

**BOARD OF COUNTY COMMISSIONERS OF SANDOVAL  
COUNTY, NEW MEXICO, ORDINANCE NO. 11-29-18.7B**

**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 Aquifer Protection and Oil and Gas Exploration and Development 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., N.M.S.A §§ Sections 3-53-1 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 Jicarilla Apache Nation, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Laguna, the Pueblo of San Felipe, the Pueblo of Sandia, the Pueblo of San Ildefonso, the Pueblo of Santa Ana, the Pueblo of Santa Clara, the Pueblo of Santa Domingo, and the Pueblo of Zia; (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 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 standards; 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.

E. 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 e 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.;
15. The Energy Policy Act, 42 U.S.C.A. §6201 et seq.;
16. The Clean Water Act 33 U.S.C.A §1251 et. seq.;
17. The Occupational Safety and Health Act 1970 U.S.C.A. 651 et. seq.;
18. The New Mexico Night Sky Protection Act N.M.S.A. 1976 74-12-1 through 74-12-11;
19. The American Indian Religious Freedom Act 42 U.S.C. ch 21 sub ch. I § §1996 & 1996a;
20. The Native American Graves Protection and Repatriation Act 25 U.S.C. ch 32 § 3001 et seq.;
21. Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 - 1376); and
22. The Clean Air Act 42 U.S.C. § 7401.

F. 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; and,
2. Any planning activities that do not disturb the subject land or adjacent properties, 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 the 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 creates Section 14(H) of the Comprehensive Zoning Ordinance, governing Oil and Gas Activities in Sandoval County.

**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” may be included. Each purpose statement is intended as an official statement of legislative purpose or findings. The “purpose” 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 unless otherwise shown in this Ordinance.

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 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 the relevant NMOCD laws, rules, and regulations; (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; or (iii) by monitoring of the well as authorized in this Ordinance.

**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 a District A Administrative Permit, a District B conditional use by the Planning and Zoning Commission, or an appeal to 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.

**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.

**CZO.** The Sandoval County Comprehensive Zoning Ordinance.

**Design and Performance Standards.** The design and performance standards set forth in Article IX 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.

**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 Exploration Permit is required, including, but not limited to, geophysical surveys, seismic surveys, gravity surveys, magnetic surveys, and any other exploration activity that may cause surface disturbance. For purposes of this Ordinance, exploration activities do not include exploration drilling.

**Fire Chief.** The Chief of the Sandoval County Fire Department.

**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.

**Gas.** Any gas or 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."

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

**Hydrocarbon Production Field Waste.** Produced water, or a mixture of water, hydrocarbons, gasses, naturally occurring materials, and other chemicals associated with conventional and unconventional drilling operations, including large volumes of flowback associated with hydraulic fracturing fluid returns.

**Industry Standards.** The American Petroleum Institute (API), “Overview of Industry Guidance and Best Practices” or subsequent API documents setting oil and gas industry best practices.

**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.

**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.

**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 15(2), “Nuisances”.

**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.

**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 purpose of the onsite visit for the County 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 impacts associated with the proposed development, and to discuss possible conditions of approval and industry standards 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.

**Pueblo or Tribe.** A federally recognized pueblo or tribe wholly or partially within Sandoval County.

**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.

**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.

**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 all or a portion of the tank's sidewalls are 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.

**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.

**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, or 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 (7) work days after an application for any permit or use is received, the Director or the Planning and Zoning Commission shall refer said 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 pueblo or tribal governments, wholly or partially located within the county and experts from municipalities, and State and Federal agencies for review and comment. The Director

shall further notify the same entities and experts if Applicant makes any substantial changes in its application.

B. Comment Period.

The application review process shall not be delayed pending review or commentary from any of the entities or experts listed in A., above. If any such referred to entity or expert fails to respond within thirty (30) calendar days, it will be presumed that it has no objection to, or comment on, issuance of a permit.

C. Comments Received.

The County shall take any comments submitted by Pueblos or tribes, municipalities and other entities and experts listed in A., above, into account when determining whether an application shall be approved.

D. 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.

E. Monitoring.

Where the Director is charged in this Ordinance with the responsibility of monitoring compliance with development and conditional 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 the Director and, thereafter, use such escrow account to defray all county expenses for monitoring if monitoring is not already administered by the state and federal agencies responsible for the laws listed in ARTICLE I, E., limited to, hiring such experts, consultants, companies or agencies as are deemed necessary to perform the monitoring function the county may have to perform. The Applicant shall provide a company check, certified or bank check, wire transfer deposit to fund such escrow account.

