual Resource Management system), and with colors matched to but slightly darker than the surrounding landscape.

Section 6.3. Setback Requirements.

- A. No Oil or Gas Facility shall be permitted within a floodplain as mapped and designated by the Federal Emergency Management Agency (FEMA).
- B. No Oil or Gas Facility shall be located within seven hundred fifty (750) feet of occupied dwellings, schools, churches, hospitals, clinics, assisted living homes, businesses, cemeteries, fresh water wells, water courses, acequias, archeological and historic sites outside an incorporated municipality in the County.

Section 6.4. Fencing. Unless provided for in an agreement with the applicable surface owner, all well site locations shall have perimeter fencing and a locked gate to prevent harm to the public, livestock and wildlife. The design and construction of the required fencing shall be a chain link fence to a minimum height of six (6) feet as approved by the Director. The Director shall have a key or other access mechanism to any locked gates on the site.

Section 6.5. Best Practices. Operator shall conduct its operations consistent with best practices of the oil and gas industry as defined by the American Petroleum Institute (API) Overview of Industry Guidance and Best Practices

Section 6.6. Trash and Debris. Operator will maintain all locations and well sites upon which operations have taken place clear of all litter, trash, and other waste.

Section 6.7. Waste Disposal. All waste must be disposed of in accordance with the operator's permit agreement. Onsite gas field waste must be removed from the subject site. On-site pits for oil or gas field waste are prohibited.

Section 6.8. Pipelines and Gathering Lines

- A. Operator may construct pipelines (including "gathering lines") on the approved site but no pipeline shall exceed the size necessary for transporting oil and gas produced on the site. Applicant/Operator shall bury all permanent pipelines no less than thirty-six (36) inches below the surface and restore the Surface as nearly as possible to its former condition, to a reasonable extent. Pipeline routing shall avoid exacerbating erosion. Operator shall use steel pipe in all pipelines in which pressure is anticipated to be in excess of 300 psi unless the material transported is highly corrosive, in which case other types of pipe meeting industry standards may be used.
- B. Applicant must ensure that all pipelines and gathering lines are platted and filed as built in the office of the Sandoval County Clerk.

Section 6.9. Storage Tanks.

- A. Except as otherwise mandated by the NMOCD, tanks used for the storage of condensate, crude oil, or other liquid hydrocarbons produced by and/or used in conjunction with any Oil and/or Gas Facility or Facilities shall conform to the American Petroleum Institute (A.P.I.) standards for such tanks.
- B. All above ground storage tanks shall be equipped with a secondary containment system, as approved by NMOCD.
- C. All below grade tanks shall be constructed and maintained according to applicable NMOCD regulations.

Section 6.10. Roads and Traffic Standards:

- A. Chains on heavy equipment shall not be permitted on paved County roads. All damage to County roads directly attributable to the installation, construction and operation of Oil or Gas Facilities shall be promptly repaired at the Applicant's expense.
- B. Heavy equipment shall not be used on roads with ruts measuring six (6) inches or more in depth.
- C. (3) Speed limits shall be set at a minimum level possible to prevent the creation of dust and erosion.
- D. (4) The amount of traffic generated by the proposed development shall not cause public roads to operate at a level less than what can be met by current capacity and structural conditions.
- E. (5) In the event that traffic generated by the development increase the burden on or cause a deterioration of County Roads, the Operator shall be required to pay a pro-rata share of the costs incurred to improve the

County Road. The pro-rata share shall be determined by the County's Public Works Director and the Applicant.

Section 6.11. Well Sites And Facilities.

- A The Well Site shall not be used for the storage of pipe or other equipment or materials except during the drilling, operating, or servicing of Oil or Gas Wells. Where not already required by another permitting agency, the Operator may seek a written exception/permission for staging of pipe or other equipment from the Director which shall be approved upon a demonstration of need, for a length of time to be determined by the Director and the Surface Property Owner. Where storage permitting is authorized by another permitting agency, a copy of the storage permit or authorization may be required at the request of the Director.
- B Site dimensions for an Oil or Gas Facility or Facilities, shall be the size necessary to provide a safe work area and minimize surface disturbance.
- C Following the completion of an Oil or Gas Well, the pad shall be reduced to the minimal size required to operate the site, and the surrounding disturbed surface shall be reclaimed.

