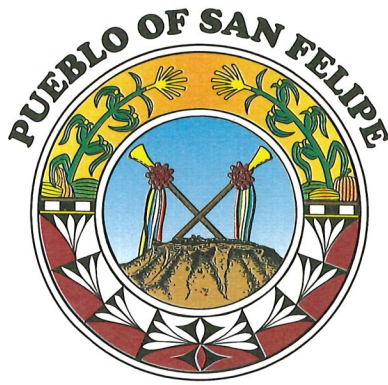


P.O. Box 4339
San Felipe Pueblo, NM 87001



Phone: (505) 867-3381/3382
FAX: (505) 867-3383

Office of the Governor

October 26, 2018

VIA Email and Hand Delivery

Sandoval County Commission
Attn: Chairman David Heil
Attn: Vice-Chairman Kenneth Eichwald
1500 Idalia Road, Building D
Bernalillo, NM 87004

Re: Oil and Gas Ordinance

Dear Sandoval County Commissioners:

At the October 18, 2018 Sandoval County Commission meeting, extensive testimony was provided to you by tribal leaders regarding the need for tribal consultation on the Oil and Gas Ordinance. Meaningful tribal consultation is the timely and frequent process of seeking, discussing, and considering the views of pueblos and tribes, and, in good faith seeking agreement on how activities affecting tribal health, wellbeing, and historic and cultural properties should be identified, considered, and managed.

At the October 18th meeting, Vice-Chairman Eichwald gave the pueblos and tribes the opportunity to submit comments on the Science Team Ordinance, to reflect tribal priorities, particularly tribal consultation.

We have taken the opportunity afforded to us in this short time frame. But please understand that these are only initial comments, intended to inform dialogue between us, to help inform your internal discussions and to give you some guidance on how to ensure that the Pueblo of San Felipe and the other pueblos and tribes of Sandoval County are not overlooked again.

When an ordinance is being advanced and has gone through the County's legal review and revision process, we will insist that there is a full tribal consultation period of not less than 30 -60 days. This consultation period will help to ensure that San Felipe and the pueblos and tribes of Sandoval County have the opportunity to fully review, consult with you and prepare meaningful comments on the

Ordinance to ensure there are sufficient protections in place and that no unintended adverse impacts exist within the Ordinance.

As you were informed on October the 18th, November 1st is a day of religious observance for the pueblos. We are disappointed that you chose to press forward and place the Oil and Gas Ordinance on the Agenda on a day that we cannot be present. We hope it is not a harbinger of future consultation efforts.

Nonetheless, we look forward to continued dialogue and engagement with you until such time there is a suitable Ordinance in place which will protect the citizens, the water, the air, and the other natural and cultural resources of the County for this and future generations.

If you have any questions, please contact Pinu'u Stout, Natural Resources Director, at (505) 771-6628 or Michael T. Sandoval, Water Resources Specialist at (505) 771-6654.

Sincerely,
Pueblo of San Felipe



Governor Anthony Ortiz

Encl: San Felipe edits to the Science Team Ordinance, electronic and hard copy

RECEIVED
OCT 26 2018
BY: 





October 30, 2018

Sandoval County Board of Commissioners
P.O. Box 40
Bernalillo, NM 87004

Dear Commissioners:

The economic contributions of the oil & gas industry in New Mexico are unmistakable! Absent the new revenue from the industry this last year, estimated now to exceed \$2 billion, the state economy would have had negative economic growth (Gross Domestic Product). That revenue supports at least one-third of the state's general fund which in turn supports education funding including \$48 million for schools in Sandoval County last year. If that revenue is reduced, will we be willing to increase taxes to make up the difference?

Whether accepted or not, oil & gas is an essential component of the New Mexico economy and will be into the foreseeable future. The State must diversify its economy but that will not happen overnight. In the meantime, we cannot throttle down a major component of the economy.

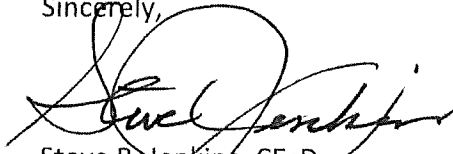
The industry has had a stellar safety and environmental record in the State and Sandoval County. The New Mexico Tech Study indicated that the San Juan Basin in the Northern and Northwestern portions of the County have the highest production capability decreasing from the Northwest to Southeast. The assessment also found that the aquifer and surface contamination risks in the basin to be low. The Albuquerque Basin did have low to moderate oil & gas potential, especially in the river basin, but moderate to high risks of contamination and even the industry has stated they have no interest in exploration in this fragile environment.

The opponents of the previous ordinance wanted to wait until the NM Tech Study was finished. Ironically, the findings substantiated much what the oil & gas industry was saying during the debate about potential aquifer contamination. Unfortunately, this was overshadowed by misrepresentations, unfounded assumptions, and pure emotion. The debate transitioned from one based on facts to one driven by emotion.

Many want to cover every conceivable “what if question” in ordinances and regulatory measures. This leads to onerous regulations and needless costs eventually resulting in reduced business activity, job loss and investment decline supporting the tax base.

It is time to act on an Oil & Gas Ordinance based on facts. The Sandoval Economic Alliance continues to support the passage of an Oil & Gas Ordinance that is **fair, reasonable, cost- and time-effective, manageable, and balanced for all interest based on facts, not emotions**. Fair and reasonable ordinances and regulations are essential for business growth and development. Such regulatory measures provide a stable, predictive environment while protecting the interests of both the residents and oil & gas businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve R. Jenkins", written over a circular stamp or seal.

Steve R. Jenkins, CECD
President & CEO

CWG SCIENCE TEAM DRAFT: SWG-SC v3

**BOARD OF COUNTY COMMISSIONERS OF SANDOVAL
COUNTY, NEW MEXICO, ORDINANCE NO. 10-11-18.7A(10)(2)**

**A LAND ORDINANCE ENACTED UNDER THE ZONING AUTHORITY
OF SANDOVAL COUNTY, AMENDING ORDINANCE NO. 10-11-18.7
COMPREHENSIVE ZONING ORDINANCE OF SANDOVAL COUNTY, FOR
REGULATING THE LOCATION WITHIN THE COUNTY OF OIL AND GAS
EXPLORATION, DRILLING, PRODUCTION, AND ALL ASSOCIATED ACTIVITIES,
TO SUITABLE AREAS OF THE COUNTY IN ORDER TO PROTECT FRESH WATER
AQUIFERS FOR THE PURPOSE OF PRESERVING WATER RESOURCES TO
PROVIDE AN ASSURED WATER SUPPLY FOR ITS INHABITANTS; TO PROTECT
THE PROPERTY AND PROPERTY VALUES OF THOSE INHABITANTS; TO
PROTECT THE ENVIRONMENT; AND, TO PROMOTE THE HEALTH, SAFETY
AND GENERAL WELFARE OF ITS CITIZENS**

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

ARTICLE I. GENERAL

A. Short Title:

This Ordinance shall be officially cited as the "Sandoval County Oil and Gas Ordinance".

B. 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, §§ Sections 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 ~~oa~~ Domingo, the Pueblo of Zia, the Pueblo of Jemez, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Navajo Nation 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.

C. Scope.

This Ordinance is intended to address oil and gas exploration, drilling, production, transportation, abandonment and remediation, as well as the effects thereof, within the County zoning jurisdiction as described above. Consequently, it will address the protection of fresh water aquifers, natural resources, sensitive habitats and wildlife; historic, cultural and archeological sites; and the effects of oil and gas development on the environment in general, in order to protect the health, safety and general welfare of the citizens of the County. 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.

D. 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/or land use regulation designed to establish separate land use, environmental, traffic, cultural, historical and archeological, emergency service and preparedness, aquifer protection, 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.

No oil or gas development shall take place in the County without a permit or prior authorization in accordance with the provisions of this Ordinance. Prior to authorizing any oil or gas development operation, the County shall require the Operator, owner of the mineral estate, or oil or gas lessee of the mineral estate, to apply for, and obtain the approvals, permits, and/or authorizations required herein.

F. State and Federal Preemption.

This Ordinance is supplementary to, does not replace, enhances and is consistent with the following federal and state statutes:

- (1) The Surface Owners Protection Act, N.M.S.A. 1978, §§70-12-1 et seq.;
- (2) The Oil and Gas Act, N.M.S.A. 1978, §§70-2-1 et seq.;
- (3) The Water Quality Act, N.M.S.A. 1978, §§74-6-1 et seq.;
- (4) The Solid Waste Act, N.M.S.A. 1978, §§74-9-1 et seq.;
- (5) The Rangeland Protection Act, N.M.S.A. 1978, §§76-7B-1 et seq.;
- (6) The Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§11001 et seq.;
- (7) The New Mexico Public Health Act, N.M.S.A. 1978, §§24-1-1 et seq.;
- (8) The Wildlife Conservation Act, N.M.S.A. 1978, §§17-2-37 et seq.;
- (9) The Cultural Properties Act, N.M.S.A. 1978, §§18-6-1 et seq.;
- (10) The National Historic Preservation Act, 16 U.S.C.A. §§470 et seq.;
- (11) The Uniform Trade Secret Act, N.M.S.A. 1978, §§57-3A-1 et seq.;
- (12) The Prehistoric and Historic Sites Act, N.M.S.A. 1978, §§18-8-1 et seq.;
- (13) The Cultural Properties Protection Act, N.M.S.A. 1978, §§18-6A-1 et seq.;
- (14) The Archeological Resources Protection Act, 16 U.S.C.A. §470aa et seq.; and,
- (15) The Energy Policy Act, 42 U.S.C.A. §6201 et seq.
- (16) The American Indian Religious Freedom Act 42 U.S.C. ch 21 subch. I § §1996 & 1996a
- (17) The Native American Graves Protection and Repatriation Act 25 U.S.C. ch 32 § 3001 et seq.;
- (18) Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 - 1376
- (19) The Clean Air Act 42 U.S.C. § 7401
- ~~(15)~~(20)

G. Findings, Declarations, Determinations.

All forms of development have the potential to impact negatively 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 County Commission hereby finds, declares, and determines that this Ordinance:

- (1) Promotes the health, safety and welfare of the County, its residents and its environment by regulating adverse public nuisance impacts and effects from the exploration, drilling, operation, transportation, waste disposal and remediation of oil and gas activities;
- (2) Protects traditional communities, pueblos and tribes and lifestyles of the County;
- (3) Protects the rights of surface property owners;
- (4) Prevents the occurrence of adverse public nuisance effects and impacts resulting from the abandonment of oil and gas activities within the County;
- (5) Protects the priceless, unique and fragile ecosystem of the County, the preservation of which is of significant value to the citizens of the County and State;
- (6) Protects the County's unique and irreplaceable historic, cultural and archeological, water and other natural resources;
- (7) Implements the goals and objectives of the County's Comprehensive Plan;
- (8) Protects the unique, fragile and irreplaceable ecosystem of the Middle Rio Grande Basin (MRGB) portion of the County, including its Santa Fe Group fresh water aquifer system, the preservation of which is vital to the citizens of the County and State;
- (9) Divides the County into separate districts for oil and gas exploration and production based upon the unique geology and hydrology of those districts;
- (10) Allows for the responsible development of oil and gas mineral resources in suitable locations within the County;
- (11) Clarifies the current Sandoval County ordinance by providing guidelines for permit review and approval;
- (12) Streamlines the processing of applications in appropriate districts of the county; and,
- (13) Attains the foregoing objectives while promoting efficient and appropriate regulation of the oil and gas industry within the County.

H. Activities for Which Approval Under this Ordinance is not Required.

The following activities do not require approval of the County under this Ordinance:

- (1) Mapping or surveying activities that do not cause or result in any disturbance of the land, unless there is an archaeological or cultural site in the location known to the State of New Mexico Historic Preservation Division, or a pueblo or tribe ; and,
- (2) Any planning activities that do not disturb the subject land or adjacent properties, cultural or archaeological resources or create any air, light, water or soil pollution.

ARTICLE II. SANDOVAL COUNTY ZONING ORDINANCE AMENDMENT

A. Repeal and Deletion of Section 10.D.13.

The County Commission hereby amends Ordinance No. 10-11-18.7A, Comprehensive Zoning Ordinance (CZO) of Sandoval County, to repeal and delete Section 10.D.13 on oil and gas exploration and production as a special use throughout the County.

B. Amendment.

The County Commission further amends Ordinance No. 10-11-18.7A to add this Section 10(2) governing oil and gas exploration, drilling and production, including structures and facilities associated with that use, as well as abandonment and remediation.

ARTICLE III. RULES OF INTERPRETATION AND DEFINITIONS

A. Rules of Interpretation.

- (1) 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.
- (2) The text shall control captions, titles, and maps.
- (3) The word “shall” is mandatory and not permissive; the word “may” is permissive and not mandatory.
- (4) Words used in the singular include the plural; words used in the plural include the singular.
- (5) Words used in the present tense include the future tense; words used in the future tense include the present tense.
- (6) 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.
- (7) In their interpretation and application, the provisions of this Ordinance are considered minimal in nature.
- (8) In computing any period of time prescribed or allowed by this Ordinance, the New Mexico Rules of Civil Procedure methodology shall apply.

B. Definitions.

Words with specific defined meanings are as follows:

Abandoned. The permanent abandonment of an oil or gas well, as established by filings of the Operator with the New Mexico Oil Conservation Division (NMOCD), from production records maintained by the abandonment of an oil or gas well based upon: (i)

plugging and abandonment of an oil or gas well pursuant to NMOCD Rule 19.15.25 N.M.A.C. et seq.; (ii) any other evidence that the oil and gas well has been abandoned or plugged and abandoned as established by filings of the Operator with the NMOCD.

Albuquerque Basin. Same definition as Middle Rio Grande Basin for purposes of this Ordinance.

API Best Practices. The American Petroleum Institute, "Overview of Industry Guidance and Best Practices."

Applicant. The owner of a mineral estate, oil and gas lessee, operator, or duly designated representative who shall have express written authority to act on behalf of the owner or oil and gas Lessee for the purposes of submitting and representing an application for administrative review by the Director, or a conditional use permit for review by the Planning and Zoning Commission or for a special use permit for review by the County Commission.

Aquifer. An aquifer is an underground layer of water-bearing permeable rock from which groundwater can be extracted.

Clear and Convincing Evidence. Evidence that a claim or assertion is substantially more likely than not to be true, leaving the determiner of fact with an abiding conviction that the truth of the factual claim or assertion is highly probable.

Closed-Loop System. A system that uses above ground steel tanks for the management of drilling fluids, flowback, produced water, and other liquid waste.

Comprehensive Plan. The Sandoval County Comprehensive Plan adopted by the Board of County Commissioners, as amended from time to time.

Conventional Drilling. The traditional way to drill for oil and gas using vertical wells and extracting hydrocarbons by natural pressure and pumping operations.

Conservation Area. An area of special historic, archeological, environmental, ecological or cultural interest the character or appearance of which it is desirable to preserve.

County. Sandoval County, New Mexico.

County Commission. The Board of County Commissioners of Sandoval County, New Mexico.

Cultural Resource. Physical evidence or place of past human activity: site, object, landscape, structure; or a site, structure, landscape, object or natural feature of significance to a group of people traditionally associated with it, including unmarked graves.

CZO. The Sandoval County Comprehensive Zoning Ordinance.

Design and Performance Standards. The design and performance standards set forth in Article X of this Ordinance.

Development. Any man-made physical change in improved or unimproved sub-surface mineral and surface estates, including, but not limited to: buildings or other structures; oil and gas drilling, dredging, filling, extraction or transportation of oil and gas, grading, paving, diking, berming, excavation, exploration, or storage of equipment or materials, whether in structures, ponds, containers, landfills or other detention facilities.

Directional Drilling. See, Unconventional Drilling.

Director. The Director of Sandoval County Planning and Zoning Department or any person or persons assigned or delegated to perform some portion of the functions exercised by the Director.

Drilling. Digging or boring a new oil or gas well for the purpose of exploring for, developing or producing oil, gas, or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth.

