

JUNE 2017 DRAFT

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

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

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

**ARTICLE 1
GENERAL**

1.1 ORDINANCE AMENDMENT.

The subject amendment to the Sandoval County Comprehensive Zoning Ordinance is entitled “Sandoval County Comprehensive Zoning Ordinance Revision, Ordinance No. 10-11-18.7A, Section 10D.13 (Oil and Gas Exploration and Production), and shall be placed in the text of the Sandoval County Comprehensive Zoning Ordinance as an Appendix.

1.2. AUTHORITY, APPLICABILITY.

This Ordinance is promulgated pursuant to the authority set forth in Art. X and XIII of the New Mexico Constitution (1912); N.M.S.A. 1978, § Section 4-37-1 (1975), N.M.S.A. 1978, §§ Sections 3-21-1 et seq., N.M.S.A. 1978, §§ Sections 3-19-1 et seq.; N.M.S.A. 1978, §§ Sections 3-18-1 et seq., and N.M.S.A. 1978, §§ 19-10-4.1, 4.2 and 4.3 (1985). This Ordinance constitutes an exercise of the County’s independent and separate but related police, zoning, planning and public nuisance powers for the health, safety and general welfare of the County and applies to all areas within the exterior boundaries of the County that lie outside of (1) the incorporated boundaries of a municipality; (2) any tribal trust lands owned by the Pueblo of Laguna, the Pueblo of Sandia, the Pueblo of Santa Ana, the Pueblo of San Felipe, the Pueblo of Cochiti, the Pueblo of Santa Domingo, the Pueblo of Zia, the Pueblo of Jemez, the Navajo Nation/Ojo Encino Chapter, and the Jicarilla Apache Nation; (3) lands owned by the state of New Mexico;

and (4) lands owned by the United States, including, but not limited to, lands that are managed by the Forest Service and the Bureau of Land Management. Additionally, this Ordinance does not apply to the construction and operation of Oil or Gas Facilities where the mineral right(s) associated with such Facilities are owned partially or in their entirety by the United States government, the State of New Mexico, or a Tribe or Pueblo.

1.3 SCOPE.

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

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

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

1.4 PURPOSE.

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

1.5 FINDINGS.

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

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

(A) Promotes the health, safety, and welfare of the County, its residents, and its environment by regulating adverse public nuisance impacts and effects resulting from the exploration, drilling, operation and transportation of oil and gas;

(B) Protects traditional communities and traditional lifestyles, as defined in the Sandoval County Comprehensive Plan, within the County;

(C) Prevents the occurrence of adverse public nuisance effects and impacts resulting from the abandonment of oil and gas activities within the County;

(D) Protects the rights of Surface Property Owners.

(E) Allows for the responsible and economically feasible development of oil and gas mineral resources;

(F) Protects the County's unique and irreplaceable historic, cultural and archaeological, water and other natural resources;

(G) Implements the goals and objectives of, and is otherwise in accordance with, the County's Comprehensive Plan; and

(H) Attains the foregoing objectives while also promoting the efficient and appropriate regulation of the oil and gas industry in the County.

1.6 STATE AND FEDERAL PREEMPTION.

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

(A) the Surface Owners Protection Act, N.M.S.A. 1978, §§ 70-12-1 et. seq.;

(B) the Oil and Gas Act, N.M.S.A. 1978, §§ 70-2-1 et seq.;

(C) the Water Quality Act, N.M.S.A. 1978, §§ 74-6-1 et seq.;

(D) the Solid Waste Act, N.M.S.A. 1978, §§ 74-9-1 et seq.;

(E) the Rangeland Protection Act, N.M.S.A. 1978, §§ 76-7B-1 et seq.;

(F) the Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§ 11001 et seq.;

(G) the New Mexico Public Health Act, N.M.S.A. 1978 §§ 24-1-1 et seq.;

(H) the Wildlife Conservation Act, N.M.S.A. 1978, §§ 17-2-37 et seq.;

(I) the Cultural Properties Act, N.M.S.A. 1978, §§ 18-6-1 et seq.;

(J) the National Historic Preservation Act, 16 U.S.C.A §§ 470 et seq.;

(K) the Uniform Trade Secret Act N.M.S.A. 1978, §§ 57-3A-1 et seq.;

(L) the Prehistoric and Historic Sites Act, N.M.S.A. 1978, §§18-8-1 et seq.;

(M) the Cultural Properties Protection Act, N.M.S.A. 1978, §§ 18-6A- 1 et seq.;

(N) the Archaeological Resources Protection Act, 16 U.S.C.A. § 470 aa et seq.; and

(O) the Energy Policy Act, 42 U.S.C.A. § 6201 et. seq.