Section 6.12. Hours of Operation.

- A All oil or gas development shall be conducted only between 8:00 AM and 5:00 PM. Upon an applicant's request, drilling (but no other activity) may be permitted up to twenty four (24) hours per day if approved by the Director of Planning and Zoning on a case-by-case basis. If approved for extended drilling hours, applicants shall at all times abide by the requirements established in this Ordinance.
- B. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation, and other related work conducted on the oil or gas facility shall be limited to between the hours of 8:00 AM and 5:00 PM except in cases of fires, blowouts, explosions and any other emergency or where the delivery of equipment is necessary to mitigate the emergency.

Section 6.13. Gas Flaring and Venting

Flaring and venting of gases from an approved Oil and Gas Facility shall be in accordance with 19.15.18.12 NMAC.

Section 6.14. Water Protection

Operator will take all measures necessary to avoid Pollution of surface water and ground water.

- A. Ground water monitoring requirements.
 - 1. At the drilling well site:

a. The applicant shall construct a ground water monitoring well approximately one hundred (100) horizontal feet from the Well Pad at a site selected by the independent expert. The monitoring well shall be designed and constructed according to the New Mexico Environment Department's Monitoring Well Guidelines (July 2008)

b. Prior to drilling and production, ground water samples shall be taken and analyzed. Samples shall establish the site-specific baseline for analytes monitored in the New Mexico Ground Water Standards Act, methane and for a set of chemicals anticipated to be used in drilling, completion and production. The baseline report shall be provided to the Director, NM OCD and to NM ED.

c. Samples from the ground water monitoring well at the well site shall be conducted and analyzed semi-annually. Semi-annually water monitoring reports shall be provided to the Director, NM OCD and to NM ED.

d. If the hydrology report required under Section 5.8A suggests that the Oil and Gas Operation will not penetrate an aquifer containing potable water, the Director, may waive the requirement of the ground water monitoring well at the site. If, however, during drilling operations, an aquifer containing potable water is revealed, this information shall be immediately reported to the Director, and a monitoring well shall be required before production operations continue.

2. Private and Public Wells near the drilling site.

a. Each private and public water well within one half (1/2) mile of the drilling well site must be sampled prior to oil and gas drilling and production to establish baseline information.

b. The baseline testing results shall be reported to the appropriate water well owner, to the Director, NMOCD and to NM ED.

c. if the water well owner refuses to have the Operator test the well, the owner shall sign a form to be developed by the Director.

B. Surface Water Monitoring Requirements

1. Permanent surface water sources, including rivers and streams, within one mile of the well site shall be sampled prior to oil and gas drilling and production to establish baseline information.

C. All sampling and testing required under Subsections A and B must be conducted by an independent consultant selected by the Director and whose services are paid for by the operator.

D. In the event that monitoring samples at the drilling well site indicate a potential violation of the NM Water Quality Control Act or US Clean Water Act standards, the Operator shall have the test repeated. If the violation is confirmed

by the laboratory the Operator shall immediately take measures to reduce these contaminants to acceptable legal standards. The operator shall immediately notify private and public well owners within one half (1/2) mile of the monitoring well as well as the Director, NMED and NMOCD and inform them about the results of the tests and the measures taken to reduce contaminant to acceptable legal standards.

E. The Operator shall provide ongoing reports to the Director, NMED and OCD regarding the potential violations, the measures that are being taken and the results.

Section 6.15. Air Quality Protection

In accordance with the Air Quality Performance Standard Plan described under Section 5.14 of this Ordinance the operator shall at his own expense contract with an independent air quality specialist and laboratories selected by the Director. A baseline air quality testing program shall be conducted at the well site prior to commencing operations and followed by an ongoing monitoring program to detect possible changes in air quality

- A. Air monitoring shall be continuously conducted twenty-four hours a day, seven days a week.
- B. Both baseline and monitoring results shall be provided to the Director, to OCD and to NMED.
- C. In the event monitoring indicates a potential violation of Air Quality Act emission standards, the Operator shall perform a site inspection of the facility. The results, including how the inspection was performed, shall be reported to the Director, NMOCD and NMED. If the increased emissions are confirmed by the inspection the Operator shall immediately take measures to reduce these emissions to below acceptable standards.
- D. The Operator shall provide ongoing reports to the Director, NMED and OCD regarding the potential violations, the measures that are being taken and the final results.