Easement. Authorization by a property owner for another to use the owner's property for a specified purpose.

Erosion. The natural process by which land surface materials, such as rock or soil, are worn away or removed.

Exploration Activities. All activities for which an exploratory permit is required, including, but not limited to, geophysical surveys, seismic surveys, gravity surveys, magnetic surveys, and any other exploratory activity that may cause surface disturbance. For purposes of this Ordinance, exploration activities do not include exploration drilling.

Fracking: See, Fracturing.

Fracturing. A process used to extract natural gas or oil that creates larger and more fractures in rocks below the earth's surface by using explosive charges and injecting a mixture of sand, water or gases such as nitrogen or carbon dioxide, chemicals, liquids, acids, and other materials under high pressure. The newly created fractures allow more oil and gas to flow out of the formation and into the well bore from where it can be extracted. "Fracturing" also includes any future innovations intended to fracture rock for the purpose of releasing hydrocarbons.

Frontier District. A region that is currently non-productive of oil and gas, largely unexplored for such minerals, and with no proven oil or natural gas reserves.

Commented [PS1]: Is this necessary to include?

Gas. Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas, or any gaseous derivatives of those extraction processes, such as carbon dioxide. Whenever "gas" is used in the Ordinance it includes "natural gas" and/or "methane."

Commented [PS2]: What about other gasses such as pentane?

Hydrocarbons. Any compound of hydrogen and carbon, such as any of those that are the chief components of petroleum and natural gas.

Injection Well. A NMOCD permitted well through which fluids or gasses are injected into a subsurface formation to increase reservoir pressure and to displace oil (e.g., during secondary or tertiary oil recovery operations or water flooding operations), for disposal of produced water, for storage purposes, or any other NMOCD permitted purpose.

In the County, within the County. Areas within the boundaries of the County, but not within the limits of any incorporated municipality, any tribal or tribal trust lands, lands owned by the state of New Mexico, and lands owned by the United States or lands where the mineral rights associated with such surface property are owned partially, or in their entirety, by the State of New Mexico or the United States.

Lot. A tract, parcel, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership, or possession, or for development.

Lot Line. The boundary of a recorded lot.

Mancos Shale. A Late Cretaceous geologic formation found in New Mexico and other western states. It is an organic-rich source rock for hydrocarbons, and is a target for shale gas unconventional drilling.

Material Data Safety Sheet (MSDS). A document that contains information on the potential hazards (health, fire, reactivity and environmental) of chemical products and how to work safely with them.

Middle Rio Grande Basin. The geologic basin defined by the extent of deposits of Cenozoic age along the Rio Grande from about Cochiti Dam to about San Acacia, New Mexico.

Mineral Rights Owner. The record owner of the fee sub-surface mineral estate, a contract purchaser holding equitable title, an oil and gas lessee, or a vendee in possession, including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in an oil or gas lease.

NMCID. The Construction Industries Division of the Regulation and Licensing Department of the State of New Mexico.

[NMCRIS. the Archaeological Records Management Section \(ARMS\) of the New Mexico Historic Preservation Division administers the New Mexico Cultural Resources Information System \(NMCRIS\).](#)

NMOCD. The Oil Conservation Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico.

Nuisance. As defined in the Sandoval County Comprehensive Zoning Ordinance, Section 6, Definitions.

Oil. A produced simple or complex mixture of hydrocarbons, in a liquid state at standard pressure and temperature, which can be refined to yield gasoline, kerosene, diesel fuel, and various other products.

Oil or Gas Facility or Facilities. Site and equipment related to oil and gas exploration and/or production described as follows: a new well or wells and the surrounding well site and well pad, constructed and operated to explore for or produce crude oil and/or gas: includes auxiliary and associated equipment and facilities, such as derricks, separators; dehydrators; pumping units; tank batteries; tanks; metering stations and equipment; any

equipment for the reworking of an existing well bore; workover rigs; compressor stations and associated engines, motors, facilities and equipment; water or fluid injection stations and associated facilities and equipment; storage or construction staging yards; gathering systems and associated facilities and equipment, collection lines, drip stations, vent stations, pigging facilities, chemical injection stations, transfer pump stations and valve boxes; any other structure, building or facility, temporary or permanent, mobile or stationary, associated with or used in connection with a new oil or gas well or the installation, construction or operation of the oil or gas well; and the roads used for ingress and egress to and from a new oil or gas well or surrounding well site. Also a pipeline for transportation of oil, gas, or water with the exception of facilities used for the transportation of natural gas under a tariff regulated by the New Mexico Public Regulation Commission ("NMPRC") or the Federal Energy Regulatory Commission ("FERC").

Oil or Gas Field Waste. Ground-based solid waste material generated in conjunction with the production of oil or gas, the collection and disposal of which is regulated and permitted by the NMOCD and as established by this Ordinance.

Oil or Gas Well. Any hole or holes, bore or bores, to any sand, formation, strata or depth for the purpose of exploring for, producing, and recovering any oil, gas, liquid, hydrocarbon, or any combination thereof.

Onsite Visit. The meeting conducted at the proposed oil or gas well site before consideration of a decision on an exploratory permit, conditional use permit, or special use permit. The purpose of the onsite visit for the County and affected pueblos and tribes is to verify information presented on an application, and to work with the surface property owner and the Applicant to identify site specific concerns and potential environmental and cultural resource impacts associated with the proposed development, and to discuss possible conditions of approval and API Best Practices to be used in mitigating the identified impacts.

Operator. Any person or entity including but not limited to the Lessee or operating rights owner, who is duly authorized by NMOCD to operate in the State of New Mexico, and who has stated in writing to the Director that it is responsible under the terms and conditions of a lease for the operations conducted on the leased lands or a portion thereof.

Person. Any natural person, corporation, partnership, trust, entity, organization, joint venture, association (including homeowners' or neighborhood associations, acequias and soil conservation districts), trust, or any other entity recognized by law.

Planning and Zoning Commission. The Sandoval County Planning and Zoning Commission.

Planning and Zoning Department. The Sandoval County Planning and Zoning Department.

Police Power. Inherent, delegated, or authorized legislative power of the county for purposes of regulation to secure health, safety, and general welfare and to prevent public nuisances.

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.

Produced Water. Water produced in conjunction with the production of oil or gas, the collection and disposal of which is regulated and permitted by the NMOCD.

Production Activities. All activities for which an approved Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport) from the NMOCD is required.

Projected Traffic. The traffic that is projected to develop in the future on an existing or proposed road.

Public Hearing. A proceeding preceded by published notice and actual notice to certain persons and at which certain persons, including the Applicant, may present oral comments or documentation. In a quasi-judicial or administrative hearing, witnesses are sworn in and are subject to cross-examination.

Pueblo or Tribe. A federally recognized tribe wholly or partially within Sandoval County, or having ancestral land, cultural and historic sites within Sandoval County.

Public Works Department. The Sandoval County Public Works Department.

Rangeland Quality. The type and amount of native vegetation on lands that are grazed by domestic livestock or wild animals.

Santa Fe Group Aquifer System. An aquifer system of the Middle Rio Grande Basin, which supplies the groundwater resources for the Albuquerque metropolitan area and other communities within the Middle Rio Grande Basin. It is composed of Santa Fe Group sediments, which chiefly consist of gravel, sand and silt, with lesser amounts of clay, and varies in thickness from less than 2,400 feet to 14,000 feet.

Seismic Disturbance. An instance of agitation of the ground that affects people; shaking, vibration, and ruptures caused by underground movement or man-made surface exploration and development techniques. These can result, for example, from geophysical testing or blasting for new construction such as dams, etc. Earthquakes are a type of seismic disturbance.

Seismic Vibrator. A truck or buggy-mounted device capable of injecting low-frequency vibrations into the earth.

Storage Tank (or Tank). Any tank, excluding sumps and pressurized pipeline drip traps, used for the storage of condensate and crude oil or other liquids produced by and/or used in conjunction with any oil or gas production. There are below-grade tanks where a portion of the tank's sidewalls is below the surrounding ground surface's elevation, and above-ground storage tanks where the tank is located above or at the surrounding ground surface's elevation and is surrounded by berms.

Structure. Anything constructed or a combination of materials that form a construction for use, occupancy, or ornamentation, whether installed on, above, or below the surface of land or water.

Substantial Modification. Any modification to an oil or gas well site or to an oil or gas facility beyond normal operation, reworking, recompleting, monitoring and maintaining that results in an increase in the size or area of the surface disturbance for which approval was granted under this Ordinance.

Surface Disturbance. Any activity that disturbs the surface of the land (a) as a result of exploration for, drilling for, and production of oil or gas or (b) as a result of the construction, development, operation, or abandonment and plugging of an oil or gas facility.

Surface Property Owner. A person that holds legal or equitable title, as shown in the records of the County Clerk to the surface of the real property on which oil and gas operations are to take place.

Surface Use Agreement. An agreement between an Operator and surface property owner specifying the rights and obligations of the surface property owner and the Operator concerning oil or gas operations.

Treatment As State. The Clean Air Act (CAA), Clean Water Act (CWA), and Safe Drinking Water Act (SDWA) expressly provide the authority for Indian tribes to implement and manage programs in a similar manner as a state (TAS) for implementing and managing certain environmental programs, and to assume the same role in Indian country that states do within state lands.

Tribal Consultation The timely and frequent process of seeking, discussing, and considering the views of pueblos and tribes, and, in good faith seeking agreement on how activities affecting tribal health, wellbeing, and historic and cultural properties should be identified, considered, and managed. Pueblos and tribes will have not less than 30 days after receipt of notification to consult on exploratory, development and other oil and gas activities within Sandoval County.

Unconventional Drilling. A method of oil and gas drilling whereby an operator drills vertically down to an intended formation, then drills horizontally into that formation, and subsequently uses hydraulic fracturing to extract hydrocarbons. Any drilling method that is not traditional or conventional drilling.

Well Pad. The area that has been cleared for a drilling rig to work on the well site.

Well Site. That portion of the surface of land used for the drilling, development, production, operation, abandonment, and plugging of an oil or gas well or co-located oil and gas wells, including, but not limited to, the area of land in which all equipment, excavations, and facilities used for oil and gas operations are located. A well site shall include, at a minimum, the area of surface disturbance associated with such uses but excluding the area of surface disturbance necessitated for the construction and use of roads.

ARTICLE IV. PROVISIONS APPLICABLE TO ALL TYPES OF PERMITS COVERED BY THIS ORDINANCE

A. Referrals.

No later than seven days after an application is received, the Director, Planning and Zoning Commission, or the County Commission shall refer an application to other government agencies, cities, counties, or entities having a statutory or regulatory interest in the matter, or are otherwise affected by the application, including pueblos and tribes Pueblo Nations wholly or partly in Sandoval County and the Navajo

~~Nation~~, for review and comment. The application review process shall not be delayed pending review or commentary from a referral agency(ies). In the event that any such referred to entity fails to respond within sixty (60) days, it will be presumed that it has no objection to issuance of a permit. **The County shall take any comments submitted into account when determining whether an application shall be approved, and shall respond to all requests for tribal consultation.**

B. Consultants.

If at any time during the review process for a permit hereunder, **including during tribal consultation**, the Director, Planning and Zoning Commission, the County Commission, the Public Works Department Director or the Fire Chief determines that the application for a permit for oil or gas development may present a negative impact on sensitive habitats and resources, historic, cultural or archeological resources, ground or surface water quality, or the environment, or otherwise believe that they require outside experts to discharge their duties, they may, at the expense of the Applicant, hire experts to review an application or to evaluate specific technical issues related to those matters. **These experts shall ~~generally include tribal leaders, Tribal Historic Preservation Officers (THPO), delegated employees or members of pueblos or tribes Pueblo nations or the Navajo Nation~~ who have knowledge of cultural resources important to these Nations.** If they determine that the County should retain such experts, they shall notify the Applicant and New Mexico state procurement law shall apply for the retention of such experts. The Applicant shall make a company check, certified or bank check, wire transfer or letter of credit deposit in an amount to be determined by the requesting authority for each application submitted, to cover all of the County's expenses incurred to engage such consultants and experts as are considered necessary and appropriate.

Commented [PS3]: Doesn't the County have its own Procurement Policy?

C. Burden of Proof. **It shall not be the responsibility of the County to disprove any claims or assertions made by an Applicant or Operator under this Ordinance.** In every case where an application is made for any permit hereunder, the Applicant must demonstrate by clear and convincing evidence that any claim or assertion that it makes is true and that its activities, if permitted, will have no significant adverse effect on the health, safety and welfare of the citizens of the County; its unique and essential natural resources, habitat and wildlife; its fresh water aquifers; and/or its historic, archeological and Native American cultural sites.

Commented [PS4]: Is this necessary?

D. Monitoring.

Where the Director is charged in this Ordinance with the responsibility of monitoring compliance with development, conditional use and special use permits, the Director may require the Applicant, as a condition for granting a permit, to fund an escrow account in an amount to be determined by **and specified in an Oil and Gas**

Exploration and Development Fee Schedule to be adopted by the Sandoval County Commission the Director and, thereafter, use such escrow account to defray all county expenses for monitoring including, but not limited to, hiring such experts, consultants, companies or agencies as are deemed necessary to perform the monitoring function. The Applicant shall provide a company check, certified or bank check, wire transfer or letter of credit deposit to fund such escrow account.

E. Other Authorizations.

During the process for obtaining any type of permit available hereunder, the Applicant may proceed with other necessary regulatory approvals with the NMOCD and other applicable regulatory agencies concurrently with the filing of an application for a development permit, conditional use permit, or special use permit with the County.

F. Application Fees.

Each application for a permit under this Ordinance shall be accompanied by a nonrefundable application fee in an amount specified in an Oil and Gas Exploration and Development Fee Schedule to be adopted, and amended ~~from time to time~~periodically as deemed appropriate, by the County Commission. The application fee shall be paid by company check, certified or bank check, wire transfer or letter of credit.

ARTICLE V. OIL AND GAS EXPLORATORY ACTIVITIES WITHIN ALL OF SANDOVAL COUNTY

A. Exploratory Activities.

Exploratory activities include, but are not limited to, geophysical surveys, seismic surveys, core testing, gravity surveys, magnetic surveys, and any other exploratory activity that does not cause significant surface disturbance. Drilling activities, even if only for exploration, require one of the development, conditional or special use permit approvals set forth hereinafter.

B. Oil and Gas Exploration Within the County.

No exploratory activities related to oil and gas development shall be permitted within the County unless an application in compliance with this Ordinance has been filed, tribal consultation has taken place, and an exploratory permit for such activities has been approved by the Director.

C. Onsite Visit

- (1) The Director retains the right to request or participate in an onsite visit prior to the consideration of an exploratory permit application. Upon submission of the application, the Director, after consultation with pueblos and tribes, shall determine whether or not an onsite visit is necessary based on the site specific information presented in the application and gathered through tribal consultation.
- (2) Where an onsite visit shall be required, the Director shall provide the Applicant with a written request for such visit, and provide notice and opportunity for pueblos and tribes to attend the onsite visit. -

D. Application Process for Exploratory Permit.

Applicants seeking to explore for hydrocarbons in areas of the County under county jurisdiction must submit an application for an exploratory permit from the Planning and Zoning Department. The application shall include:

- (1) A schedule showing beginning and ending dates of exploratory activities, including a date for submitting a report to the County;
- (2) A list of surface exploration technologies to be used. If seismic technologies are to be used, Applicant shall provide details on how and where seismic studies will be conducted;
- (3) The name(s) and contact information for all companies that will conduct exploratory activities and proof that each company carries sufficient insurance to protect property and employees;
- (4) A map showing all area(s) to be explored. The map must show the location of any historical, archeological or cultural sites listed in the New Mexico Cultural Resources Information System (NMCRIS), and the Register of Cultural Properties of the New Mexico Historic Preservation Division within 5 miles; and,
- (5) Identification of steps that will be taken to protect historical, archeological or cultural sites listed in the Register of Cultural Properties of the New Mexico Historic Preservation Division from damage, and posting of a bond in an amount to be determined by the Director to restore any site damaged during the exploration.