F. 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 or conditional use permit with the County.

G. 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 as deemed appropriate, by the County Commission. The application fee shall be paid by company check, certified or bank check, or wire transfer.

**ARTICLE V. OIL AND GAS EXPLORATION ACTIVITIES WITHIN SANDOVAL COUNTY**

A. Exploration Activities.

Exploration activities include, but are not limited to, geophysical surveys, seismic surveys, core testing, gravity surveys, magnetic surveys, and any other exploration activity that does not cause significant surface disturbance. Drilling activities, even if only for exploration, require an administrative permit or a conditional use as set forth hereinafter.

B. Oil and Gas Exploration Within the County.

No exploration activities related to oil and gas development shall be permitted within the County unless an application in compliance with this Ordinance has been filed and an Exploration 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 Exploration Permit application. Upon submission of the application, the Director shall determine whether or not an onsite visit is necessary based on the site-specific information presented in the application.
2. Where an onsite visit shall be required, the Director shall provide the Applicant with a written request for such visit. The Applicant may refuse the request. A refusal may result in denial of an Exploration Permit, a District A Administrative Permit, or a conditional use.

D. Application Process for Exploration Permit.

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

1. A schedule showing beginning and ending dates of exploration 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 exploration 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 Register of Cultural Properties of the New Mexico Historic Preservation Division; and,
5. Identification of steps that will be taken to protect historical, archeological or cultural sites identified by consultants or 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.

E. Review for Administrative Completeness of Application.

1. The Planning and Zoning Department shall review submitted applications for Exploration Permit completeness within six (6) work 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) calendar 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 X.D.

F. Review Process and Criteria for Exploration Permits.

1. After an application is complete, the Director shall decide whether to approve or deny an Exploration Permit application no later than 60 calendar days after the application is determined to be complete..
2. The Director shall use the following standards when deciding to approve or deny an application for an Exploration Permit:
  - a. The health, safety and general welfare of residents of Sandoval County;
  - b. Compliance with the design and performance standards of this Ordinance;
  - c. Compatibility with existing land use;
  - d. Suitability of the land for the proposed exploration;
  - e. Compliance with industry standards;
  - f. Comments submitted by the entities or experts in Article IV.A..
3. Any decision by the Director denying an application for an Exploration 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 X.D., a final decision indicating denial shall be provided to the Applicant upon the expiration of that period.

#### G. Effect of Approval.

When an Exploration 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 Exploration Permit, along with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for the commencement of the approved exploration activity.

#### H. Exploration Report on Completion of Exploration.

1. When exploration activities have been completed, Applicant shall submit an Exploration 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 the Register of Cultural Properties of the New Mexico Historic Preservation Division;
  - b. A list of the exploration 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.
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 District A Administrative Permit; or,
  - b. Require additional information in which case the County shall not issue a District A Administrative Permit until the Director has approved Applicant's Exploration Report.
3. The Applicant's Exploration Report shall be maintained as a public record in the Planning and Zoning Department, and as such is public information and available to all interested parties.

#### I. Expiration of Exploration Permits.

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

**ARTICLE VI. DISTRICT A: CREATION OF DISTRICT AND GENERAL APPROVAL REQUIREMENTS**

A. Creation of District A.

There is hereby created District A, the boundaries of which are shown on Map attached as Exhibit A hereto.

B. Area and Boundaries of District A.

The area of the County included within District A 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.

C. Oil and Gas Development Within District A.

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 District A Administrative Permit for such activity has been approved by the Director.

D. Application Review.

The Application shall be reviewed by the following County employees:

- a. County Attorney,
- b. Director, Economic Development Department,
- c. Fire Chief,
- d. Director, Public Works Department, and
- e. Director, Planning and Zoning Department

These individuals shall meet as needed to review and advise the Director on their opinion as to whether to approve or deny of District A Administrative Permit applications.

E. Public Notification

1. No later than seven (7) work days after an application for a District A Administrative Permit is filed, the Director shall cause to be displayed on the County website a notice that a District A Administrative Permit application is being processed, giving the name of the Applicant, and the location and description of the development. Interested parties shall be permitted to provide the Director with comments on the application for forty (40) calendar days after the notice was posted. The Director shall take comments made before the end of the comment period into consideration in making a determination.