Section 6.16. Cultural, Historical and Archeological Sites

In the event that a cultural, historical or archeological site, including unmarked burial grounds, is discovered or identified during any phase of developing with the Well Site, or the construction of roads, the Operator shall comply with all applicable local, state and federation regulations.

Section 6.17. Abandonment, Plugging and Remediation.

- A. Operator shall submit to the County copies of all OCD approved plugging and abandonment permits.
- B. Operator shall include a written certification that all gathering lines have been removed and a statement of the use to be made of the site following reclamation, including a discussion of the utility and capacity of the

reclaimed land to support the surface owner's preferred use and the consideration which has been given to making reclamation operations consistent with surface owner plans, and the terrain management plan.

Section 6.18. Soils and Terrain Management

A. Soils

1. Soils having severe limitations, or which are shown as unsuitable for the intended purposes shall not be used for those purposes unless the Operator has clearly demonstrated in the Terrain Management Plan how the soil limitations are to be overcome or mitigated.
2. All topsoil stripped from the surface and retained on the site shall be carefully stockpiled in a manner to prevent erosion and to facilitate its re-application to the disturbed areas during reclamation.
3. Any necessary grading or clearing should, to the extent possible, follow, preserve, match, or blend with the natural contours and vegetation of the land and should not increase the possibility for erosion.
4. The Operator shall take sufficient measures to prevent dust arising from any area where the surface is disturbed.
5. All changes made to the existing soil composition and arrangement should be compatible with the soil stability and erodibility as demonstrated in the soil survey, if a soil survey was required in the application.

B. Drainage and Erosion:

1. To the extent possible, the Operator shall preserve natural drainage existing on the site prior to development.
2. Water that drains from the Well Site shall not contain pollutants or sedimentary materials at a greater concentration than would occur without the presence of the development.
3. Drainage from the Well Site shall not cause erosion outside of the site to a greater degree than would occur without the presence of the development.

C. Vegetation:

1. During development and operation, the Operator shall minimize damage to existing vegetation.
2. There shall be no introduction of or increase in the prevalence of invasive or noxious plant species within the Well Site as a result of oil or gas activity.
3. Operators are advised to consult the local agricultural extension office or the local Natural Resources Conservation Service to determine the appropriate materials needed to prevent or contain the spread of

noxious and invasive plant species. Any materials used should be listed in the Terrain Management Plan.

D. Restoration:

1. The Operator shall begin interim and final restoration activities as soon as practical upon completion of each phase of development.
2. The operator shall reseed by drilling on the contour, or another method as approved by the Director.
3. The Operator shall obtain vegetative cover that equals seventy (70%) percent of the native perennial vegetative cover, which has not been impacted by overgrazing, fire, or some other damaging intrusion, and shall maintain that vegetative cover for at least two (2) successive growing seasons.

- E. The Operator shall notify the County at least ten (10) days in advance of the date that final restoration activities are to begin and the Operator shall also notify the County as soon as final restoration activities have been completed.

ARTICLE VII. INSURANCE REQUIREMENTS.

Section 7.1. Insurance. In addition to the financial assurance required by the OCD and other laws, the operator shall carry the insurance policy or policies required below provided by an insurance company or companies authorized to do business in New Mexico. In the event such insurance policy or policies are cancelled, the operator will take corrective actions to reinstate the insurance policy or policies, and notify the County of said corrective action.

- A. The County, its officials, employees, agents and officers shall be endorsed as an "additional insured" on the required policies.
- B. Certificates of insurance shall be delivered to the Sandoval County, Planning and Zoning Commission, 1500 Idalia Road, Building D, Bernalillo, NM 87004, evidencing all the required coverage, including endorsements, prior to the commencement of operations requiring notice.
- C. Each policy shall be endorsed to provide the County a minimum thirty-day notice of cancellation, non-renewal and/or material change in policy terms or coverage. A ten days' notice shall be acceptable in the event of non-payment of premium.