Commented [P55]: How would the Director begin to assess a dollar figure to a cultural / religious site, human remains or object of cultural patrimony? How do you restore damage to something that has been there for thousands of years and is irreplaceable?

E. Review for Administrative Completeness of Application.

- (1) The County shall review submitted applications for exploratory permit completeness within ten (10) days of receipt.
- (2) If an application for a permit is deemed incomplete the Director shall provide a written determination to the Applicant explaining why the application is incomplete and the manner in which the application can be made complete.
- (3) Applicants have thirty (30) days to submit the additional required materials unless the Director agrees in writing to a longer time period.
- (4) If the required materials are not submitted within the given time period, the application shall be deemed withdrawn and the Applicant will not be entitled to a refund of any application fees,
- (5) Upon submission of the required submittals, the application shall be reviewed again for completeness according to the appropriate review schedule and the

Applicant shall have another opportunity, if necessary, to complete the application.

- (6) After an application is complete, the Director may nevertheless request additional information or studies if the Applicant seeks to make a substantial change in the proposed exploration or otherwise requests relief under Article XI.D.

F. Review Process and Criteria for Exploratory Permits.

- (1) Completed applications for exploratory permits shall be reviewed by the Director within sixty (60) days for compliance with the design and performance standards of this Ordinance, compatibility with existing land use, suitability of the land for the proposed exploration, and any relevant API Best Practices.
- (2) Any decision by the Director denying an application for an exploratory permit shall be in writing, and the Applicant shall be given the opportunity to cure or correct, if possible, those grounds given as the basis for denial. In the event that the Applicant cannot cure or correct the grounds of denial within the time frame established by the Director in the initial letter of denial, or obtain relief under Article XI.D., a final decision indicating denial shall be provided to the Applicant upon the expiration of that period.

(3) Completed exploratory applications will have a tribal consultation period of not less than 30 days after pueblos and tribes are notified.

G. Effect of Approval.

When an exploratory permit has been granted for oil or gas exploration activities and after all appeals have been exhausted, or the time for filing of appeals has expired, such exploratory permit, along with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for the commencement of the approved exploratory activity.

H. Exploratory Report on Completion of Exploration.

- (1) When exploratory activities have been completed, Applicant shall submit an Exploratory Report to the Director. The Report shall include the following information:
 - (a) A map showing areas explored. The map must show the location of any historical, archeological or cultural sites listed in the New Mexico Cultural Resources Information System (NMCRIS) and Register of Cultural Properties of the New Mexico Historic Preservation Division;
 - (b) A list of the exploratory technologies actually used. If seismic technologies were used, the map must show the location(s) where the seismic vibrator was located, and the areas that were affected by the seismic exploration; and,
 - (c) A list of any damage to property and/or to historical, archeological or cultural sites, and steps taken to remediate any damage.

Commented [PS6]: Who is going to remediate damage to historical, archaeological and cultural sites, and how? Mitigation of adverse effects is discussed in the National Historic Preservation Act, but if the County works with pueblos and tribes, there should, and can be, avoidance of these sites, thus there will be no damage – as remediation is not possible. When they are gone they are gone.

- (2) After the Report is reviewed, the Director may:
- (a) Approve the Report, in which case the Applicant shall then be eligible to apply for a development permit; or,
 - (b) Require additional information in which case the County shall not issue a development permit until the Director has approved Applicant's Exploratory Report.
- ~~(3)~~(4) The Applicant's Exploratory Report shall be maintained as a public record in the Planning and Zoning Department, and shall be provided to pueblos and tribes who are consulting on the project.

I. Appeal.

A decision by the Director to approve or deny an exploratory permit is subject to appeal in the same manner and in accordance with the procedures outlined in the CZO No. 10-11-18.7A, Section 22, governing appeals from a decision of the Zoning Officer.

J. Expiration of Exploratory Permits.

An exploratory permit issued pursuant to this Ordinance shall expire if exploratory activities have not commenced within one (1) year of the date on which the exploratory permit was issued. This one (1) year period shall be tolled pending the exhaustion of any administrative and judicial appeals.

ARTICLE VI. DISTRICT A (SAN JUAN BASIN): CREATION OF DISTRICT AND GENERAL APPROVAL REQUIREMENTS

A. Findings.

The County Commission hereby finds, declares and determines as follows:

- (1) The County includes a portion of the San Juan Basin, which is part of the Colorado Plateau, a major separate and distinct geologic province of the United States. The San Juan Basin, itself, is a structurally simple depression that is not heavily faulted. Its maximum structural relief is about 10,000 feet and it contains more than 14,000 feet of layered sedimentary rocks. The San Juan Basin is Late Cretaceous in age (80 to 55 million years ago) and formed during the Laramide Orogeny (which produced the Rocky Mountains).
- (2) The San Juan Basin includes historic, archeological and Native American cultural sites that could be impacted adversely by oil and gas development

- ~~(2)~~(3) The San Juan Basin contains oil and natural gas reserves, which have been in development since the 1920s. There are currently more than 40,000 drilled wells in

the basin, including currently active and operating oil and gas wells (both conventional and unconventional) in Sandoval County.

(4) Oil and gas producers using fracking techniques generally treat the components of fracking as trade secrets. However, numerous chemicals have been identified as being used in the process. These include, but are not limited to, acids, petroleum distillates, chlorides, carbonates, sulfates and hydroxides. For each fracking job as much as 80 to 300 tons of chemicals may be used, and a single well may be fracked multiple times, with different chemicals used each time. Disclosure of the chemicals used in the fracking process is not required under the federal Safe Water Drinking Act (part of the Energy Policy Act of 2005) and other federal environmental regulation. Neither are those chemicals regulated by the State of New Mexico. A Yale Public School of Health study concluded that many of the chemicals used in fracking are linked to reproductive and developmental health problems in humans.

Commented [PS7]: From Section VIII. A 8 of this document

(3)(5) While a number of conventional oil and gas operations have produced some hazards to health (including surface spills and casing leaks, etc.), there has been no known contamination of drinking water aquifers by unconventional drilling operations. This low risk of aquifer contamination is due to the fact that there are thousands of feet of uniform, unfaulted geologic strata between the drinking water aquifers (near the surface) and the targeted Mancos Shale (at depth).

(4)(6) Although the San Juan Basin is comprised of approximately 36% Native American population, and 20% of the region lives below the poverty level, there exists a county, state and national interest in the San Juan Basin as a major energy-producing region, one that has the potential to benefit rural communities, the economy as a whole, and national security interests.

Commented [PS8]: On 10/18/18 the Commission heard from residents of this area who described no such benefit. Only foul air, crime, Meth, childhood illness and other disruptions to life, while the benefits go elsewhere

(5)(7) In that portion of the San Juan Basin that lies within the County, the County Commission deems there is a need to balance the regulation of oil and gas development in order to protect the health, safety and general welfare of the public, preserve the County's unique and invaluable historic, cultural, archeological and natural resources, and promote the responsible and economically feasible development of oil and gas resources which contribute to the economy of the County and its rural communities. In order to attain such balance, there is created by this Ordinance a District A (San Juan Basin) the boundaries of which are described on the Exhibit A attached hereto. Oil and gas development activities within District A, which include drilling or the construction of oil or gas facilities, shall after the pueblos and tribes are informed and provided with a tribal consultation period of not less than 30 days be subject to an administratively approved development permit process as set forth hereinafter, unless information is gathered during tribal consultation which indicates a conditional use permitting process is required.

B. Creation of District A (San Juan Basin).

There is hereby created District A (San Juan Basin) the boundaries of which are shown on Exhibit A attached hereto.

C. Area and Boundaries of District A (San Juan Basin).

The area of the County included within District A (San Juan Basin) overlay zone is fully described on the Exhibit A attached hereto which exhibit is incorporated by reference. The Official Zoning Map of the County is hereby amended to include and reflect the designation and boundary of the District A overlay zone. Where the District A boundary line intersects fee surface property, the entire fee surface property shall be considered to be within District A.

Commented [PS9]: Why?

D. Oil and Gas Development Within District A (San Juan Basin).

No oil or gas drilling shall be conducted, and no oil or gas facility shall be constructed, within District A unless an application in compliance with this Ordinance has been filed and a development permit for such activity has been approved by the Director, and tribal consultation has been conducted.

E. Onsite Visit.

- (1) The County retains the right to request or participate in an onsite visit prior to consideration of a development permit application. Where an onsite visit shall be required, the Director, after consultation with pueblos and tribes, shall provide the Applicant with a written request for an onsite visit. Pueblos and tribes shall be given timely notification, and the opportunity to attend the onsite visit.
- (2) Prior to the onsite visit for a development permit application, the Applicant shall flag all proposed access roads along the center line, and stake, with wooden staking, the proposed well site, two (2) two-hundred (200) foot directional reference stakes from the well site, the exterior dimensions of the proposed drill pad, the exterior dimensions of any oil or gas facilities, and the outer limits of the area proposed to be disturbed.

F. Review for Administrative Completeness of Application.

- (1) Applications for development permits must comply with the requirements of Article IX herein. The County shall review submitted applications for development permit completeness with ten (10) days of receipt.
- (2) If an application for a permit is deemed incomplete the County shall provide a written determination to the Applicant explaining why the application is incomplete and the manner in which the application can be made complete.
- (3) Applicants have thirty (30) days to submit the additional required materials unless the County agrees in writing to a longer time period.

- (4) If the required materials are not submitted within the given time period, the application shall be deemed withdrawn and the Applicant will not be entitled to a refund of any application fees,
- (5) Upon submission of the required submittals, the application shall be reviewed again for completeness according to the appropriate review schedule and the Applicant shall have another opportunity, if necessary, to complete the application.
- (6) After an application is complete, the County may nevertheless request additional information or studies if the Applicant seeks to make a substantial change in the proposed development that is the subject of a pending application or otherwise seeks relief under Article XI.D.

(7) Completed development applications will have a tribal consultation period of not less than 30 days after pueblos and tribes are notified.

G. Review Process and Criteria for Development Permits.

- (1) Completed applications for development permits shall be reviewed by the Director within sixty (60) days for compliance with the design and performance standards of this Ordinance, compatibility with existing land use, suitability of the land to contain the proposed development, incorporation of pueblo and tribal concerns, and the relevant API Best Practices.
- (2) Any decision by the Director denying an application for a development permit shall be in writing, and the Applicant shall be given the opportunity to cure or correct, if possible, those grounds given as the basis for denial. In the event that the Applicant cannot cure or correct the grounds of denial within the time frame established by the Director in the initial letter of denial or obtain relief under Article XI.D., a final decision indicating denial shall be provided to the Applicant upon the expiration of that period.

H. Public Notification.

Upon determining that a development permit application is complete, the Director shall immediately cause notification to be given to the pueblos and tribes, and shall cause to be displayed on the County website a notice that a completed development permit application is being processed, giving the name of the Applicant, and the location and description of the development. Interested parties shall be permitted within the sixty (60) day review period to provide the Director with comments on the application which comments the Director shall take into consideration in making a determination.

I. Authority.

- (1) The Director is granted the authority to approve a development permit in accordance with the requirements and standards of this Ordinance.
- ~~(2)~~ The Director is granted the authority to impose any additional conditions in the approval and granting of a development permit as are necessary to carry out the intent and purpose, and to implement the requirements and standards of this Ordinance, to protect the public health, safety and general welfare, and to ensure that any such permit, when implemented, complies with the criteria for the granting of the permit.
- ~~(2)~~~~(3)~~ The Director is required to engage in tribal consultation with the pueblos and tribes regarding oil and gas activities.
- ~~(3)~~~~(4)~~ The Director is required to impose those conditions set forth in Article X herein in the approval and granting of a development permit which conditions are necessary to protect the public health, safety and general welfare.
- ~~(4)~~~~(5)~~ The Director is further granted the authority to monitor recipients of development permits to insure compliance with the conditions imposed in those permits.

J. Effect of Approvals.

When a development permit has been granted for within District A and all appeals have been exhausted or the time for appeals has expired, such development permit, along with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for the commencement of the approved development.

K. Appeal.

A decision by the Director to approve or deny a development permit is subject to appeal in the same manner and in accordance with the procedures outlined in the CZO No. 10-11-18.7A, Section 22, governing appeals from a decision of the Zoning Officer.

L. Expiration of Development Permits.

A development permit issued pursuant to this Ordinance shall expire if drilling and/or construction of the oil or gas facility is not commenced within two (2) years of the date on which the development permit was issued. This two (2) year period shall be tolled pending the exhaustion of any administrative and judicial appeals.

ARTICLE VII. **DISTRICT B (TRANSITION ZONE): CREATION OF DISTRICT AND GENERAL APPROVAL REQUIREMENTS**

A. Findings.

The Commission hereby finds, declares and determines as follows:

- (1) As much as one-third (1/3) of the County lies between the San Juan Basin in the northwest and the Middle Rio Grande Basin in the east (hereinafter the "Transition Zone").
- (2) The Transition Zone is part of the Colorado Plateau, a major separate and distinct geologic province of the United States. It is bounded on the east by the Middle Rio Grande Basin, which is part of the separate and distinct Basin and Range province.
- (3) The Transition Zone is very complex geologically and includes multifaceted and unique geologic features. It comprises part of the Jemez Mountains and other major volcanic-related features, such cinder cones, plugs, ash flows, hot springs, and travertine deposits, etc. It also includes layered stratigraphic sedimentary rocks, many of which are faulted due to tectonic uplift.
- (4) The Transition Zone is a frontier district with no active oil or gas wells and no history of any oil or gas production in the area.
- (5) The Transition Zone is an ecologically fragile area that includes farmlands, grassy mesas, volcanic features, the Jemez Mountains, the Jemez River and tributaries, and the Rio Puerco. The Rio Puerco 7340-square mile drainage accounts for one-fourth (1/4) of the Rio Grande watershed.
- (6) The sensitive habitats and resources found in the Transition Zone are threatened by all forms of development, including oil and gas exploration and production.
- (7) The Transition Zone also encompasses all or parts of as many as 12 Native American tribal reservations and pueblos over which the County has no jurisdiction. Nevertheless, the County must be sensitive to the impact that oil and gas development on properties which it does regulate might have on those Native American entities.
- ~~(8)~~ The Transition Zone also includes historic, archeological and Native American cultural sites that could be impacted adversely by oil and gas development.
- ~~(8)~~(9) The Transition Zone includes areas of high or moderate risk as described by New Mexico Tech and should be subject to baseline and ongoing monitoring where human health and the environment are subject to adverse impacts.
- ~~(9)~~(10) The County recognizes that oil and gas development could in the future expand out of the San Juan Basin (District A) and into the Transition Zone. It also recognizes that it is the right and in the economic interest of private surface property owners and

mineral rights owners within the Transition Zone to develop mineral rights, and that the development of these resources can provide County residents with jobs and economic opportunity. Taxes received from oil and gas development in the Transition Zone in the future could be a source of revenue for the County. Thus, the County intends that this Ordinance should foster sustainable economic opportunity for residents of the Transition Zone through oil and gas development while at the same time protecting the area's unique and essential natural resources, habitat and wildlife; the health, safety and welfare of residents; and, the historic, archeological and Native American cultural sites of the area from potential adverse impacts of oil and gas development.

~~(10)~~(11) In order to accomplish the foregoing objectives, there is created by this Ordinance a District B (Transition Zone) the boundaries of which are described on the Exhibit A attached hereto. The southeastern boundary of District B is the northwestern boundary of the Middle Rio Grande Basin, which is defined by many scientific papers and is the most common rendering used by the United States Geological Survey (USGS). Exploratory activities within District B which do not involve drilling shall be subject to an administrative exploratory permit approval process pursuant to Article V. All other oil and gas development in District B shall be subject to a quasi-judicial conditional use development permitting process under the regulations contained herein.