2. Within the same seven (7) day period, the Director shall make the notifications required by Article IV.A.

#### F. On-Site Visit.

1. The County retains the right to request or participate in an onsite visit prior to consideration of a District A Administrative Permit application. Where an onsite visit shall be required, the Director shall provide the Applicant with a written request for an onsite visit. The Applicant may refuse the request. A refusal may result in denial of a District A Administrative Permit.
2. Prior to the onsite visit for a District A Administrative 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.

#### G. Review for Application Completeness.

1. Applications for District A Administrative Permits must comply with the requirements of Article IX herein. The Planning and Zoning Department shall review submitted applications for District A Administrative Permit completeness with ten (10) work 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 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 Director 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 X.D.

#### H. Approval or Denial of District A Permit.

1. After the application is complete, the Director shall approve or deny an application no later than 30 calendar days after the application is determined to be complete.



2. The Director shall take the following into account when approving or denying an application for a District A Administrative Permit:
  - a. The health, safety and general welfare of residents of Sandoval County,
  - b. The Applicant's ability, as shown in documents submitted in response to the requirements in Article VIII, to comply with the standards in this Ordinance.
  - c. Comments made by the Application Review Group.
  - d. Comments submitted by the entities and experts listed in Article IV.A.
  - e. Comments obtained at any public hearing on the matter.
3. Any decision by the Director denying an application for a District A Administrative 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. If 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 X.D., a final decision indicating denial shall be provided to the Applicant upon the expiration of that period.

#### I. Authority.

1. The Director is granted the authority to approve a District A Administrative Permits 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 District A Administrative Permit as are necessary to:
  - a. 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
  - b. Ensure that any such permit, when implemented, complies with the criteria for the granting of the permit.
3. The Director is required to impose those conditions set forth in Article IX herein in the approval and granting of a District A Administrative Permit which conditions are necessary to protect the public health, safety and general welfare.
4. The Director is granted the authority to monitor recipients of District A Administrative Permits to insure compliance with the conditions imposed in those permits.

#### J. Effect of Approvals.

When a District A Administrative Permit has been granted and all appeals have been exhausted or the time for appeals has expired, such District A Administrative 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. Expiration of District A Administrative Permits.

A District A Administrative 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 permit was issued. This two (2) year period shall be tolled pending the exhaustion of any administrative and judicial appeals.

**ARTICLE VII. DISTRICT B: CREATION OF DISTRICT AND GENERAL APPROVAL REQUIREMENTS**

A. Creation of District B.

There is hereby created District B, the boundaries of which are shown on the Map attached as Exhibit A hereto.

B. Area and Boundaries of District B.

The area of the County included within District B 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 B overlay zone. Where the District B boundary line intersects fee surface property, the entire fee surface property shall be considered to be within District B.

C. Oil and Gas Development Within District B.

1. In District B, oil or gas drilling using conventional, vertical drilling techniques only shall be considered a conditional use. Unconventional drilling (horizontal drilling and hydraulic fracking) shall not be permitted.
2. No oil or gas drilling shall take place within District B unless an application in compliance with this Ordinance has been filed, and a conditional use permit has been approved and granted in accordance with this Ordinance.

D. Application Review.

The Application shall be reviewed by the following County employees:

- a. County Attorney,
- b. Director, Economic Development Department,
- c. Fire Chief,
- d. Director, Public Works Department, and
- e. Director, Planning and Zoning Department

These individuals shall meet as needed to review and advise the Director on their opinion as to whether to approve or deny of District B Conditional Use applications.

E. Onsite Visit.

1. All conditional use applications require an onsite visit to be arranged and conducted by the Applicant prior to any consideration of the application.

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.

F. Review for Administrative Completeness of Application.

1. Applications for a conditional use in District B must comply with the requirements of Article VIII of this Ordinance. The County shall review submitted applications for conditional use for completeness with ten (10) work 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) calendar 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. The Applicant may, at any point in the review process, request additional time. If additional time is requested, the count of days shall be suspended until the Applicant notifies the Planning and Zoning Department that no additional time is needed.
7. 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.

G. Director Review and Referral to the Planning and Zoning Commission.

1. Completed applications for conditional use in District B shall be reviewed by the Director within sixty (60) calendar days of the determination that the application is complete for compliance with:
  - a. The Guidelines in the Conditional Use Section of the CZO;
  - b. The design and performance standards in of this Ordinance; compatibility with existing land use, suitability of the land for the proposed development, and industry standards;
  - c. Comments made by the entities and experts in Article IV.A; and
  - d. Compliance with SOPA.