Section 7.2. Standard Commercial General Liability Policy. This coverage must include premises, operations, blowout or explosion, products,

completed operations, sudden and accidental pollution, blanket contractual liability, underground resources and equipment hazard damage, broad form property damage, fire, independent contractors' protective liability and personal injury. This coverage shall be a minimum combined single limit of \$25,000,000 per occurrence for bodily injury and property damage.

Section 7.3. Pollution Insurance:

A. A pollution insurance policy or policies that provide standard pollution liability insurance with a coverage of not less than \$ 30,000,000 per occurrence, issued by an insurance company authorized to do business in the State, and that names the applicant as insured. Such insurance policy shall be maintained in full force and effect from the date of approval of this Special Use request by the Board of County Commissioners and continuing in force until the well is plugged and abandoned in accordance with the applicable State statutes, NM OCD regulations, and the Site Remediation Plan as approved by the County Engineer. The insurance policy or policies shall provide that they may not be cancelled without written notice to the County at least thirty (30) days prior to the effective date of such cancellation

B. A separate policy is not required if pollution coverage is included and added into the comprehensive general liability insurance policy required by Section 7.3 A. In this case the coverage shall not be less than \$50,000,000 per occurrence.

Section 7.4. Site remediation financial assurance.

Acceptable financial assurances may include:

- A. A bond in the principal sum of such amount as may be determined by the Board, but not less than \$1 million dollars, in an amount representing the actual cost to remediate the site of the Oil and Gas Facility after abandonment less the amount of any agreement entered into by and between the applicant and a surface owner pursuant to the Surface Owners' Protection Act. A bond shall be executed by a reliable insurance company authorized to do business in the State of New Mexico, as surety, and the Applicant as principal, running to the County for the benefit of the County and all persons concerned, under the condition that the Operator shall comply with the terms and conditions of this Section in the drilling and operation of the well;
- B. An irrevocable letter of credit issued by a federally-insured financial institution located within the State of New Mexico, backed by cash on deposit at the institution representing the full value of the amount of the letter of credit. The amount shall be set as may be determined by the Board, but in no event shall be for a sum less than \$1 million dollars. A letter of credit shall be for a term of not less than five (5) years, and shall be automatically renewed on like terms unless the issuer notifies

the County in writing of non-renewal at least thirty (30) days prior to the end of the five (5) year period.

- C. Except for the requirement under Subsection D of Section 7.4 the County shall release the financial assurance deposited pursuant to this Section upon written request of the Operator if the well has been plugged and abandoned and the location restored and/or remediated consistent with the Site Remediation Plan approved by the County Engineer, or if a Change of Operator of the well site has been approved by the State of New Mexico and the County and a new Financial Assurance has been secured by the County.
- D. The County and the Operator shall agree that a specific amount of the financial assurance to be released shall be retained by the County to pay for an inspection of the site every three years for twelve years. If there is a Change of Operator of the well site in accordance with 7.4.C of this Ordinance the full financial assurance may be released under the terms set out under 7.4 C of this Ordinance.

ARTICLE VIII. VARIANCES.

Section 8.1. Application for Variance. Any request for approval of a variance shall be submitted to the Director with the appropriate filing fee on an application form prescribed by the Director. In addition, the applicant shall submit to the Director such information as may be reasonably required to determine whether the requested variance is consistent with the intent and purpose of this Ordinance. At such time, the Director shall transmit the application and any supplementary information to the Planning and Zoning Commission for review and public hearing. Fees shall be determined by the Director and may include outside consulting costs paid for by the applicant.

Section 8.2. Required Information. The variance shall identify the term, limitation, or requirement with reference to the article, section, and paragraph for which operator seeks the variance. Operator shall also state the grounds upon which the variance is sought and should be granted.

Section 8.3. Criteria. Granting of the variance shall not be detrimental to the public health, safety, or welfare or injurious to the County's interests. Granting of a variance is justified if there is a demonstrable hardship on operator or common benefit to all interested parties based upon articulable conditions upon the site covering the application.