B. Creation of District B (Transition Zone).

There is hereby created District B (Transition Zone) the boundaries of which are shown on the Exhibit A attached hereto. The Official Zoning Map of the County is hereby amended to include and reflect the designation and boundary of the District B (Transition Zone) overlay zone.

C. Area and Boundaries of District B (Transition Zone).

The area of the County included within District B (Transition Zone) overlay zone is fully described in the Exhibit A attached hereto which exhibit is incorporated by reference. The Official Zoning Map of the County is hereby amended to include and reflect the designation and boundary of the District B overlay zone.

D. Oil and Gas Development Within District B (Transition Zone).

- (1) Oil or gas drilling development within District B shall be considered a conditional use as that term is defined in the CZO.
- (2) No oil or gas drilling, and no construction of an oil and gas facility, shall take place within District B unless an application in compliance with this Ordinance has been

filed, and a conditional use permit for such drilling or facility has been approved and granted in accordance with this Ordinance.

- (3) Any form of wastewater injection or waste disposal injection wells (especially those associated with the final stages of hydraulic fracturing) shall not be permitted.

E. Pre-Application Meeting.

No less than thirty (30) days prior to the submission of an application for a conditional use development permit within District B, the Applicant shall meet with the Director and such other County employees, consultants or representatives as he may designate, in order to discuss the anticipated application including, but not limited to, a discussion of the application process, the materials to be included in the application, the results of any prior exploratory activities of the Applicant, the coordination of an on-site visit, and the manner in which the Applicant intends to comply with the requirements for the submission and processing of the application.

F. Onsite Visit

- (1) All conditional use development permit applications require an onsite visit to be arranged and conducted by the Applicant prior to any consideration of the application. Pueblos and tribes shall be notified of any onsite visit, and given opportunity to attend.
- (2) Prior to the onsite visit, the Applicant shall flag all proposed access roads along the center line and stake, with wooden stakes, the proposed well site, two (2) two hundred (200) foot directional reference stakes from the well site, the exterior dimensions of the proposed drill pad, the exterior dimensions of any oil or gas facilities, and the outer limits of the area proposed to be disturbed.

G. Review for Administrative Completeness of Application.

- (1) Applications for conditional use development permits in District B must comply with the requirements of Article IX of this Ordinance. The County shall review submitted applications for conditional use development permits for completeness with ten (10) days of receipt.
- (2) If an application for a permit is deemed incomplete the County shall provide a written determination to the Applicant explaining why the application is incomplete and the manner in which the application can be made complete.
- (3) Applicants will have thirty (30) days within which to submit the additional required materials unless the County agrees in writing to a longer time period.
- (4) If the required materials are not submitted within the given time period, the application shall be deemed withdrawn and the Applicant will not be entitled to a refund of any application fees.

- (5) Upon submission of the required submittals, the application shall be re-reviewed for completeness according to the appropriate review schedule and the Applicant shall have another opportunity, if necessary, to complete the application.
- (6) After an application is complete, the County may nevertheless request additional information or studies if the Director determines that new or additional information is required in order to assess the application for compliance with this Ordinance or if there is a substantial change in the proposed development that is the subject of a pending application.
- (7) Completed development applications will have a tribal consultation period of not less than 30 days after pueblos and tribes are notified.

H. Review Process and Criteria for Conditional Use Development Permits in District B.

- (1) Completed applications for conditional use development permits in District B shall be reviewed by the Director within sixty (60) days for compliance with the design and performance standards of this Ordinance, compatibility with existing land use, suitability of the land for the proposed development, and the API Best Practices. The Director should consider the needs or preferences of the surface property owner and other interested parties, including Native American tribal or pueblo entities pueblos and tribes.
- (2) Upon completion of his review, the Director shall submit a written report, together with a recommendation, on whether the conditional use development permit application should be granted, to the County Planning and Zoning Commission.
- (3) Upon submission of the Director's report to the Planning and Zoning Commission, the matter shall then proceed, as required under Section 17 of the CZO through a review and decision by the Planning and Zoning Commission.
- (4) In addition to any applicable goals, policies and assessment criteria listed in the CZO for a conditional use permit, the following additional assessment criteria shall be used by the Planning and Zoning Commission in the consideration of an application for a conditional use development permit for oil and gas development:
 - (a) Those criteria listed in item (1), above, of this subsection;
 - (b) The potential impact of the proposed development on fresh water aquifers;
 - (c) The impact of the proposed development on the surface owner, if different from the mineral rights owner, and adjacent landowners;
 - (d) The impact of the proposed development on sensitive habitats and resources, historic, archeological and Native American cultural sites, and Native American tribal and pueblo entities within District B pueblos and tribes as developed through tribal consultation; and,
 - (e) Any Surface Use Agreement between the surface property owner and the Applicant.

- (f) Information gathered through required tribal consultation with pueblos and tribes.

I. Public Notification.

Upon determining that a conditional use development permit application is complete and completion of his report to the Planning and Zoning Commission, the Director shall give notification of a hearing before the Planning and Zoning Commission as set forth in Article XI.

J. Authority of the Planning and Zoning Commission.

- (1) The Planning and Zoning Commission has the authority to approve and grant a conditional use permit in accordance with the requirements and standards of this Ordinance.
- (2) The Planning and Zoning Commission has the authority to impose any conditions, in the approval and granting of any conditional use permit as necessary to carry out the intent and purpose, and to implement the requirements and standards, of this Ordinance, to protect the public health, safety and welfare, and to ensure that any conditional use permit, when implemented, complies with the criteria for the approval and granting of that permit. **In setting those conditions, the Planning and Zoning Commission shall consider any comments made by official representatives of Pueblo Nations, the Navajo Nation, or Navajo Chapters, pueblos and tribes submitted at hearings or in writing.**
- (3) The Planning and Zoning Commission is required to impose those conditions set forth in Article X herein in the approval and granting of a conditional use permit which conditions are necessary to protect the public health, safety and general welfare.
- (4) The Director ~~is granted the authority to shall~~ monitor recipients of conditional use permits to insure compliance with the conditions imposed in those permits.

K. Effect of Approvals.

When a conditional use permit has been granted for an oil and gas development within District B in accordance with this Ordinance, and all appeals have been exhausted or the time for appeals has expired, such conditional use permit, together with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for commencement of drilling, operation, production, maintenance, repair and testing, and all other usual and customary activities associated with oil and gas development.

L. Appeal.

The decision by the Planning and Zoning Commission to approve or deny a conditional use permit is subject to appeal in accordance with Section 22 of the CZO governing appeals from a decision of the Zoning Commission.

M. Expiration of Conditional Use Permit.

A conditional use permit issued pursuant to this Ordinance shall expire if drilling and/or construction of at least one of the oil or gas facilities approved under the conditional use permit has not commenced within two (2) years of the date on which the conditional use permit was approved by the Planning and Zoning Commission. This two (2) year period shall be tolled pending the exhaustion of any administrative and judicial appeals.

ARTICLE VIII. DISTRICT C (MIDDLE RIO GRANDE BASIN): CREATION OF DISTRICT AND GENERAL APPROVAL REQUIREMENTS

A. Findings.

The Commission hereby finds, declares and determines as follows:

- (1) According to the Statistical Atlas of Sandoval County, it currently has a population of approximately 133,500. As much as 90% of that population resides in the southeastern portion of the County which includes the communities of Rio Rancho, Corrales, Bernalillo, Algodones, Placitas and Edgewood as well as Native American pueblos.
- (2) That population center of the County lies within the Middle Rio Grande Basin (MRGB), also known as the Albuquerque Basin.
- (3) The United States Geological Survey (USGS) reports that the MRGB covers approximately 3060 square miles encompassing, in addition to Sandoval County, parts of Santa Fe, Bernalillo, Valencia, Tarrant and Cibola counties. It starts at Cochiti Dam in the north and continues south to San Acacia.
- (4) The general geology of the referenced area of the county is:
 - (a) The MRGB is a part of the Rio Grande Rift, extending from Colorado to Mexico. The Rio Grande Rift, and thus the MRGB, is a major tectonic geologic feature that is highly faulted, fractured and fissured.
 - (b) As the MRGB developed geologically, numerous fault zones formed, central portions collapsed, and adjacent mountain ranges uplifted. Eroded sediments from the mountains and the Rio Grande filled down-dropped basins with large amounts of sedimentary fill, which includes the Santa Fe Group aquifer system.
 - (c) The MRGB trends downward in elevation from north to south and, therefore, the groundwater flow of the Santa Fe Group aquifer system is also north to south.
[Sources for the above include publications of the USGS; a 2018 report entitled "The Oil and Natural Gas Potential of Sandoval County, New Mexico, and Its Relationship to Groundwater With a Discussion of Modern Oil Drilling Methods and Possibilities for Aquifer Contamination" created by the New Mexico Bureau of Geology and

- Mineral Resources, a division of New Mexico Tech (the "N.M. Tech Report"); and, other readily available scientific reports.
- (5) Based on the geology and hydrology of the MRGB, protection of the Santa Fe Group aquifer system is critical to the health, safety and general welfare of the population of eastern Sandoval County for the following reasons:
- (a) As much as 90% of the population of the County is dependent on the Santa Fe Group aquifer system for municipal, community and individual well drinking water.
 - (b) In 1995, the Office of the New Mexico State Engineer declared the MRGB a "critical basin", i.e., a groundwater basin faced with rapid economic and population growth for which there was less than adequate technical information about the available water supply.
 - (c) In 2001, the United States Geological Survey (USGS) completed a 6-year study of the hydrology of the MRGB. It concluded, among other things, that groundwater from the Santa Fe Group aquifer system is the sole source of water for municipal supply, domestic, commercial and industrial use within the basin. The groundwater status of the Santa Fe Group aquifer system is critical inasmuch as basin-wide municipal and private well groundwater extraction rates have been as much as three times the modern natural re-charge rate, which means that the MRGB is currently using more water than it is being supplied. Aquifer drawdown (exceeding 100 feet in places) has been documented in the vicinity of groundwater pumping centers throughout the MRGB, most prominently in the Rio Rancho and Albuquerque areas. Continued aquifer drawdown can have deleterious effects including land subsidence, intrusion of lower quality water into well production zones, and permanent irreparable damage to the aquifer itself and its ability to store water for future generations.
- (6) There are different methodologies for the extraction of hydrocarbons (oil and gas):
- (a) Traditionally, oil wells have been drilled vertically (conventional drilling) downward from the surface to reservoir rocks. The type of vertical well construction that is used prevents fluids from migrating upward in the space between the outside of the casing and the rocks surrounding the drill hole.
 - (b) In the 2000s, techniques have been developed to drill wells horizontally through shales and then extract hydrocarbons using hydraulic fracturing. Produced water from a hydraulically fractured well is then re-injected back in the ground into a different geologic formation.
 - (c) In Sandoval County, the Mancos shale formation is the main target for oil drilling. Adequate levels of oil production from the Mancos shale require unconventional drilling.
 - (d) The Jurassic Entrada Sandstone and the Upper Cretaceous Dakota Sandstone formations in the Sandoval County part of the MRGB are deeper than the Mancos shale formation, have the potential for oil exploration and could be developed by vertical (conventional) wells without hydraulic fracturing.

- [Source for the above includes the N.M. Tech Report].
- (7) Recent occurrences in areas of the nation where horizontal drilling and hydraulic fracturing is common demonstrate that this method of hydrocarbon extraction has the potential to contaminate drinking water aquifers and cause adverse human health impacts. The USGS has identified environmental issues associated with this unconventional drilling, including:
- (a) Water availability. Water usage in a fracked well can range from about 2 million gallons to 16 million gallons per well, depending on location, depth, and the formation being fracked;
 - (b) Surface chemical spills;
 - (c) Surface water quality degradation from waste fluid disposal;
 - (d) Ground water degradation from methane released in the fracking process, fracking fluids themselves, and existing elements in the fracked geologic zone such as arsenic and other heavy metals that could be released by fracking fluids;
 - (e) Conductive faults or fracture zones (such as are found in the MRGB) greatly reduce the time that it takes contaminants to reach groundwater aquifers above the fracked zone; and,
 - (f) In addition, any oil and gas activity has the potential for causing reduced air quality, noise, night sky pollution, landscape degradation, and disruption of wildlife corridors and habitats.
- (8) Oil and gas producers using fracking techniques generally treat the components of fracking as trade secrets. However, numerous chemicals have been identified as being used in the process. These include, but are not limited to, acids, petroleum distillates, chlorides, carbonates, sulfates and hydroxides. For each fracking job as much as 80 to 300 tons of chemicals may be used, and a single well may be fracked multiple times, with different chemicals used each time. Disclosure of the chemicals used in the fracking process is not required under the federal Safe Water Drinking Act (part of the Energy Policy Act of 2005) and other federal environmental regulation. Neither are those chemicals regulated by the State of New Mexico. A Yale Public School of Health study concluded that many of the chemicals used in fracking are linked to reproductive and developmental health problems in humans.
- (9) There is low potential for hydrocarbon extraction in the MRGB portion of Sandoval County. Even with the use of unconventional drilling, it is probably a limited resource due to a recent study finding that the Mancos shale is thermally immature and has not generated significant amounts of hydrocarbons in that part of the MRGB.
- [Source for the above includes the N.M. Tech Report].
- (10) As Sandoval County considers the “unconventional oil and gas resources” of the MRGB, it is important to assess the susceptibility of groundwater resources to contamination during oil and gas operations. Water quality susceptibilities include leakage of hydrocarbon and saline brines from the Mancos shale upward into the Santa Fe Group aquifer. Risk factors include:
- (a) Completion of wells in the same geologic units as the aquifer;

Commented [PS10]: Does all of the (good) information in 1-12 belong in the body of an Ordinance?

- (b) In some locations in the MRGB, the Mancos shale is in contact with the Santa Fe Group aquifer; and,
 - (c) Existing faults and fractures show signs of being permeable, which makes them susceptible flow paths to the Santa Fe Group aquifer. Such faults have in the past have acted as conduits for the upwelling of deep brines, implying that leakage of hydrocarbons up those faults is a possible contamination pathway.
[Source for the above includes the N.M. Tech Report].
- (11) If oil and gas drilling is permitted in the MRGB portion of the County, high impact wells such as municipal wells should be closely monitored; and the pressure of the oil and gas reservoir should be assessed relative to hydrostatic pressure because overpressured systems can leak more easily and for longer durations. [the N.M. Tech Report]. However, Sandoval County does not have the personnel, equipment or expertise to do such monitoring and implementation of a monitoring system would be prohibitively expensive.
- (12) Oil and gas operations in the MRGB portion of the County are high risk given the reliance of all of the communities in the area upon the Santa Fe Group aquifer system as their drinking water supply; and, because geologic faults in the region have acted as conduits for upwelling contaminants in the past. [Source for the above includes the N.M. Tech Report].
- (13) While the County recognizes that surface property and mineral rights owners within the MRGB may have an economic interest in the development of oil and gas mineral rights, such interests are subordinate to the County's duty to promote the health, safety and general welfare of its citizens, particularly in the protection of the Santa Fe Group aquifer system upon which approximately 90% of its population depends for its fresh water supply. Contamination of MRGB aquifer system through potential oil or gas exploration and development in the MRGB, of which there is a clear and present danger, could be irreparable, depriving the residents and businesses of the County of a life-sustaining natural resource. In addition, the County has the further duty to protect its citizens from the adverse consequences of seismic disturbances contributed to by the end stage of the fracking process (i.e., injection wells); and, to preserve the limited water supply of the Santa Fe Group aquifer system from exploitation by oil and gas interests using fracking techniques. Therefore, the County intends that this Ordinance should limit, but not necessarily prohibit, oil and gas development in the MRGB portion of the County.
- (14) In order to accomplish the foregoing there is created by this Ordinance a District C (Middle Rio Grande Basin) the boundaries of which are described on the Exhibit A attached hereto. All oil and gas development within District C shall require:
- (a) An Exploratory Permit as provided in Article V followed by an Exploratory Report to be submitted to the County. No further oil and gas exploration or development shall be permitted until an Exploratory Report has been completed.
 - (b) Once an Applicant has completed and filed an Exploratory Report, pursuant to the powers granted to the County by the State of New Mexico, including, but

not limited to §4-37-1 N.M.S.A. 1978, §3-18-1 N.M.S.A. 1978 (to provide for the safety, preserve the health, promote the prosperity and protect the property of inhabitants), §3-21-1 N.M.S.A. 1978 (power to zone), §3-53-2.1 N.M.S.A. 1978 (to preserve and protect water sources and provide an assured water supply for inhabitants), and §4-37-9.1 N.M.S.A. 1978 (enact ordinances to encourage water conservation), said Applicant shall be required to obtain a special use permit for further oil and gas exploration and development using conventional, vertical drilling techniques. No other form of oil and gas development shall be permitted in District C.