2. Upon completion of his review, the Director shall submit a written report, together with a recommendation on whether the conditional use application should be granted to the County Planning and Zoning Commission.

H. Approval or Denial of Application for a Conditional Use.

1. Upon submission of the Director's report to the Planning and Zoning Commission, the matter shall then proceed, as required under the Conditional Use Section of the CZO through a review and decision by the Planning and Zoning Commission.
2. In addition to any applicable goals, policies and assessment criteria listed in the CZO for a conditional use, the following additional assessment criteria may be used by the Planning and Zoning Commission in the consideration of an application for a conditional use for oil and gas development:
  - a. The general welfare of residents of Sandoval County.
  - b. Those criteria listed in Article VII.G(1), above, of this subsection;
  - c. The potential impact of the proposed development on fresh water aquifers;
  - d. The impact of the proposed development on sensitive habitats and resources, historic, archeological and Native American cultural sites, and Native American lands within District B;
  - e. The recommendation made in the Director's written report;
  - f. Comments submitted by entities and experts listed in Article IV.A; and/or
  - g. Comments submitted by the public in writing or at public hearings.

I. Authority.

1. The Planning and Zoning Commission has the authority to impose any conditions, in the approval and granting of any conditional use, as necessary, to carry out the intent and purpose, and to implement the requirements and standards of this Ordinance: to protect the health, safety and public welfare, and to ensure that any conditional use, when implemented, complies with the criteria for the approval and granting of that use.
2. The Director is granted the authority to monitor recipients of conditional uses to insure compliance with the conditions imposed by the Planning and Zoning Commission.

J. Effect of Approvals.

When a conditional use 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, 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.

K. Expiration of Conditional Use.

A conditional use issued pursuant to this Ordinance shall expire if drilling approved under the conditional use has not commenced within two (2) years of the date on which the conditional use 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. APPLICATION CONTENTS AND SUBMITTALS FOR A DISTRICT A ADMINISTRATIVE PERMIT AND CONDITIONAL USE (DISTRICT B)**

Applicants seeking to drill for hydrocarbons in Districts A and B in areas under County jurisdiction must apply for a District A Administrative Permit or conditional use (District B) 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. **For District A.** If Applicant has not conducted exploration activities:
  - a. If well location(s) are in or near a 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.
4. **For District B.** If Applicant has not conducted exploration activities the following shall be required:
  - a. A report describing existing historical, archeological or cultural sites within 2500 feet of properties listed in the New Mexico Cultural Resources Information System (NMCRIS) or Register of Cultural Properties of the New Mexico Historic Preservation Division and recommending steps to ensure preservation of such sites.

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.** 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 all 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. 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, and *acequias* within one (1) mile of each well;
2. Water supply wells (fresh or brackish), rivers, streams fresh water storage reservoirs within one (1) 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) within a one (1) mile radius of each well;
5. The location of any historical, archeological or cultural sites listed in the Register of Cultural Properties of the New Mexico Historic Preservation Division within one (1) mile of each well; and,
6. The boundaries of any lands owned by any pueblo or tribe within five (5) miles of the proposed well site.

#### E. Environmental Compliance History.

The application shall contain the following information:

1. List any and all hydrocarbon extraction activity(ies) 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, or indicate if not applicable;
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 exploration well permit, Applicant may choose to submit a report supplementing the prior report.

#### F. Financial Solvency.

1. 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 exploration well permit, Applicant may choose to submit a report supplementing the prior report.
2. The Applicant shall submit financial information as necessary for the County to determine the financial viability of the applying firm. Such information shall be directed to a non-governmental third-party firm selected by the County.
  3. Information said third party firm may request may include, but not be limited to:
    - a. Bank references
    - b. Insurance company references
    - c. Unaudited/Interim financial statements
    - d. Audited financial statements
    - e. Previous oil and gas transaction references
    - f. Proof of insurance and bonding capacity
    - g. Information on any partners of the proposed project
  4. The third-party firm shall sign a Non-Disclosure Agreement (NDA) to assure privacy of applicant's financial information and the third-party firm shall keep the information received confidential and not release it to the County or put it in the public domain, unless the applying firm approves such release in writing or the information is already available in the public domain.
  5. The third-party firm shall prepare a report to the County rendering an opinion of the financial viability of the Applicant and proposed project without releasing any of the Applicant's information not approved for disclosure or not otherwise available in the public domain.
  6. The County and the Applicant shall determine what non-disclosed information shall be disclosed to the public domain. It is understood that certain information obtained by the third-party may remain confidential:
    - a. to protect the source of the information; or
    - b. if the information is proprietary to the Applicant and such disclosure may present business complications to the applying firm; or
    - c. if the release of the information is prohibited by law or other contractual agreement.
  7. The expenses of the third-party firm shall be paid by the Applicant and shall be in the form of a written mutually agreed upon contract between the parties. The County shall be given an executed copy of the Agreement. The County shall not be a party to the contract.