ARTICLE 2
DEFINITIONS

2.1 RULES OF INTERPRETATION.

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

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

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

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

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

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

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

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

2.2 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 NMOCD, and from information gathered by the Director. The County may presume abandonment of an Oil or Gas well based upon: (i) plugging and abandonment of an Oil or Gas Well pursuant to NMOCD Rule 19.15.25.1 N.M.A.C. et. seq.; (ii) any other evidence that the Oil or Gas well has been abandoned or plugged and abandoned as established by filings of the Operator with the NMOCD. An Oil or Gas well which has been temporarily abandoned as approved by the NMOCD or the BLM is not considered permanently abandoned for purposes of 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 Administrative Review by the Director or a Conditional Use Permit for review by the Planning and Zoning Commission for oil and gas related activities.

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

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

County. Sandoval County, New Mexico.

Design and Performance Standards. The design and performance standards set forth in Article 5 of this Ordinance.

Director. The Director of the Sandoval County Planning and Zoning Division 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.

Exploration Activities. All County-approved exploration activities for which a C-101 and C-102 APD (Application for Permit to Drill) for exploration activities from the NMOCD is also required.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or the unusual and rapid accumulation of run-off of surface waters from any source.

Floodplain. Any land area susceptible to being inundated by water from any source. See *Flood or Flooding* and *100-year floodplain*.

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 this Ordinance it includes “natural gas” and/or “methane.”

Interim Reclamation. The activity of reclaiming surface disturbed within the Well Site during previous phases of development which will no longer be utilized for future phases of development.

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 United States.

Lessee. A person, corporation or other legal entity that has been granted an oil or gas

lease from the Owner of a mineral estate or who has received an assignment of all or a portion of a previously granted oil or gas lease. For the purposes of this Ordinance the Lessee is used interchangeably with mineral lease owner.

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.

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

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

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 and/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 and 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 station, transfer pump stations and valve boxes; any other structure, building or facility, temporary or permanent, mobile or stationary, associated with or used in connection 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 and/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 in this Ordinance.

Oil and/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.

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), trust, or any other entity recognized by law.

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

Police Power. Inherent, delegated, or authorized legislative power 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 County-approved production activities for which an approved Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport) from the NMOCD is also 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.

Reserve Pit. A waste pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.

Sound Mitigation Structure. A structure which surrounds the entirety of a Well Site for the purpose of minimizing sound impacts relating to oil and/or gas facilities to surrounding areas.

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 productions. 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.

Storm Water Pollution Protection Plan (SWPPP). A document provided by an Applicant that identifies all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from a construction site, and establishes measures to prevent such pollution on the construction site, as reviewed and approved by the County Engineer.

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 hold 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.

Surface Water Features. With regard to Storm Water Pollution Protection Plan (SWPPP), Terrain Management Plan, and Article 5, Section 5.3, Setbacks. Any geographic surface feature which contains water at least seasonally, including but not limited to, perennial, seasonal, or ephemeral watercourses, streams, rivers, springs, wetlands, ponds, lakes, playas, creeks, arroyos, acequias, irrigation ditches, stock ponds and any other surface water impoundments.

Tenant. As defined in the Surface Owners Protection Act, N.M.S.A. 1978, §§ 70-12-1 et. Seq; a person who occupies land or premises belonging to another in subordination to the owner's title and with the owner's assent, express or implied.

Terrain Management Plan. A document provided by an Applicant which addresses control of floods, drainage and erosion, measures necessary to adapt proposed development to existing soil characteristics and topography during land use activities, and measures necessary to restore a development site to resemble vegetation and topography of surrounding properties upon completion of land use activities, as reviewed and approved by the County Engineer.

Watercourse. With regard to Storm Water Pollution Protections Plan (SWPPP), Terrain Management Plan. A river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

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 3
ESTABLISHMENT OF ENERGY DEVELOPMENT AREAS.

3.1 ENERGY DEVELOPMENT AREAS.

(A) By virtue of higher concentrations of population of citizens in the southern area of Sandoval County, and by virtue of lower concentrations of population of citizens in the northern area of Sandoval County, it is hereby established that the Northwest Energy Development Area and the Southeast Development Area is created as a basis for regulations, review, and regulation enforcement for oil and gas activity. The Northwest and Southeast areas are mapped and shown in **FIGURE 1**.

3.2 BOUNDARIES OF ENERGY DEVELOPMENT AREAS.

(A) Where the Northwest Energy Development Area boundary line intersects fee surface property, the entire fee surface property shall be considered within the Northwest Energy Development Area.

(B) Where the Southeast Energy Development Area boundary line intersects fee surface property, the entire fee surface property shall be considered within the Southeast Energy Development Area.

3.3 FINDINGS – NORTHWEST ENERGY DEVELOPMENT AREA

The Board of County Commissioners hereby finds, declares and determines as follows:

(A) The County area identified and established as the Northwest Energy Development Area has experienced significant energy development over the last fifty (50) years.

(B) The population in Sandoval County in 2014 was estimated at approximately 137,608. Approximately ten percent (10%) of the population of Sandoval County lives within or in close proximity to this area. This population includes municipalities, County communities, and Native American Pueblo/Nation communities.

(C) The County communities of the Northwest Energy Development Area (Counselor, La Jara, Regina, Torreon, Cabezon, La Cueva, San Luis, Gillman, Ponderosa) are sparsely populated and located.