B. Creation of District C (Middle Rio Grande Basin).

There is hereby created District C (Middle Rio Grande Basin) the boundaries of which are shown on the Exhibit A attached hereto.

C. Area and Boundaries of District C (Middle Rio Grande Basin).

The area if the County included within District C (Middle Rio Grande Basin) overlay zone is fully described in the Exhibit A attached hereto which exhibit is incorporated by reference. The Official Zoning Map of the County is hereby amended to include and reflect the designations and boundary of the District C overlay zone. Where the District C boundary line intersects fee surface property, the entire fee surface property shall be considered to be within District C.

D. Oil and Gas Development Within District C (Middle Rio Grande Basin).

- (1) Oil or gas drilling within District C using conventional, vertical drilling techniques only shall be considered a special use. No other type of oil or gas development, including and especially unconventional drilling (horizontal drilling and hydraulic fracking and as defined in earlier section) shall be permitted. **Any form of wastewater injection or waste disposal injection wells (especially those associated with the final stages of hydraulic fracturing) shall not be permitted.**
- (2) No oil or gas drilling, and no construction of an oil and gas facility, shall take place within District C unless an application in compliance with this Ordinance has been filed, and a special use permit has been approved and granted in accordance with this Ordinance.

E. Procedures for a Special Use Permit in District C.

The procedures for a special use permit in District C shall include a Pre-Application Meeting (see Article VII.E); Onsite Visit (see Article VII.F); Review for Completeness of Application (see Article VII. G); Review Process and Criteria for Special Use Development Permits in District C (see Article VII. H); Public Notification (see Article VII. I) **and Tribal Consultation**; and are the same as the comparable referenced subsections of Article VII of this Ordinance. Said subsections of Article VII shall be applied and followed for a special use permit in

District C substituting, where applicable, “special use” for “conditional use”; and changing the role of the Planning and Zoning Commission from decision maker to recommending body.

F. Authority.

- (1) Applications for special use permits in District C shall be processed in a manner consistent with Section 19 of the CZO.
- (2) The Planning and Zoning Commission, after receiving the Director’s written report and recommendation, shall proceed to review the matter as set forth in Section 19 of the CZO and make a recommendation to the County Commission to approve or disapprove the application, including suggesting the imposition of conditions. **In setting those conditions, the Planning and Zoning Commission shall consider any comments made by official representatives of Pueblo Nations, the Navajo Nation, or Navajo Chapters, pueblos and tribes submitted at hearings or in writing.**
- (3) Upon receipt of a recommendation from the Planning and Zoning Commission on a special use permit application, the County Commission shall proceed to a final decision on the application pursuant to Section 19 of the CZO.
- (4) The County Commission has the authority to impose any conditions, in the approval and granting of any special use permit, as necessary, to carry out the intent and purpose, and to implement the requirements and standards of this Ordinance, to protect the public health, safety and welfare, and to ensure that any special use permit, when implemented, complies with the criteria for the approval and granting of that permit.
- (5) The County Commission is required to impose those conditions set forth in Article X herein in the approval and granting of a special use permit (except as otherwise provided in Article XI.D.) which conditions are necessary to protect the public health, safety and general welfare.
- (6) The Director is granted the authority to monitor recipients of special use permits to insure compliance with the conditions imposed in those permits.

G. Effect of Approvals.

When a special use permit has been granted for an oil and gas development within District C in accordance with this Ordinance, and all appeals have been exhausted or the time for appeals has expired, such special use permit, together with any

other required County permits and any conditions associated therewith, shall constitute sufficient authority for commencement of drilling, operation, production, maintenance, repair and testing, and all other usual and customary activities associated with oil and gas development.

H. Appeal.

The decision by the County Commission to approve or deny a special use permit is subject to appeal pursuant to Section 39-3-1.1 N.M.S.A (1978).

Commented [PS11]: There is no provision in the County Ordinance?

I. Expiration of Special Use Permit.

A special use permit issued pursuant to this Ordinance shall expire if drilling and/or construction of at least one of the oil or gas facilities approved under the special use permit has not commenced within two (2) years of the date on which the conditional use permit was approved by the Planning and Zoning Commission. This two (2) year period shall be tolled pending the exhaustion of any administrative and judicial appeals.

ARTICLE IX. APPLICATION CONTENTS AND SUBMITTALS FOR DEVELOPMENT (DISTRICT A), CONDITIONAL USE (DISTRICT B) AND SPECIAL USE (DISTRICT C) PERMITS

Applicants seeking to drill for hydrocarbons in Districts A, B and C in areas under County jurisdiction must submit an application for a permit (development in District A, conditional use in District B and special use in District C) to the Planning and Zoning Department. The application shall include:

A. General Information.

The Application shall contain:

- (1) The names and contact information for all companies that will conduct any operation at the drilling site. This information should be updated at least three days before a previously unlisted company begins operations at the site.
- (2) A schedule showing beginning and ending dates for each major phase of operations at each well site.
- (3) Reports and Authorizations (**For all Districts**):
 - (a) If the Applicant has conducted surface exploration activities, an approved Exploratory Report; and,
 - (b) An approved Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport) from the NMOCD.
- (4) **For District A.** If Applicant has not conducted exploration activities:
 - (a) If well location(s) are in or near a key conservation area, an analysis of how the development may impact wildlife and habitat in the area.
 - (b) A report describing rangeland quality at and near the site.

Commented [PS12]: How is this defined?

(c) A report describing existing historical, archaeological or cultural sites within 2500 feet of properties listed in the New Mexico Cultural Resources Information System (NMCRIS) and the New Mexico Historic Preservation Division Register of Cultural Properties

(d) Setting.

A map showing the location of:

- (1) Occupied dwellings, schools, churches, hospitals, clinics, assisted living homes or cemeteries, parks and recognized open space, , wildlife habitat, acequias within one mile of each well;
- (2) Water supply wells (fresh or brackish), rivers, streams fresh water storage reservoirs within one mile of the proposed well;
- (3) Any key conservation area as mapped and defined by the NM Department of Game and Fish and the U.S. Fish and Wildlife Service;
- (4) Any roads (public, private or tribal) within a one-mile radius of each well; and
- (5) The location of any historical, archeological or cultural sites listed in NMCRIS or the Register of Cultural Properties of the New Mexico Historic Preservation Division within one mile of each well.
- (6) The boundaries of any pueblo or tribe within ten miles of the proposed well site

(5) **For Districts B and C.** If Applicant has not conducted exploration activities:

- (a) A report describing the hydrology, geology and seismology of the well location(s), and of surrounding areas as defined by Director, identifying any threats to health, safety or general welfare posed by the location or extraction activities;
- (b) If well location(s) are in or near a key conservation area, an analysis of how the development may impact wildlife posed by the location or extraction activities;
- (c) A report describing rangeland quality at and near the site; and,
- (d) A report describing existing historical, archeological or cultural sites within 2500 feet of properties listed in the New Mexico Cultural Resources Information System (NMCRIS) and Register of Cultural Properties of the New Mexico Historic Preservation Division and recommending steps to ensure preservation of such sites.

Commented [PS13]: Is this the applicant making recommendations on historic and cultural preservation? Will they be required to hire a THPO, archaeologist or other consultant to make the recommendations?

B. Scope of Operations.

A description of the scope of operations contemplated by the Operator, including:

- (1) The legal property description and a map showing the location and size of the plot on which one or more well pads will be located;
- (2) The number of wells to be drilled on each well pad;
- (3) The estimated depth of each proposed well;
- (4) **District A and B.** If horizontal bores are to be used, the likely direction and proposed length of each bore, and proof that, if the Applicant does not own sub-surface rights, permission from the sub-surface rights holder to

drill the proposed horizontal bores and to extract hydrocarbons from those bores; and,

- (5) The nature of any necessary ancillary facilities.

C. Site Plan.

The proposed site plan for the well(s) with a map showing the location of:

- (1) Wells with GPS coordinates for each well;
- (2) Tanks, pits, compressors, dehydrators, gates pump stations, tank batteries, and other equipment facilities; and,
- (3) Pipelines and gathering lines, including the proposed location of and off-site routing of any gathering lines.

D. Easement.

A document granting the county a temporary twenty-foot access easement to the proposed wells and a 30 foot radius easement around each well. Within ten (10) days of the commencement of drilling, the Applicant shall update the temporary easement to "as built" and file it with the office of the Sandoval County Clerk, copy to the Planning and Zoning Department.

Commented [PS14]: What is the purpose of the temporary easement?

E. Setting.

A map showing the location of:

- (1) Occupied dwellings, schools, churches, hospitals, clinics, assisted living homes or cemeteries, parks and recognized open space, ~~archeological sites~~, wildlife habitat, acequias within one mile of each well;
- (2) Water supply wells (fresh or brackish), rivers, streams fresh water storage reservoirs within one mile of the proposed well;
- (3) Any key conservation area as mapped and defined by the NM Department of Game and Fish and the U.S. Fish and Wildlife Service;
- (4) Any roads (public, ~~or private~~ or tribal) within a one-mile radius of each well; and,
- (5) The location of any historical, archeological or cultural sites listed in NMCRIS or the Register of Cultural Properties of the New Mexico Historic Preservation Division within one mile of each well.
- (6) The boundaries of any Pueblo Nations, the Navajo nation, or any Navajo Chapters pueblo or tribe within ten miles of the proposed well site

F. Environmental Compliance History.

- (1) Any hydrocarbon extraction activity where Applicant has had a permit suspended or revoked or paid a fine for violations of any law or regulation in any location during the past five years;
- (2) Whether any of these violations are still outstanding; and,
- (3) If this list was submitted within the previous six (6) months as part of an application for an exploratory well permit, Applicant may choose to submit a report supplementing the prior report.

G. Financial Solvency.

Applicant must demonstrate financial solvency. If the Applicant is a subsidiary of another company, the information provided must be certified by an officer of the company. If this document was submitted within the previous six (6) months as part of an application for an exploratory well permit, Applicant may choose to submit a report supplementing the prior report.

H. Noise Control Plan.

Applicant must provide a Noise Control Plan identifying:

- (1) The type, frequency and maximum level of noise to be emitted during construction, maintenance and operations of the hydrocarbon well(s) and associated facilities, including during any kind of fracturing of the well bore; and,
 - (2) Any noise mitigation to be performed to ensure that continuous noise shall not exceed 55 decibels at the property line of the parcel containing a well pad and any adjacent occupied structure or wildlife corridor.
- (3) Baseline and ongoing noise monitoring can be requested by County residents or pueblos and tribes within 1000 feet of the proposed well

I. Road Plan.

Applicant shall submit a Road Plan that identifies:

- (1) Roads that will be used during any phase of hydrocarbon extraction operations;
- (2) Gross weight of equipment using these roads during each phase of operations;
- (3) Number of estimated trips per day during each phase of operations; and,
- (4) Estimated time that well(s) will be in operation.

J. Road Plan Approval.

- (1) Director shall send the Road Plan to the Public Works Department Director for review. The Public Works Department Director shall review the Road Plan using the health, safety and general welfare standards in the CZO. The Public Works Department Director may approve the Road Plan as submitted, request additional information, require changes before approval, or deny approval of the Road Plan.
- (2) The Public Works Director, as part of his review, may require the Applicant to secure Right-of-Way (ROW) Permits for County roads. The Applicant may also be required to secure Right-of-Way (ROW) Permits for municipal and/or state roads where needed. The Public Works Director 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 enter into a Road Improvement Agreement for use of County roads. The applicant shall be required to secure ROW permits across tribal land as needed to explore or develop any oil and gas sites.
- (3) The Public Works Department Director shall accept or deny the Road Plan within thirty (30) calendar days of receipt of the Plan from the Director. The Applicant or the Public Works Director may ask Director, in writing, for a reasonable amount of additional time. The Director shall grant a request for additional time unless there is a compelling reason for ruling that lack of approval is in effect a denial of the plan.
- (4) Applicant may appeal the Public Works Director's denial of a Road Plan to the Planning and Zoning Commission using the same procedure set forth in the CZO, Section 22, governing appeals from a decision of the Zoning Officer.

K. Emergency Services Plan.

Applicant shall submit an Emergency Service Plan that:

- (1) Contains a map showing the location of the well pad(s), the location of the nearest County emergency services and the location of the nearest other (municipal, tribal, private, etc.) emergency services;
- (2) Describes any emergency services that will be available on-site;
- (3) Describes the services available from the nearest source(s), any arrangements for assistance that are already in place, whether a reliable method of communication with these services is planned or in place, and

- the circumstances that will cause the Applicant to seek emergency assistance; and,
- (4) Contains a Materials Safety Data Sheet (MSDS).

L. Fracturing Plan (Applicable Only in Districts A and B).

- (1) If fracturing is to be performed on any well in any location in Districts A and B under County jurisdiction, Applicant shall provide the Fire Chief, at least 15 calendar days before fracturing is scheduled, a list of any materials, chemicals, fluids and/or gases to be used for each fracturing of each well. The list shall be provided in a sealed envelope which shall be securely stored but immediately accessible should an incident posing a threat to health, safety and the general welfare occur. If the OCD publishes a list of those the fracturing materials used, the envelope shall be returned to Applicant and the information published by OCD retained in electronic and immediately accessible form.
- (2) If Applicant, or any of Applicant's contractors, store any materials used for fracturing at any location in Sandoval County, Applicant or its contractor shall describe the procedure that will be used to the Fire Chief **and any pueblo or tribe within 50 miles of the site**, including:
- (a) The GPS coordinates of each location where fracturing materials are stored;
 - (b) A complete list of all materials to be stored at each location in a sealed envelope, to be securely held but immediately accessible should an incident occur;
 - (c) The location of the nearest fire station or fire-fighting equipment; and,
 - (d) Assurances that any fire, flood or other incident at a storage site posing a threat to health, safety or the general welfare will be immediately reported to the County fire department and any other emergency services; and, that Applicant or contractor will fully cooperate with emergency services efforts to contain the threat.

Commented [PS15]: Is this requirement legally defensible? I thought this was "confidential business information" not required to be released.

M. Emergency Services and Fracturing Plan Approval.

- (1) The Director shall send the Emergency Services and Fracturing Plans to the County Fire Chief for review. The Fire Chief shall review the plans using the health, safety and general welfare standards in the CZO. The Fire Chief may choose to obtain comments on the plans from municipalities and other sources of assistance.
- (2) The Fire Chief may approve the Emergency Services and/or Fracturing Plans as submitted, request additional information, require changes before approval, or deny approval of the Plan.
- (3) The Fire Chief may contract with one or more consultants to review the Emergency Services and/or Fracturing Plans and advise the Fire Chief and/or Director (See Article V).
- (4) The Fire Chief and/or the County Manager may require the Applicant to pay for any specialized training or equipment needed. The County

- Manager may require the Applicant to provide a cash bond security, a letter of credit, escrow deposit or other method acceptable to the County.
- (5) The Fire Chief shall accept or deny the Emergency Services and Fracturing Plans within thirty (30) calendar days of receipt of the plans from the Director. The Applicant or the Fire Chief may ask the Director, in writing, for a reasonable amount of additional time. The Director shall grant a request for additional time unless there is a compelling reason for ruling that lack of approval is in effect a denial of the Emergency Services Plan or Fracturing Plan.
- (6) Applicant may appeal the Fire Chief's denial of an Emergency Services Plan or Fracturing Plan to the Planning and Zoning Commission.