#### G. Noise Control Plan.

Applicant shall estimate the noise levels from expected operations requiring notice, which shall not exceed sixty (60) decibels as measured from a distance of seven hundred fifty (750) feet from the well or associated operations, including noise from traffic, and describe the manner in which operator intends to limit the noise levels associated with

such operations below that threshold. Noise levels may exceed sixty (60) decibels, up to eighty (80) decibels, for a period of time not to exceed thirty (30) calendar days for each calendar year.

#### H. Noise Plan Approval.

1. The Director may seek comments on the Noise Plan from other County departments, and/or from municipalities and Pueblos or tribes. The Director may also contract with one or more consultants at Applicant's expense to review the Noise Plan and advise Director (See Article IV).
2. The Director may approve the Noise Plan as submitted, request additional information, require changes before approval, or deny approval of the Plan.
3. In examining the effect proposed noise levels from the well or facilities applied for, the Director may take into account:
  - a. The cumulative effect on noise level if there are other wells nearby.
  - b. The direction of prevailing winds, if there are occupied structures (including residences, schools, hospitals, daycare centers or other structures used by the public) within one (1) mile of the proposed well or facility.
  - c. The nature of the terrain and vegetation between the well and occupied structures, noting whether the terrain or vegetation diminishes, or augments, the well's effect on noise levels.
4. The Director shall accept or deny the Noise Plan 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.
5. The Applicant may appeal the Director's denial of the Noise Plan to the Planning and Zoning Commission
6. Once the Noise Plan is approved, the Director shall ensure that the plan is made available to County Departments and nearby municipalities, pueblos and/or tribes.

#### 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;
4. Estimated time that well(s) will be in operation.

In addition, the Road Plan shall contain an assurance that the Applicant will comply with the road and traffic standards in Article IX.D(2). and accepts the obligations in Article IX.D(1).

#### 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 or to enter into a Road Improvement Agreement for use of County roads. The Applicant shall pay the costs of carrying out changes required by these Permits and/or Agreements as described in Article IX.D.(1).
  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. Emergency Services Approval.

1. The Director shall send the Emergency Services 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, pueblos, and/or tribes, and other sources of assistance.
2. The Fire Chief may approve the Emergency Services 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 advise the Fire Chief and/or Director (See Article V). Costs of such consultants shall be paid by the Applicant.

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, escrow deposit or other method acceptable to the County.
5. The Fire Chief shall accept or deny the Emergency Services Plan 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 to the Planning and Zoning Commission.

M. Proof of Bond.

Applicant must provide certification that OCD's financial assurance requirements have been satisfied.

N. 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; or by a letter signed by the surface property owner stating the Operator has complied with SOPA.

O. 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.

P. Hydrogen Sulfide Protection Contingency Plan.

Applicant shall provide a Hydrogen Sulfide Contingency Plan to the Director identifying municipalities, unincorporated areas, and tribes located within one (1) mile radius of the well site and describing steps that will be taken should hydrogen sulfide be released at the well site.

Q. 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, from pueblos, tribes and/or from municipalities.
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. In examining the effect on air quality from the well or facilities applied for, the Director shall take into account:
  - a. The cumulative effect on air quality of approving the well, if there are other wells nearby.
  - b. The direction of prevailing winds, if there are occupied structures (including residences, schools, hospitals, daycare centers or other structures used by the public) within one (1) mile of the well site.
  - c. The nature of the terrain and vegetation between the well and occupied structures, noting whether the terrain or vegetation diminishes, or augments, the well's effect on air quality.
4. 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.
5. The Applicant may appeal the Director's denial of one or both of the Air Quality Plans to the Planning and Zoning Commission
6. Once the Air Quality Plans are approved, the Director shall ensure that the plans are made available to County Departments, pueblos, tribes, and local municipal governments. The Fire Chief shall assist municipalities that request help in preparing for an air quality emergency.