ARTICLE IX. PROCEDURES AND FEES.

Section 9.1. Review of Permit application.

- A. The Planning and Zoning Division Director shall review the Permit

application for completeness and complies with the requirements of the Ordinance. The review of the application shall be deemed complete by the Planning and Zoning Division Director or designee within 30 working days.

B. In the event that the Planning and Zoning Division Director determines that the Permit application is complete and complies with the requirements of the Ordinance, the Director shall submit the application and supplementary materials for review and to the Planning and Zoning Commission for recommendation to the county commission.

C. In the event that the Planning and Zoning Division Director or designee determines that the Permit Application is incomplete, the Director or designee will notify the applicant within 30 working days of receipt of the Permit Application and provide information regarding the Permit Application's insufficient information. In this event, should the Applicant pursue Permit Application approval, the Applicant shall resubmit the Permit Application to include material and information to resolve the insufficiency within 30 working days. The Planning and Zoning Division Director or designee shall have an additional 30 working days to review the Permit Application for completeness. If the applicant fails to submit the required information within 30 working days the application is automatically withdrawn.

Section 9.2. Fees.

- A.** For any new well drilled by operator in the County, the applicant will pay to the County a fee of \$500 per well with such payment to be included with the application provided for such new drilling operation. In the event that the applicant is required to provide additional information to resolve Permit application insufficiencies, additional fees may be required.

Section 9.3. Appeal. Anyone aggrieved by a decision of the Planning and Zoning Commission may appeal such decision to the Board of County Commissioners. The Appellant is responsible for demonstrating Legal Standing to file an Appeal as determined by the County Attorney. Such appeal must set forth specifically wherein it is claimed there was an error or an abuse of discretion, or where the decision was not supported by evidence in the matter.

ARTICLE X. ENFORCEMENT

Section 10.1. Non-Compliance. In the event of failure by the operator to comply with this Ordinance and the permit conditions, the Planning and Zoning Division Director or designee shall issue a written notice to operator stating a time of a maximum of 30 days to comply with the notice.

Section 10.2. VIOLATIONS

A. Minor violations

- 1 . If any permittee knowingly violates any provision of this Ordinance or any provision of the special use permit granted under this Ordinance, and such violation does not directly cause material harm to the public health, safety of county residents, or the environment, the Planning and Zoning Division Director or designee shall issue a written citation to such person describing the violation and corrective actions required giving the permittee thirty (30) days to mitigate the violation.
- 2 . The citation shall conspicuously and in bold face type state: "If not paid, this fine shall constitute a lawful debt which will be collected pursuant to legal process and may be assessed as a lien upon the property upon which the violation exists. If the violation is remediated by the County or by a contractor hired by the County, the actual costs of remediation may be added to the fine."
- 3 . The fine for violating Section 10.2 Subsection A of this ordinance shall not exceed \$300 or the maximum legally allowable and the fine shall be payable to the County. The fine may be waived in the sole discretion of the County if the alleged permittee commences and completes satisfactory actions to remediate the alleged violation.

B. Major Violations.

1. When a violation of the Sandoval County Oil and Gas Ordinance and provisions of the special use permit results in a significant public safety, health or environmental risk and violates county laws, permittee shall be sent a Cease and Desist Letter, giving the permittee thirty (30) days, or less depending on the seriousness of the alleged violation, in which to correct the violation. The permittee must immediately cure the alleged violation. Failing to do so may result in the permittee receiving a summons for violating the Sandoval County Oil and Gas Ordinance and the provisions of the permit and having the permit suspended or revoked.
- 2 . The director may revoke or suspend the permit after notice and an opportunity for a public hearing. In assessing whether to suspend or revoke the permit, the division may consider the seriousness of the violation and any good-faith efforts to comply with the applicable requirement

C. The violation citations under Subsection A or B shall be issued to the permittee. When possible, the citation shall contain the address of the property on which the violation is alleged to exist, the legal description of the property or

both. The citation shall be hand-delivered to the alleged permittee if possible, or may be mailed to the alleged permittee posted upon the property. Any of the previously listed forms of notice shall constitute sufficient service of notice under the law.