(7) The Emergency Services and Fracturing Plans will be provided to pueblos and tribes within 50 miles of the proposed well.

N. Proof of Bond.

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

O. SOPA Documentation.

The Applicant must 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; by a copy of the Surface Use Agreement; by a letter signed by the surface property owner stating the Operator has complied with SOPA; or by proof of bonding as required by SOPA.

P. Air Quality Plan.

Applicant shall submit an Air Quality Plan that meets the standards in NMSA 1978 § 74 Article 2, and has been approved by the Air Quality Bureau of the New Mexico Environment Department. The Plan shall list all regulated compounds projected to be released during oil and gas operations. It shall also describe the mitigating measures to be used to reduce air emissions should they exceed federal and state standards, and those standards of pueblos or tribes with TAS for Air Quality. The Director and pueblos or tribes within 20 miles of the proposed well will have the opportunity to request baseline and ongoing air quality monitoring.

Q. Hydrogen Sulfide Protection Contingency Plan.

Applicant shall provide a Hydrogen Sulfide Contingency Plan to the Director identifying municipalities, unincorporated areas, and tribes located within 1-mile radius of the well site and describing steps that will be taken should hydrogen sulfide be released at the well site. The Director shall determine if the Plan meets the standards in the American Petroleum Institute's RP-49 "Recommended Practices for Drilling and Well Servicing Operations Involving Wells Containing Hydrogen Sulfide."

R. Air Quality and Hydrogen Sulfide Contingency Plan Approval.

- (1) The Director may seek comments on the Air Quality and Hydrogen Sulfide Contingency Plans ("Air Quality Plans") from the Fire Chief, from other County departments, and/or from municipalities or the Environment Departments of pueblos and tribes. The Director may also contract with one or more consultants at Applicant's expense to review the Air Quality Plans and advise Director (See Article IV).
- (2) The Director may approve the Air Quality Plans as submitted, request additional information, require changes before approval, or deny approval of the plans.
- (3) The Director shall accept or deny the Air Quality Plans within thirty (30) calendar days of receipt of the plans. The Applicant may request, in writing, a reasonable amount of additional time. The Director shall grant a request for additional time unless there is a compelling reason for ruling that lack of approval is in effect a denial of the plans.
- (4) The Applicant may appeal the Director's denial of one or both of the Air Quality Plans to the Planning and Zoning Commission
- (5) Once the Air Quality Plans are approved, the Director shall ensure that the plans are made available to "need to know" County Departments and local municipalities. The Fire Chief shall assist municipalities that request help in preparing for an air quality emergency.

S. Water Usage and Sources Plan.

Applicant shall submit a plan showing:

- (1) The amounts of water to be used during drilling, fracturing, if any (in Districts A and B only), and other operations at the well(s) site(s), including water used in all processing that is performed before the hydrocarbons leave the well(s) site(s) area(s);
- (2) Frequency (times per year) of each operation requiring water;
- (3) Source of water for each operation;
- (4) Type of water (fresh, effluent or produced) that will be used for each operation;
- (5) Steps that will be taken to avoid pollution of surface and ground water; and,
- (6) Procedure that will be used if more than 1000 gallons of water of any kind is spilled at the well site, including when emergency services assistance will be requested.

(7) This plan shall be submitted to the Director and to pueblos and tribes within 50 miles of the well.

T. Water Usage and Sources Plan Approval.

- (1) The Director may seek comments on the Water Usage and Sources Plan from the NM Environment Department, from the State Engineer, from other County Departments and/or from municipalities, or pueblo or tribal Environment Departments. The Director may also contract at Applicant's expense with one or more consultants to review the

Water Usage and Sources Plan and advise the Director. (See Article IV).

- (2) The Director may approve the Water Usage and Sources Plan as submitted, request additional information, require changes before approval, or deny approval of the plans.
- (3) The Director shall, after consultation with pueblos and tribes, and in particular those pueblos and tribes with TAS under the Clean Water and Drinking Water Acts, accept or deny the Water Usage and Sources Plan within ~~thirty-sixty~~ (630) calendar days of receipt of the plans. The Applicant may request, in writing, for a reasonable amount of additional time. The Director shall grant a request for additional time unless there is a compelling reason that lack of approval is in effect a denial of the plan.
- (4) Applicant may appeal the Director's denial of its Water Usage and Sources Plan to the Planning and Zoning Commission using the procedure set forth in the CZO, Section 22, governing appeals from a decision of the Zoning Officer.

(5) The Director and pueblos and tribes with TAS under the Clean Water Act, or within 20 miles of the proposed well may request baseline and ongoing monitoring in areas where risk is believed to be high, including as demonstrated by the New Mexico Tech study presented to the County Commission.

U. Terrain Management and Drainage Plan.

Applicant must provide the Director with Terrain Management and Drainage Plans.

- (1) Terrain Management Plan. A schedule and description of terrain management activities to be conducted before and after each phase of development within the well site. The plan shall show the pre-drilling grades of the entire parcel; a soil analysis describing the soil characteristics of the parcel; and, kinds of vegetation found on the parcel before drilling. This information shall be specific enough to allow for the site to be returned to its pre-drilling condition once production has terminated. 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.
- (2) Drainage Plan. The Drainage Plan shall contain a certification that Applicant will 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 liquid containing any chemicals, hydrocarbons, or any drilling mud, sand, water or saltwater; or permit, by any means, any of such substances to escape from any property owned, leased or controlled by the Applicant.

V. Waste Disposal Plan.

Applicant must submit a waste disposal plan that identifies the type and amount of waste that will be generated on site and how that waste will be properly disposed of, including any radioactive wastes soils, or byproducts. Copies of agreements and permits from waste disposal facilities must be included in the application. The plan

must describe the roads that will be used to remove waste and produced water, and the estimated number of trips per week needed to remove waste and produced water. This part of the plan will be reviewed by the Public Works Department as part of its review of Road Plans. The plan must also contain a certification that:

- (1) Hydrocarbons field waste shall be promptly removed from the site and disposed of at an OCD certified site;
- (2) Closed-Loop Storage Systems for production water shall be used; and,
- (3) That produced water shall be disposed off-site at an NMOCD approved site.

On-site pits for oil and gas field waste are prohibited

W. Post Production Plan.

The Post Production Plan shall describe the methods to be used to restore the entire parcel to pre-drilling (of any kind) condition. The Post Production Plan shall include, but may not be limited to, a schedule and description of proposed restoration activities to be completed upon the final NMOCD approved plugging and abandonment of the hydrocarbon well, and a discussion of how those restoration activities will impact the anticipated future uses of the property.

ARTICLE X. GENERAL PROVISIONS FOR OIL AND GAS FACILITIES

A. General Requirement.

All operations conducted for an oil or gas facility or construction of structures associated with, or serving, an oil or gas facility, for which a drilling permit or a Form C-104 (Request for Allowable and Authorization to Transport) is required, shall strictly comply with the requirements of this Ordinance applicable to such oil or gas facility or facilities, including, but not limited to those set forth in this Article.

B. Setbacks.

- (1) No oil or gas facility shall be permitted within a floodplain as mapped and designated by the Federal Emergency Management Agency (FEMA).
- (2) Setbacks shall not apply to roads used solely for the purpose of accessing oil or gas facilities.
- (3) Setbacks shall be measured from the center of roads and from the seasonal high water mark of watercourses, or the outer boundary of the affected surface water feature.
- (4) No oil or gas facility shall be permitted within the following distances:
 - (a) Distance from lot line or property where a NMCID licensed, County addressed residential structure is present: ~~1500~~1000 feet.
 - (b) Distance from lot line or property where NMCID licensed, County addressed places of worship, and/or schools are present: 1500 feet.

- (c) Distance from lot line of property where NMCID licensed and County addressed electrical, natural gas, and related public water utility structures are present: 1 mile.
- (d) Distance from lot line of property where a NMCID licensed, County addressed non-residential occupied structure and/or use, excluding places of worship and/or schools, is present: 1000 feet.
- (e) Distance from existing water well permitted by the NM Office of the State Engineer: 1000 feet for well used by a single family residence; 2000 feet for wells used by five (5) or more residences.
- (f) Distance from a cultural, historic, or archaeological resource as ~~designated~~included in ~~by NMCID~~ by NMCRIS and the State Historic Preservation Register: 1500 feet. (This distance may be increased on written request by a pueblo or tribe ~~Native American tribe or pueblo~~ for the preservation of a cultural site).
- (g) Distance from a state or federal designated trail or open space, whether part or not part of a state or federal forest or preserve: 500 feet.
- (h) Distance from a public road or highway: 250 feet.

(i) Distance from the boundary line of a pueblo or tribe: 1500 feet.

C. Gas Flaring

Flaring of gases from an approved oil and gas facility shall be in accordance with 19.15.18.12 NMAC.

D. Road Improvements, Agreements, Standards.

- (1) In order for the County to be assured of the completion of required road improvements, the Operator shall agree to either one of the following:
 - (a) The Operator shall install and construct such road improvements, if any, as are required by this Ordinance and in the manner and to the design standards provided in the County Subdivision Regulations, Article 8, Design Regulations, or industry standards acceptable to the County. Prior to the construction of any improvements or the submission of any bond or other improvement guarantee, the Operator shall furnish the County with all plans necessary for the construction of such improvements. These plans shall be reviewed and approved by the County Public Works Department.
 - (b) The Operator shall provide a cash bond security, letter of credit, escrow deposit or other method acceptable to the County, in which case, the County shall install and construct such road improvements.

(2) 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 Operator's expense.
- (b) Heavy equipment shall not be used on roads with ruts measuring six (6) inches or more in depth.

- (c) Speed limits shall be set at a minimum level possible to prevent the creation of dust and erosion.
- (d) The amount of traffic generated by the proposed development shall not cause public roads to operate at a level more than what can be met by current capacity and structural conditions as determined by the Public Works Department Director.
- (e) In the event that traffic generated by the development increases the burden on or causes 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 Operator.

E. Storage Tanks.

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 or gas facility shall conform to the American Petroleum Institute (A.P.I.) standards for such tanks. All above ground storage tanks shall be equipped with a secondary containment system, as approved by NMOCD. All below grade tanks shall be constructed and maintained according to applicable NMOCD regulations.

F. Well Sites and Facilities.

- (1) 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.
- (2) 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.
- (3) 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.

G. Lighting.

All permanent lighting fixtures shall comply with the New Mexico Night Sky Protection Ordinance. Where a conflict exists between the requirements of the New Mexico Night Sky Protection Ordinance and lighting requirements of the Federal Occupational Health and Safety Administration (OSHA), the OSHA regulations shall apply.

H. Terrain Management Plan Standards.

- (1) Soils and terrain management:
 - (a) 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.

- (b) 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.
- (c) 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.
- (d) The Operator shall take sufficient measures to prevent dust arising from any area where the surface is disturbed. 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.

- (2) Drainage and Erosion:
 - (a) To the extent possible, the Operator shall preserve natural drainage existing on the site prior to the development.
 - (b) 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.
 - (c) Operators shall 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.
- (3) Restoration:
 - (a) The Operator shall begin interim and final restoration activities as soon as practical upon completion of each phase of development.
 - (b) The Operator shall reseed by drilling on the contour, or any another method approved by the Director.
 - (c) The Operator shall obtain vegetative cover that equals seventy percent (70%) 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.
 - (d) 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.

I. Financial Security.

- (1) Financial security shall be evaluated by the County every five (5) years from the date of approval of the application, and must include:
 - (a) A policy or policies of commercial general liability insurance, including contractual liability, covering bodily injuries and property damage, and environmental impacts, that names the Applicant as the insured and the County as an additional insured, issued by an insurance company approved by the State of New Mexico Superintendent of Insurance. The insurance policy must be in a form acceptable to the County and shall further provide a limit of liability of not less than Five Million Dollars (\$5,000,000) per occurrence. Said policy or policies shall provide that they may not be cancelled without written notice to the County of at least thirty (30) days prior to the effective date of such cancellation.
 - (b) In the event that the above described policy or policies does not include environmental impacts, the County shall require a pollution insurance policy or policies that provide standard pollution liability insurance with a coverage of not less than Ten Million Dollars (\$10,000,000) per occurrence, issued by an insurance company approved by the New Mexico Superintendent of Insurance, and that names the Applicant as insured and the

County as additional insured. Such insurance policy shall be maintained in full force and effect from the date of approval of any development, conditional use or special use permit and continuing in force until the well is plugged and abandoned in accordance with the applicable State statutes, NMOCD regulations, and the Terrain Management Plan as approved by the County Engineer. A separate policy is not required if pollution coverage is included as a part of the comprehensive general liability insurance policy required by this Section as long as the pollution coverage is not less than Ten Million Dollars (\$10,000,000). 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. The Applicant, if offering a plan of self-insurance, may provide a certificate of insurance as required by this Section issued pursuant to such plan provided that such plan has been approved by the Public Regulation Commission of the State of New Mexico and the County Manager.

J. Visual Impacts.

Oil or gas facilities shall be painted or otherwise made to be harmonious with the surrounding environment in uniform or camouflaging, non-contrasting, non-reflective color tones, based on the BLM Visual Resource Management system.

K. Fencing.

Perimeter fencing and a locked gate for an oil or gas facility or facilities shall be required surrounding the facility, and surrounding the perimeter of the lot within property lines. The design and construction of the required fencing shall be a chain link fence to a minimum height of six (6) feet as approved the Director. The Operator shall, at a minimum, comply with applicable NMOCD requirements for fencing to protect livestock and wildlife from oil and gas facilities.

L. Change of Operator.

- (1) If a permitted facility undergoes a change of Operator or a change of Operator name, 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.
- (2) The new Operator must also present proof of adequate insurance where applicable in this Ordinance.

ARTICLE XI. ADMINISTRATION

A. Notices of Decisions.

The County shall notify Applicants, in writing, of decisions regarding applications for oil and gas facilities by the Director, by the Planning and Zoning Commission

and by the County Commission. ~~The Director shall also notify any of the government agencies, Pueblos or the Navajo Nation~~ pueblos or tribes that submitted comments on the application, and shall post a notice of approval on the County website.

B. Nonconformities.

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

C. Notification Requirements.

All notifications hereunder shall be at the Applicant's expense.

(1) Notice of Public Hearing. 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 and on the County's website at least fifteen (15) days prior to the hearing. In addition, notice of the public hearing shall be mailed by the Applicant(s) by certified mail, return receipt requested, to:

- (a) The owner(s), as shown by the records of the County Assessor, of the land for which the approval is requested, if different from the Applicant(s);
- (b) The owners, as shown by the records of the County Assessor, of land within two (2) miles, 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.

(2) All government and ~~Native American nation/pueblo agencies~~ pueblos and tribes in Districts B and C within three (3) miles of subject site are to be notified by the County of any request for oil and gas facilities or any hearing thereon as regulated by this Ordinance. Municipalities within five (5) miles of the subject site, with a population of over five thousand (5,000), and state and federal agencies responsible for state and federal lands within the district are also to be notified by the County. The County shall communicate all comments from State reviewing agencies to notified area agencies regarding any request for oil and gas facilities as regulated by this Ordinance.

(3) Notice of Planning and Zoning Commission or County Commission meeting on Legislative Amendment. A meeting of the Planning and Zoning Commission or County Commission regarding a legislative amendment shall be noticed in writing to pueblos and tribes and by publication of the title and a general summary of the proposed amendment on the County's website and in a newspaper of general circulation in the County at least once a week for two consecutive weeks prior to the date of the meeting.