R. Water Usage and Sources Plan.

The applicant shall certify that it will comply with the requirements of OCD and NMED concerning the protection of water, will provide estimates on how much water is to be used, the type of water to be used, where the water is planned to be sourced, and the applicant shall take reasonable measures necessary to avoid the pollution of surface water, ground water, and the use of non-potable water wherever possible. The operator will conduct a pre-drill water sample quality test on any public drinking water well within five thousand two hundred eighty (5,280) feet of the drill site, and shall conduct quarterly water sample quality tests thereafter for so long as the well is not plugged and abandoned in accordance with NMOCD and NMED requirements. Such test results shall be made available within ten (10) working days following verification of the results by a laboratory licensed in the State of New Mexico for water quality analysis to the Planning and Zoning Division Director or designee.

P. Water Usage and Sources Plan Approval.

The applicant shall certify that it will comply with the requirements of OCD and NMED concerning the protection of water, will provide estimates on how much water is to be used, the type of water to be used, where the water is planned to be sourced, and the applicant shall take reasonable measures necessary to avoid the pollution of surface

water, ground water, and the use of non-potable water wherever possible. The operator will conduct a pre-drill water sample quality test on any public drinking water well within five thousand two hundred eighty (5,280) feet of the drill site, and shall conduct quarterly water sample quality tests thereafter for so long as the well is not plugged and abandoned in accordance with NMOCD and NMED requirements. Such test results shall be made available within ten (10) working days following verification of the results by a laboratory licensed in the State of New Mexico for water quality analysis to the Planning and Zoning Division Director or designee.

Q. 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 and pad. 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 within two (2) miles of 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.

R. Waste Disposal Plan.

Applicant shall submit a waste disposal plan that identifies the type and amount of waste that will be generated on site, including oil and gas field waste and hydrocarbon production field waste, including any radioactive waste soils or byproducts and explains how that waste will be properly disposed of. 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 the estimated number of trips per week needed to remove waste. 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. Oil and gas field waste and hydrocarbon production 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 in District B and within 5 miles of population centers of 500 or more in both Districts; and,
3. Hydrocarbon production field waste shall be disposed of in an OCD approved site in the same District in which the well was drilled.

**DISTRICT B:** On-site pits for oil and gas field waste in District B are prohibited

S. 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 in accordance with NMOCD rules and regulations. 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 IX. 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 feet.
  - b. Distance from lot line or property where NMCID licensed, County addressed place of worship, and/or a school are present: 1500 feet.
  - c. 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: 1500 feet.
  - d. 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. This setback does not apply to installation of public utilities and related facilities.

- e. Distance from existing water well permitted by the NM Office of the State Engineer: 1 Mile.
- 5. Distance from a cultural, historic, or archaeological resource as designated by State Historic Preservation Register: 2500 feet.
- 6. 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.
- 7. Distance from a public road or highway: 250 feet.

#### C. Gas Flaring.

Flaring of gases from an approved oil and gas facility shall be in accordance with OCD rules and regulations.

#### 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, 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.
- 3. 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.

4. 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 Standards.

Soils and Terrain Management:

1. Soils having severe limitations, or which are shown as unsuitable for the intended purposes shall not be used for those purposes unless the Operator has clearly demonstrated in the Terrain Management Plan how the soil limitations are to be overcome or mitigated.

2. All topsoil stripped from the surface and retained on the site shall be carefully stockpiled in a manner to prevent erosion and to facilitate its re-application to the disturbed areas during reclamation.
3. Any necessary grading or clearing should, to the extent possible, follow, preserve, match, or blend with the natural contours and vegetation of the land and should not increase the possibility for erosion.
4. The Operator shall take sufficient measures to prevent dust arising from any area where the surface is disturbed. 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.

#### I. Drainage and Erosion.

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

#### J. Restoration.

The Operator shall:

1. Begin interim and final restoration activities as soon as practical upon completion of each phase of development.
2. Reseed by drilling on the contour, or any another method approved by the Director.
3. 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.
4. Notify the County at least ten (10) days in advance of the date that final restoration activities are to begin and shall also notify the County as soon as final restoration activities have been completed.

#### K. Insurance Policies.

1. Financial security shall be evaluated by the County every five (5) years from the date of approval of the application, and must include:
2. 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.

3. 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 Exploration Permit, District A Administrative Permit, or conditional use 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 Superintendent of Insurance and the County Manager.