D. Any citation issued for violation of this Ordinance shall state the name of the alleged permittee, the date the citation was issued, the type of violation, and the section of this Ordinance under which the violation is issued. The citation shall, if possible, list the action necessary to cure the alleged violation.

ARTICLE XI NOTICES OF DECISIONS.

The County shall notify, in writing, applicants of decisions regarding permit applications, including variances, for Oil and Gas Facilities by the Director and by the Planning and Zoning Commission or the County Commission. The County shall also notify, in writing, all government agencies involved in the review process for Oil and Gas Facilities, and those government and Native American Pueblo/Nation agencies who received notices of meetings for application review.

ARTICLE XII NONCONFORMITIES.

The procedures for evaluation of a potential Non-Conforming Use are established in Section 18 (1), Nonconformities, Sandoval County Comprehensive Zoning Ordinance.

ARTICLE XIII SEVERABILITY, EFFECTIVE DATE.

Section 13.1. SEVERABILITY.

If any provision of this Ordinance shall be held invalid or non-enforceable by any court of competent jurisdiction for any reason, the remainder of this Ordinance shall not be affected and shall be valid and enforceable to the fullest extent of the law.

Section 13.2. EFFECTIVE DATE.

As necessary to protect the public health and safety, this Ordinance proposed for adoption shall take effect 30 days upon approval by the Sandoval County Board of County Commissioners.

ATTEST:

BOARD OF COUNTY
COMMISSIONERS SANDOVAL
COUNTY

Proposed Oil and Gas Ordinance
Sandoval County Citizens Study Group
9/12/17

Eileen Garbagni, County Clerk

Don G. Chapman, Chair

David J. Heil, Vice Chair

APPROVED AS TO FORM:

Jay C. Block, Member

Heather R. Smallwood, County Attorney

F. Kenneth Eichwald, Member

James F. Holden-Rhodes,
Member

Some of the Major Provisions of the Citizens' Oil and Gas Ordinance

This document summarizes only some of the major concerns and provisions in the Citizens' Ordinance and its development. The Oil and Gas Industry has had almost exclusive input to ordinance development, whereas citizen's serious concerns and input have been largely ignored. Both citizen testimony and extensive submitted documentation point out the need for regulation of on-the-surface behavior, beyond the OCD down-hole regulation.

- The citizens' ordinance incorporates many positive provisions of P&Z staff drafts, staff reports and even the AMREP lease as well as adds other critical provisions.
- Under no circumstances should any application be automatically approved if the time frame for County review has been exceeded. The citizens' ordinance requires a 30-day review period. What is involved is not a checklist but a review of the application to see if it complies with the standards required in the citizens' ordinance.
- Given the geological/hydrological evidence that there are highly faulted areas in the county which are vulnerable to contamination should drilling occur, the citizens' ordinance requires a site specific hydrologic/geologic and seismological report to be submitted to Planning and Zoning. The applicant pays for any expertise needed through the hiring of consultant(s).
- In addition, the applicant is required to describe existent historical, archeological or cultural sites that are listed in the Register of Cultural Properties of the New Mexico Historic Preservation Division and that are located in the area of the well site.
- Baseline measurements in the permitting process establish a status quo to determine accountability and resolve later disputes. Baseline measurements also can serve as references for determining pollution thresholds (water, air).
- Recognizing that each well is expected to provide industry with an annual profit in the high six-to-seven figures, the citizens' ordinance allows for reasonable application and other fees. The amounts would cover, but not be limited to, permit review, monitoring, inspection, and specialist consultation (legal, scientific and technical). The County is authorized to establish fees to cover indirect costs imposed on the County by the industry such as special equipment and training and payments for deteriorating roads
- Background checks on all companies, such as financial solvency, history of environmental violations, proof of pollution as well as general liability insurance and bonding to ensure plugging and site remediation, are included in the application review process.
- The County needs effective tools to incentivize best practices. Fines are not effective tools for enforcement especially when limited to \$300. The possibility of permit suspension or revocation, while ensuring due process, is effective to provide clear consequences to violations of our ordinance.