D. Relief.

Any Applicant desiring relief, waiver, or exemption from any aspect or requirement of application within this Ordinance may request such in writing, provided that the request is contained in an application for an oil and gas facility as established in this Ordinance. Such request shall be reviewed for approval by the Director (for District A applications), the Planning and Zoning Commission (for District B applications), or the County Commission (for District C applications), except that no relief, waiver or exemption shall be granted for any production method other than conventional, vertical drilling techniques in District C. Any property owner desiring relief, waiver, variance, or exemption from a setback or a fencing requirement within this Ordinance may request such in writing, provided that the request is contained in an application for an oil and gas facility as established in this Ordinance.

Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant and/or property owner. The Applicant and/or property owner shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant and/or property owner demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the County, its residents and other service providers.

E. Interpretation.

In the event that this Ordinance and the CZO are in conflict, the provisions of this Ordinance shall apply. Otherwise, this Ordinance and the CZO, where applicable, are to be enforced together.

F. Enforcement.

The procedures for enforcement of the provisions of this Ordinance are established in Section 18(7), Penalties, Sandoval County Comprehensive Zoning Ordinance.

ARTICLE XII. INDEMNIFICATION

Each permit issued under this Ordinance for oil and gas exploration or development shall include the following language:

“THE OPERATOR DOES HEREBY EXPRESSLY RELEASE AND DISCHARGE ALL CLAIMS, DEMANDS, ACTIONS, JUDGMENTS, AND EXECUTIONS WHICH IT EVER HAD, OR NOW HAS, OR MAY HAVE, OR ITS ASSIGNS MAY HAVE, OR CLAIM TO HAVE, AGAINST THE COUNTY OF SANDOVAL AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, SUCCESSORS, ASSIGNS, SPONSORS, VOLUNTEERS, OR EMPLOYEES, CREATED BY, OR ARISING OUT OF PERSONAL INJURIES, KNOWN OR UNKNOWN, AND INJURIES TO PROPERTY, REAL OR PERSONAL, OR IN ANY WAY INCIDENTAL TO OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK PERFORMED BY THE OPERATOR UNDER ANY OIL OR GAS PERMIT GRANTED UNDER, AND IN ACCORDANCE WITH THIS ORDINANCE.

THE OPERATOR SHALL FULLY DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS THE COUNTY OF SANDOVAL, NEW MEXICO, ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, EMPLOYEES, SUCCESSORS, ASSIGNS, SPONSORS, OR VOLUNTEERS FROM AND AGAINST EACH AND EVERY CLAIM, DEMAND, OR CAUSE OF ACTION AND ANY AND ALL LIABILITY, DAMAGES, OBLIGATIONS, JUDGMENTS, LOSSES, FINES, PENALTIES, COSTS, FEES, AND EXPENSES INCURRED IN DEFENSE OF THE COUNTY OF SANDOVAL, NEW MEXICO, ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES AND DEATH IN CONNECTION THEREWITH WHICH MAY BE MADE OR ASSERTED BY OPERATOR, ITS AGENTS, ASSIGNS, OR ANY THIRD PARTIES ON ACCOUNT OF, ARISING OUT OF, OR IN ANY WAY INCIDENTAL TO OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK PERFORMED BY THE OPERATOR UNDER ANY OIL OR GAS PERMIT GRANTED UNDER AND IN ACCORDANCE WITH THIS ORDINANCE.”

ARTICLE XIII. SEVERABILITY, EFFECTIVE DATE

- A. 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.

- B. Effective Date.
As necessary to protect the public health and safety, this Ordinance proposed for adoption shall take effect immediately upon approval by the Sandoval County Board of County Commissioners.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SANDOVAL COUNTY

EILEEN GARBAGNI, County Clerk

DAVID J. HEIL, Chair

F. KENNEITH EICHWALD, Vice Chair

APPROVED AS TO FORM:

DON G. CHAMPMAN, Member

ROBIN HAMMER, County Attorney

JAMES HOLDEN-RHODES, Member

JAY C. BLOCK, Member

Final Sandoval County O&G Ordinance Public Comments for the week of 10-28-2018 Elaine Cimino/CGCT

Elaine Cimino <ecimino10@gmail.com>

Sat 10/27/2018 3:35 PM

To: Public Comment <PublicComment@sandovalcountynm.gov>; James Holden-Rhodes <jholden-rhodes@sandovalcountynm.gov>; Dave Heil <dheil@sandovalcountynm.gov>; Kenneth Eichwald <keichwald@sandovalcountynm.gov>;

📎 3 attachments (5 MB)

Final_2018_Letter_Authorization_RG-88934_POD1_POD2_Signed_20180831.pdf; The Costs of Fracking vUS.pdf; 10-28-18 Combined File PC-OGOrdinance Ecimino CGCT .pdf;

Sandoval County Commissioners,

October 28, 2018

I am a resident of Rio Rancho in Sandoval County, NM; this is a Public Comment on the Oil and Gas Ordinance that I wish to appear in full on the record for the County Commission to consider. The issues in front of the County Commission are many regarding the writing and implementation of the Oil and Gas Ordinance. Here are the concerns we have:

The County can but does not appear to be willing to insert the needed protections where they have jurisdiction, on what is not preempted by State and Federal authority, into the ordinance.

WATER– While water quality issues are being addressed in the Science Citizens Working group ordinance; it only pertains to specific districts within the ordinance itself.

BRINE/BRACKISH WATER- The County has not commented regarding the use of and its impacts Brackish/Brine would have on the shallower drinking water aquifers when a breach occurs. The Shoemaker Report of 2008-2013 of the Deep Water Brine wells was submitted in the oil and gas public comments two months ago. This report shows brine well impacts on the Rio Grande and the shallower wells, especially the drinking water wells in Rio Rancho, according to the OSE authorization letter.

The County has not disclosed:

- Their fiscal interest to the public on its private partnership with IMH Financial Corp partners in the Rio West Desalination Project;
- This entity has mineral rights to frack and drill. What are the County's fiscal interests in those mineral rights?
- The County, agreed to a settlement agreement 12-30-2010, it will receive 4,000 acre-feet a year (AFY) to sell industrial water; What is the potential interest?
- On 12-14-2018 there is an expected \$6M, the part of the sum the county spent on water development and the Rio West Desalination Pilot Program,
- This is not including the costs of road creation, repair, and maintenance, which was to be provided by the developers.

- Why has the County not processed any of the Pilot Project fiscal information and agreement through the County Clerk's office or Treasures office? Why was the property taxes in Rio West assessed they way it was?

These are one of many of the items that the County has not disclosed, but the County is moving forward without addressing them.

1.) The IMH Financial Corp Partnership will not have to polish the brackish/brine water to sell industrial water as "raw brine" for fracking and drilling once a pump is installed.

a.) This brackish brine water could be sold to fracking operators for the 40,000 mineral leased parcels on public lands being approved by federal authorities, as well as, for other community uses that have not been defined. The County complicit in the impacting of the private, public, trust and tribal lands onslaught of health safety and environmental degradation, not only the private lands under its jurisdiction. Is the County aware of this?

2.) The County could hold IMH to the intent of project by setting a standard of polished effluent for water sold.

a.) MOU between the State and EPA regarding recycling and green-washed use of fresh, produced and Brackish/brine finite waters of New Mexico does not address quantity or quality issues and what a breach of and or blow would cause to groundwater in the area. OSE and NMED have a limited jurisdiction but the intent of the project lies within the Rio West Master Plan and County ordinance jurisdiction.

Our suggestion is that the Commission demand that their Planning and Zoning Department follow the intent of the approval of the Master Plan for desalination, not sell raw brine and that any changes of the product produced would need to be approved by the county commission regarding the desalination project.

ENVIRONMENTAL JUSTICE –CIVIL RIGHTS

According to the environmental justice advocate, Richard Moore, "We believe that every New Mexican regardless of race, ethnicity, or class has a right to be properly informed and engaged in the decisions regarding our land, our communities, and the future development from economic development to community development. The struggle for land rights continues," for Native American, traditional Hispanic and low -income communities. Districting also is seen as a segregation issue being played out within the Sandoval County ordinance. This is not only troubling; it is an indication of systemic bias within the county government. It would not be hard to lodge a federal complaint to address a decades-old system of discrimination where more affluent communities are protected and low-income minority communities are left out of the process and how local government and developers make decisions for them. Sandoval County is already under a corrective action order on Native American voting rights violations. The County has a track record of discrimination.

In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affects human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.

Any Federal and State funding may be jeopardized and the County would be held responsible for implementing an ordinance of this nature, according to the ordinance drafts being presented for discussion and final approval.

Title VI of the Civil Rights Act prohibits recipients of federal financial assistance (states, grantees, etc.) from discriminating based on race, color, or national origin in any program or activity.

Executive Order 12898, on the other hand, directs federal agencies to identify and address, as appropriate, disproportionately high adverse human health and environmental effects of their programs, policies, and activities on minority populations and low-income populations.

However, a Title VI civil rights complaint may raise environmental justice issues when challenging a recipient's activity. For instance, if a state agency receives funds from EPA to run a clean air program, that state recipient is legally prohibited from discriminating on the basis of race, color or national origin under Title VI when engaging in clean air enforcement activities.

The EPA, in complying with Executive Order 12898, can also ensure the programs it funds consider disproportionately high adverse human health and environmental effects on minority and low-income populations.

This includes the land use protections of health and safety that they are not addressing. The County is using "permissive use" restricting and disenfranchising environmentally impacted minority communities in the NW Section of Sandoval County. Follow-up comments by current County Commissioners are troubling in regarding the questioning of health and safety concerns voiced by Tri-Chapter tribal leaders. These comments indicate a deep bias against Indigenous and Hispanic communities in the Northwest Sector of the Sandoval County when their concerns are dismissed and they are disparaged publicly. (Rio Rancho Observer article 10-20-18)

We are proposing a collaborative community development structure.

Public Participation and Notification Meanwhile, the County is not allowing public comment, in a public hearing, prior to the final approval of the ordinance.

- Past actions by the Sandoval County Planning and Zoning on the Sandridge Application when the county accepted online public comments, that were put into an unscannable pdf. Several commissioners said they never read or considered those comments submitted online because of the sheer volume of email against the fracking attempt in the ABQ basin.
- The County has opened public comment online but this holds many questions as to citizens' comments being a legitimate record on the issue.
- According to complaints to the Commission there are complaints that are missing that were submitted. The Commission by not allowing Public Comments prior to a final approval of the ordinance disenfranchises community participation, with their actions that will permanently impact the lives of residents, and further disallows members of the public the opportunity for redress of a taking in district court, appears to be a violation of due process and civil rights.

CHEMICALS– many chemicals are used in fracking; some known, some not – most are toxic or can be radioactive at low levels. Radium found naturally in lower rock levels would be contained in rocks, even if brought to the surface. However, Radium turns in a radioactive gas called Radon, and that will be dispersed into the air. The Brine water will also contribute to a larger waste stream within the County that is

radioactive agents of uranium and full of lead, arsenic and other heavy metals and minerals and VOCs. This is another waste stream additional to the fracking operations that will impact the region.

The County has letters of interest from Lhoist who has indicated that they would like to make gypsum board from the “lime” sludge waste from the desalination process—This waste stream is dangerous and needs more oversight.

The County should take seriously the tests, survey results, and statements by Tri-Chapter leaders regarding the health and safety impacts experienced by many residents who live on trust lands and private lands. We have not seen any public statement on what the County intends to consider regarding the Tri-Chapter complaint despite the occasional visit to Chapter meetings. The County attempts have indicated the County's intentions only. There has not been a reciprocal collaboration, which should be a collaborative and mediated process.

BASELINE TESTING is needed prior to application approvals. The County should start this now.

SEISMIC ACTIVITY– Has not been sufficiently considered in the ABQ Middle Rio Grande Basin Rio Puerco and Watershed not in the Lower Colorado Watershed and San Juan Basin where there are several known fault lines near our water sources and in the geological formation of the Rio Grande Rift. Injection wells are often used to dispose of wastewater and these are known to cause seismic activity. There is also increasing evidence in Texas and Oklahoma that fracking is associated with significantly more earthquakes. A couple of the Ph.D. UNM Seismologists would be willing to come present but those efforts have been stopped by the Sandoval Commission and planning department during 2017 -2018. The NM Tech supplement report did not adequately address this issue.

AIR QUALITY AND CLIMATE CHANGE– Flaring is a common practice used in fracking in which huge amounts of hydrocarbons are released directly into the atmosphere. A 3- 12 miles radius near flaring pits has been identified as dangerous to human and animal health. In 2014, scientists working on a NASA study discovered a 2,500-square-mile cloud of methane hovering over the Four Corners region. The County seems to dismiss this as being of unknown origin, although recent studies clearly indicate that oil and gas development is the largest source of emissions contributing to this massive methane “hotspot”. Environmental health studies have found impacts of respiratory illnesses up to 10 miles from fracking wells, according to the peer-reviewed studies by Physicians for Social Responsibility previously submitted to the County). The County has not drawn up a Climate Change Ordinance to address climate emissions for this industry and other environmental and public health and safety issues, as we face an onslaught of fracking and drilling in the region.

The County appears to be ignoring many things in its rush to push a fictitious deadline to pass an inadequate ordinance.

SOIL RESOURCES– in this high desert climate, the soil can be fragile. Our concerns for the soil in light of heavy traffic from big rigs used in fracking; the traffic and erosion caused by roads and construction of drilling pads; toxic chemical spills and the hauling of water have caused in other counties in the nations that have similar populations to Rio Rancho and Sandoval County Urban, Semi-Urban and Rural Roads. Local County and City jurisdictions may spend up to \$40 million a year. (See attached the Cost of Fracking Study) The EPA and State authorities state that in some areas soils are fragile, but this is of “minor concern due to the remoteness of parcels”. In other words, out-of-sight is out-of-mind, if they can't see it, it doesn't matter. Surely, this is not the message the Commission wants to be sending.

WILDLIFE– The Endangerment of the particular species to the County of the specifics species endangers in these areas, and the disruption of migratory patterns, etc. Here is a list of species candidate, threatened and endangered:

- Yellow-billed Cuckoo -Coccyzus americanus -Bird Candidate
- Rio Grande cutthroat trout- Oncorhynchus clarki virginalis- Fish Candidate
- New Mexican meadow jumping mouse- Zapus hudsonius luteus -Mammal Candidate
- Southwestern willow flycatcher- Empidonax traillii extimus- Bird Endangered
- Rio Grande silvery minnow- Hybognathus amarus- Fish Endangered
- Black-footed ferret- Mustela nigripes- Mammal Endangered
- Mexican spotted owl- Strix occidentalis lucida- Bird Threatened
- Plus Migratory birds and animals

Wastewater pits, with indeterminate lining, are another means of disposing of fracking's toxic sludge. There are open pits used in fracking, and there are new toxic evaporation ponds in the Rio Puerco waiting for a discharge permit from NMED, which should be out soon for public comment.

- 1.) What are the provisions to keep birds and animals from drinking, or landing in, the open pit storage water in the ordinance?
- 2.) What is the ordinance insertion that gives assurance that each parcel application has been inspected for threatened and Endangered Species?

DARK SKY-NOISE. The County has not inserted from the hours of previous comments given in the previous ordinance in 2017, the protection of the night sky and protection from noise in rural settings. The current suggestion from PZ Director is his opinion rather from scientific data. Therefore not allowing the correct insertion in the ordinance is a taking of property values of its citizens.

CULTURAL RESOURCES AND LANDSCAPES of Indigenous nations and Tribal Communities are not being appropriately addressed. After an eloquent public comment from Tribal leaders at the 10-18-18 regular session of the County Commission;

- 1.) The county commission ignored what was said and moved forward with an ordinance timeline without appropriate comment and consultation;
- 2.) When Pueblo leaders told the Commission that Nov. 1st was not possible a date for their attendance and further impute because of their ceremonial obligations, the Commission ignored this request and schedule a meeting on November 1st despite their requests.
- 3.) These inactions are an embarrassment to County residents because they have ignored conversations, emails, and comments and are moving forward with a bad ordinance.

Our suggestion is to enter into a formal tribal consultation and collaboration with tribal nations. Mediation on collaboration is needed because the County has shown its inability to address the process adequately and should take up the offer of Regis Pecos at the 10-18-18 meeting.