#### L. 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.

#### M. Fencing.

Unless provided for in an agreement with the applicable surface owner, all well site locations following drilling and completion operations shall have fencing or other exclusionary measures to prevent harm to the public and wildlife. Fencing will comply with all OCD and Occupational Safety and Health Administration (OSHA) requirements for the protection of the public, livestock, and wildlife.

#### N. 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 X. 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, municipalities, and 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 16, Nonconformities, Sandoval County CZO.

### C. Notification Requirements.

Notice shall be pursuant to the requirements set forth in the Comprehensive Zoning Ordinance, adding all pueblo or tribal governments in Sandoval County as to persons to be notified.

### D. Relief.

Any Applicant desiring relief or exemption from the requirements of Article VII within this ordinance in Rio Rancho Estates Units 1,2,3,4,5 and 6 may request such in writing. Such request shall allow the applicant to proceed in accordance with the requirements of Article VI within this ordinance provided that the Applicant ensure that:

1. The operator will conduct a pre-drill water sample quality test on any public drinking water well within five thousand two hundred eighty (5,280) feet of the drill site, and shall conduct quarterly water sample quality tests thereafter for so long as the well is not plugged and abandoned in accordance with NMOCD and NMED requirements. Such test results shall be made available within ten (10) working days following verification of the results by a laboratory licensed in the State of New Mexico for water quality analysis to the Planning and Zoning Division Director or designee.
2. The operator will have adequate insurance or bond to remediate any hydrocarbon contamination detected by the quarterly water quality tests.
3. The operator shall use of the most efficient water use technology in unconventional drilling or fracturing activities.
4. The operator shall use noise attenuation techniques so as to maintain noise levels at 60 dB level 24 hours a day at the property boundary.

Such request for relief shall be reviewed for approval by the Director after receipt of advice from the Directors noted in the Article VI D. Application Review.

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.

If 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, Non-Compliance, and Violations.

In the event of failure by the operator to comply with this Ordinance, the Planning and Zoning Division Director or designee shall issue a written notice to operator stating a time within forty-five (45) days to comply with the notice.

Violations. If any permittee knowingly or willfully violates any provision of this Ordinance and such violation directly causes material harm to the public health, safety of county residents, or the environment, the Planning and Zoning Division Director or designee shall issue a written citation to such person describing the violation and corrective actions required. When a violation of the Sandoval County Oil and Gas Ordinance results in a significant safety or environmental hazard, the owner or controller, will be sent a Cease and Desist Letter, giving the permittee thirty (30) days in which to set forth reasonable abatement measures. The permittee must immediately cease all nuisance behavior. Failing to do so may result in the permittee receiving a summons for violating the Sandoval County Oil and Gas Ordinance. The violation citation may be issued to the permittee of the land where the violation is alleged to exist, the occupier of the land if different from the owner or to both in the discretion of the Planning and Zoning Division Director or designee. When possible, the citation shall contain the address of the property on which the violation is alleged to exist, the legal description of the property or both. The citation shall be hand-delivered to the alleged permittee or violator if possible, or may be mailed to the alleged permittee or violator posted upon the property. Any of the previously listed forms of notice shall constitute sufficient service of notice under the law.

Any citation issued for violation of this Ordinance shall state the name of the alleged permittee or violator, the date the citation was issued, the type of violation, and the section of this Ordinance under which the violation is issued. The citation shall, if possible, list the action necessary to cure the alleged violation. The citation shall conspicuously and in bold face type state: "If not paid, this fine shall constitute a lawful

debt which will be collected pursuant to legal process and may be assessed as a lien upon the property upon which the violation exists. If the violation is remediated by the County or by a contractor hired by the County, the actual costs of remediation may be added to the fine.”

The fine for violating any provision of this ordinance shall be in compliance with State regulations and not exceed the maximum legally allowable. The fine shall be payable to the County. The fine may be waived in the sole discretion of the County Commission if the alleged permittee or violator commences and completes satisfactory actions to remediate the alleged violation.

## **ARTICLE XI. 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 XII. 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

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DAVID J. HEIL, Chair

APPROVED AS TO FORM:

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F. KENNEITH EICHWALD, Vice Chair

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DON G. CHAMPMAN, Member

\_\_\_\_\_  
ROBIN S. HAMMER, County Attorney

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JAMES HOLDEN-RHODES, Member

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JAY C. BLOCK, Member