LOW SOCIOECONOMIC POTENTIAL FROM OIL AND GAS- The County Commission assumption if there is a "No Action Alternative" (no lease option) in the environs of impacted watersheds within the county. IN OTHER WORDS, IF THERE IS NOT ENOUGH OIL AND GAS TO BE OF ANY REAL COMMERCIAL VALUE, then why move forward without a socio-economic cost-benefit analysis. The NM Tech Supplement did not provide a sufficient analysis. Yet the County is barreling towards oil and gas exploration at grave risks of chemical and mechanical pollution without public comments, will be rubber stamping oil and gas production by the Planning and Zoning Director through permissive use, seriously exposing the County to legal actions.

The INFRASTRUCTURE required for oil and gas production has not been addressed nor has its impacts on the environment including pipelines, compressor stations and gathering lines. Ordinance language from local communities who also face preemption was submitted to Commissioner Heil during the process and was ignored.

The Paseo Del Vulcan (ABQ by-pass) now becomes heavy industrial roadway being paid for by the taxpayers, instead of the heavy industry being slated and seated in the regional area. The County is paving the way for crony developers to buy up frontage road along the route. This includes past action of the City of Rio Rancho annexing ranches in the area to bring the by-pass into the middle of the City. This appears to be agreements made with developers, ranchers and oil and gas industry in backroom deals, putting more tax burdens on property owners.

There have been transparency violations filed on how the bonds were approved without proper public notification. Many existing roads in Rio Rancho and the County have been ignored for many years when the bond was pulled putting Rio Rancho and the County 10-20 years behind on maintenance, repair, and replacement. Property owners now see a major highway proposed while many existing roads lay in disrepair. This will get worse if fracking operations are allowed access without substantial impact fees. The County does not have a cost-benefit, or fiscal impact analysis to take into account the taxpayers' cost of environmental cleanup, roads, etc. as described in this document.

INADEQUATE Language in the following areas of the Ordinance:

Infrastructure concerns - Pipelines, Compressor stations

No regs on road closures

No regs on gathering lines

No emergency response plan -- We were trying to work with the County Commissioners Holden Rhodes, Heil and Eichwald back in January to form a LERC to write a plan, but the commissioners buried our request.

Relying on Industry to implement and enforce it has shown not to work.

No public health concerns in the ordinance

No road impact fees

No lighting regulations

Did not require better noise standards

Not enough impact fees On erosion control

No operational restrictions,

No requirements on produced water

No requirements on the type of Water used

No requirement for additional air monitoring of schools inside and outside air quality.

No Real-time air monitoring for oil and gas particulates including FLIR Cameras to report real-time emission violations on fracking rigs.

HEALTH CONCERNS—For the record several physicians that wished to give testimony have been stopped by the County Commission and the Planning Department. Physicians for Social Responsibility and other health professionals have not had the opportunity to testify under oath to the Commission and enter into the record the statistics of respiratory illnesses that occur in communities with populations similar to Rio Rancho. According to peer-reviewed studies, (already submitted previously to the County), respiratory illnesses from fracking operations healthcare costs would soar upwards to \$275,000 a day. Can the County afford these types of expenses considering the health programs they already fund?

OPEN MEETING ACT (OMA) VIOLATIONS- We have filed an OMA complaint on every meeting the County has held on the oil and gas ordinance and the bonds issues that included the road issues in the past 2-3 months. The OMA violations occurred because of insufficient listings of agendas bond items, rolling quorum,

lack of attachments and meetings minutes, notification of time, place and date, the disenfranchising of the public comments in the process by continually holding a hearing where people are not allowed access or to comment because they are holding the hearing in chambers too small to contain the interested public.

The County's *reliance on overflow seating* is a problem in the atrium is poor sound quality and it doesn't allow for public comment on any other agenda item or on the particular agenda item being heard. They do this on a continual basis despite offers by the Bernalillo mayor to facilitate crowds in a larger forum so those interested in speaking and attending the meeting in person can show their interest on an issue. It is unfair to the citizens of the County, does not allow them to redress, it chills public participation, creates apathy and disdain for the government on the issues that impact their lives and violates due process. Much has been corrected because of our filing of the OMA Complaints but despite the County efforts that we still have problems. Currently, there are several complaints in front of the OAG for determination.

IN CLOSING -

Our suggestion would be to discuss this ordinance with the firm that wrote the Santa Fe and Mora County ordinances, discuss passing a moratorium, request a moratorium to continue safely to develop this ordinance with both citizens working groups. Set up a reporting and development during the moratorium period, which allows the final product to be vetted. This would not be starting over, it would be taking the ordinance we have and delineating the issues with them and vetting what is legal ending with a quality protective ordinance.

Right now the commission needs to engage in Tribal Consultation and Collaboration and allow the process to be done correctly. The Sandoval tribes, in the APCG and Tri-chapter area, have supported moratoriums while is the ordinance process.

This ordinance is for the protection of the people and property in Sandoval County.

The Commission has not allowed public comment in a public hearing, to air this proposal to them as a possible solution to the challenges in front of them. We are in this together but that is not what the County's message has been to those in or not in the CWG.

Instead, we are watching another train wreck.

There is a full onslaught of over 40,000 parcels on public lands in the Rio Chama, Rio Grande, Chaco Canyon, and the Greater Chaco areas up for public mineral leases. It is in the Greater Chaco area where health impacts are being experienced. People there have grave safety concerns that need to be addressed. The county ordinance would help adjacent private landowners fend off environmental impacts being ignored by federal and state regulatory agencies.

The County is not in a position to rely on staff that has no previous experience with writing and implementing the oil and gas ordinance, to the extent of the issues presented in Sandoval County, including tribal consultation. Our suggestion is to contact, Kate Ferlic, Law Firm and pay professional legal planners fees to bring forward an ordinance similar to the Mora and Santa Fe ordinance to save taxpayers the cost of legal actions that are sure to follow if the county continues with its current process.

Sincerely,

Elaine Cimino

Ecimino10@gmail.com

Kate Ferlic 123 West San Francisco, Suite 200, Santa Fe, NM 87501 | 505.986.9641

Cost of Fracking Attachment

Nothing is more perishable than our relationship with the Earth."

"In a time where every living system is declining and the rate of decline is accelerating, we must figure out what it means to be a human on Earth and remain humane in the process."-Elaine Cimino

"Our lives begin to end the day we become silent about things that matter."

-Martin Luther King Jr.



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
District I

TOM BLAINE, P.E.
STATE ENGINEER

5550 San Antonio Drive NE
Albuquerque, NM 87109-4127
(505) 383-4000

August 31, 2018

ATTN: Mr. Jonathan Brohard
IMH Financial Corporation
7001 N. Scottsdale Rd. Ste. 2050
Scottsdale, AZ 85253

RE: Notice of Intention RG-88934 to Drill Wells to Appropriate Nonpotable Groundwater pursuant to NMSA Sections 72-12-25 through 72-12-28: Review of Notice of Intention and associated submittals.

Dear Mr. Brohard:

On June 16, 2006, *Notice of Intention to Appropriate Non-potable Groundwater at Greater Depths than 2,500 Feet Pursuant to NMSA § 72-12-26* (NOI) was filed with the New Mexico Office of the State Engineer (OSE) for a combined diversion amount of 16,000 acre-feet per annum from wells RG-88934 PODs 1-3 and PODs 25-35, for domestic, irrigation, municipal, industrial, commercial, and subdivision and related purposes of use with a specific use of community water supply for the Rio West Master Planned District. The NOI was filed in the names of: Recorp New Mexico Associates, LP; Butera Properties, LLC; Carinos Properties, LLC; Recorp New Mexico Associates II, LP; Recorp New Mexico Associates III, LP; & Tesoro Properties, LLC.

The place of use is described in the NOI as Section 8 (Part), Section 7 (Part), Section 17 (Part), Section 18 (all), Section 20 (Part), Section 19 (all), Section 29 (Part), Section 30 (all), Section 31 (Part) and Section 32 (Part) of Township 12 North, Range 1 East; Section 3 (all), Section 4 (Part), Section 2 (all), Section 9 (Part), Section 12 (Part), Section 11 (all), Section 10 (all), Section 14 (all), Section 13 (all), Section 15 (all), Section 16 (Part), Section 21 (Part), Section 22 (all), Section 24 (all), Section 23 (all), Section 28 (Part), Section 33 (Part), and Section 36 (all) of Township 12 North, Range 1 West PLSS, as shown in Map 1, attached.

On February 20, 2007, the State Engineer did approve *Application for Permit to Drill an Exploratory Well* for RG-88934 PODs 1-3, in the name of Aperion Companies as the parent company for all entities listed on the NOI.

Through subsequent communication with Aperion Companies, the OSE has received additional data and information, referred to as the "Aperion filing", and which fulfill, or partially fulfill, the OSE filing requirements pursuant to NMSA 1978, §§ 72-12-25 through 72-12-28.

The Aperion filing includes: Affidavits of Publication from the *Sandoval Sentinel* dated April 21, 28, and May 5, 2006, for NOI to drill fourteen wells, Well Nos. 1 through 14 (*i.e.*, RG-88934 PODs 1-3 and PODs 25-35), to appropriate 16,000 acre-feet per annum from all fourteen wells combined; approved Exploratory Permit and Artesian Well Plan of Operations for RG-88934-POD1 and RG-88934-POD2; Well Record and Log with detailed lithology log and other relevant data for RG-88934-POD1 and RG-88934-POD2; and laboratory analysis of water chemistry for samples collected on March 14, 2011, at RG-88934-POD1 wellhead and October 16, 2008, at RG-88934-POD2 wellhead.

Pursuant to NMSA 1978, § 72-12-25, only appropriations from an aquifer the top of which is 2,500 feet or more below the ground surface at any location at which a well is drilled, and which contains only nonpotable water (1,000 parts per million or greater dissolved solids), may proceed pursuant to NMSA 1978, §§ 72-12-25 through 72-12-28.

Aperion reports for RG-88934-POD1 a total well depth of 6,460 feet below ground surface, and top of the Agua Zarca Sandstone at 3,275 feet below ground surface. For RG-88934-POD2 a total well depth of 3,840 feet below ground surface, and top of San Andres Formation at 3,719 feet below ground surface are reported. Water from the aquifers developed in the Agua Zarca Sandstone vertically downward through the San Andres Formation, Glorieta Sandstone, and producing intervals of the Yeso Formation, Abo Formation, Madera Group, Sandia Formation, and any uppermost fractured Pre-Paleozoic basement rock sampled from well RG-88934-POD1 had an average total dissolved solids (TDS) content of 12,400 milligrams per liter. Water from the aquifer developed in the San Andres – Glorieta Formations sampled from well RG-88934-POD2 had an average TDS content of 12,000 milligrams per liter.

Filings submitted by Aperion for wells RG-88934-POD1 and RG-88934-POD2 have demonstrated that the top of the aquifer at the well locations is greater than 2,500 feet below land surface, and the dissolved solids content of the water in the aquifer is greater than 1,000 parts per million.

On September 26, 2017, the OSE received a letter from IMH Financial Corporation (IMH) via Maria O'Brien, Esq., stating that "IMH Financial Corporation has obtained ownership interests in the Notices of Intent to Appropriate" including the one identified by OSE File No. RG-88934.

Permits to repair RG-88934-POD1 and RG-88934-POD2 were issued on August 28, 2017 by the OSE. On July 24, 2018, the OSE received the final report from the project engineer, Mr. Gary Lee, P.E., stating that the repairs to both wells were successful and that both wells were equipped with bridge plugs, rendering pumping/flow impossible until the plugs are retrieved. The OSE received the Well Records & Logs from the well driller, Alpha Southwest, Inc., on July 30, 2018,

confirming the repair work described in the project engineer's final report.

Based upon the data submitted thus far and made available, the State Engineer accepts, at this time, the assertions of the Notices of Intention that wells RG-88934-POD1 and RG-88934-POD2 will appropriate water from aquifers in accordance with NMSA 1978, §§ 72-12-25 through 72-12-28.

The State Engineer requires that IMH submit meter diversions from wells RG-88934-POD1 and RG-88934-POD2 on a quarterly basis and water chemistry results annually to ensure the total dissolved solid concentration remains "non-potable" as defined in statute. In order to monitor changes in that chemistry and ensure those concentrations remain "non-potable" as defined by that same section, IMH will be required to annually sample and test water chemistry for each well and report these data to the District I Office of the State Engineer in Albuquerque upon removal of the bridge plugs and in accordance with the following conditions:

1. All wells shall be equipped with OSE approved totalizing meters installed before the first branch of the discharge line from the well and the installation shall be acceptable to the State Engineer. Records of the amount of water diverted from each well during the preceding three calendar months shall be submitted in writing to the OSE on or before the 10th day of January, April, July and October of each year. No water shall be pumped or allowed to flow from any well unless equipped with a functional totalizing meter designed to continuously and digitally record the pumping/flow rate.
2. IMH shall provide in writing the make, model, serial number, number of dials, initial meter reading, units of measure, multiplier, and the date of installation of each meter to the State Engineer.
3. Representative samples of water diverted shall be collected annually and analyzed by a certified laboratory for concentrations of major anions and cations, alkalinity, specific conductance, and total dissolved solids (TDS). Purge and sampling protocol in general shall follow industry standards and be acceptable to the State Engineer. Samples shall be taken as close to the wellhead as practicable, before the first branch of the discharge line and prior to any treatment or blending with other water sources. Field measurement of pH, temperature, and fluid conductivity shall be made at the time of sampling. Laboratory reports and results shall be submitted in writing to the OSE on an annual basis on or before the 10th day of January for the preceding calendar year. If the water chemistry reflects a significant change in quality of water from the initial water quality information provided for this authorization, the OSE may send notification that more frequent sampling must occur, up to quarterly analysis, from that point forward. If meter readings reflect no water was diverted during a calendar year, IMH shall inform the State Engineer in writing that no samples will be taken for that year.
4. Upon receipt of annual water chemistry measurements, the State Engineer may review the data for compliance with NMSA 1978, §§ 72-12-25 through 72-12-28. If IMH fails to meet the requirements, a permit to appropriate groundwater may be required from the State Engineer.

5. IMH shall allow the State Engineer and his representatives to access the wells and surrounding sites and make available all records for water chemistry monitoring and meter readings (NMSA § 72-12-27) upon request.
6. Results from future well tests, including pumping tests, well casing integrity, etc., shall be submitted to the District I Office of the State Engineer.
7. IMH shall install cathodic protection on the wells prior to removal/drilling out of the bridge plugs.
8. Prior to any diversion of groundwater as described in this letter, the well owner shall acquire valid, consumptive use water rights acceptable to the State Engineer in the amount of 0.73% of the maximum allowed diversion to offset depletions on the Jemez River.
9. Prior to any diversion of groundwater as described in this letter, the well owner shall acquire valid, pre-1907 consumptive use water rights acceptable to the State Engineer to offset depletions in the amount of 1.1% of the maximum allowed diversion on the mainstem Rio Grande.
10. These conditions shall be binding upon any successor-in-interest to IMH.
11. The State Engineer retains jurisdiction over this authorization.

The Office of the State Engineer concludes that requiring these offsets are reasonable and protective over the fully appropriated Jemez/ Rio Grande Stream systems. If you have any questions regarding the above stated requirements, please call myself or Ghassan Musharrafiieh at (505) 827-6120.

Sincerely,



John T. Romero, P.E.
Director, WRAP Program/Water Rights Division

cc: District I Office (Water Rights Division) – Mr. Wayne Canon, District Manager
Statewide Projects – Ms. Jerri Pohl
Hydrology Bureau – Dr. Ghassan Musharrafiieh, Hydrology Bureau Chief
Litigation and Adjudication Program (LAP) – Maureen Dolan, Esq., Acting ALU
Managing Attorney

Encl: Hydrology Bureau Technical Memorandum, dated August 25, 2018
Map 1- RG-88934 NOI Place of Use and Ownership