(D) The presence of oil and gas resources within this area are of significant amount and value and has the potential to benefit the economy of Sandoval County, the State of New Mexico, and national energy priorities and interests.

(E) The permitting process of NMOCD, and all other applicable permits and approvals as may be granted by the State of New Mexico and the U.S. Federal Government, has

served adequately to regulate the oil and gas industry while preserving the quality of life in County and Native American communities.

(F) Within the Northwest Energy Development Area, all other zoning and subdivision matters addressed in the Sandoval County Comprehensive Zoning Ordinance and the Sandoval County Subdivision Regulations are applicable as in other areas of the County.

3.4 FINDINGS – SOUTHEAST ENERGY DEVELOPMENT AREA

The Board of County Commissioners hereby finds, declares and determines as follows:

(A) The County area identified and established as the Southeast Energy Development Area has been researched for oil and gas development over the last fifty (50) years.

(B) The population in Sandoval County in 2014 was estimated at approximately 137,608. Approximately ninety percent (90%) of the population of Sandoval County lives within or in close proximity to this area. This population includes municipalities, County communities, and Native American Pueblo/Nation communities.

(C) The County communities of the Southeast Energy Development Area (Pena Blanca, Sile, Budaghers, Algodones, La Madera, Placitas, Rio Rancho Estates) are more densely populated and located.

(D) The presence of oil and gas resources within this area are of significant amount and value and has the potential to benefit the economy of Sandoval County, the State of New Mexico, and national energy priorities and interests.

(E) The permitting process of NMOCD, and all other applicable permits and approvals as may be granted by the State of New Mexico and the U.S. Federal Government, has served adequately to regulate the oil and gas industry while preserving the quality of life in County and Native American communities.

(F) Within the Southeast Energy Development Area, all other zoning and subdivision matters addressed in the Sandoval County Comprehensive Zoning Ordinance and the Sandoval County Subdivision Regulations are applicable as in other areas of the County.

3.5 APPLICATION PROCESS FOR NORTHWEST AND SOUTHEAST ENERGY DEVELOPMENT AREAS FOR EXPLORATION ONLY.

(A) The County hereby establishes an Administrative Temporary Use Permit review procedure for applications for oil and/or gas facilities in the Northwest and Southeast Energy Development Areas where exploration only is proposed, and for which an applicant provides required materials and information that adequately addresses exploration activities. Approval of a request for an Administrative Temporary Use Permit review procedure for oil and/or gas Exploration Only shall be granted by the Director upon satisfactory provision by the applicant of the requirements established in this Ordinance.

(B) The process of application for an Administrative Temporary Use Permit is established in Section 8 (4), Temporary Use Permit, Sandoval County Comprehensive Zoning Ordinance. For the purposes of this Ordinance, the effective time frame for an Administrative Temporary Use Permit approval shall not exceed one hundred twenty (120) days.

(C) The applicant shall provide additional Oil and Gas materials and information to address requirements as established in this Ordinance. The applicant shall submit the required Oil and Gas materials and information with the application for review by the Director. The Oil and Gas materials and information shall include, and may not be limited to, the following:

(1) All required approved permits for exploration only activities from NMOCD.

(2) Facility Plan: the applicant shall provide an Oil and Gas facility schedule with information addressing facility construction, facility operation start up, and facility operation parameters. The applicant shall provide site plans, elevations, and equipment details for the facility.

(3) Road Plan: The applicant shall submit an Oil and Gas road route plan that identifies adequate roads for oil and gas related truck traffic for exploration only. The County shall review and revise as needed. The County 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 County may require the applicant to provide a cash bond security, a letter of credit, escrow deposit or other method acceptable to the County, and/or Road Improvement Agreement for use of County roads.

(4) Fire/Police/Emergency Response Plan: the applicant shall provide documentation of all location of fire, police, and emergency response service

facilities which may be contacted for these services. The documentation shall be reviewed and revised where needed by the County Fire Department, and municipal and other agencies where needed. The applicant shall provide to the County a vicinity map with these facilities indicated, and a document narrative of information that includes contact information, address, directions, and distance to each facility. The applicant shall provide documents indicating communication with these facilities, and financial arrangements with these facilities and agencies for fire/police/emergency response support.

(5) Waste Disposal Plan: For the Southeast Energy Development Area only: Reserve pits are prohibited. Injection of produced water on-site must be approved by NMOCD.

(D) In the event the applicant requests review and approval for production, the applicant shall follow applicable application procedures for production as outlined in Article 3.6 for the Northwest Energy Development Area, and Article 3.7 for the Southeast Energy Development Area.

3.6 APPLICATION PROCESS FOR NORTHWEST ENERGY DEVELOPMENT AREA FOR EXPLORATION AND PRODUCTION.

(A) The County hereby establishes an Administrative Review procedure for applications for oil and/or gas facilities in the Northwest Energy Development Area where exploration and production are proposed, and for which an applicant provides required materials and information that adequately addresses exploration and production activities. Approval of a request for an Administrative Review procedure for oil and/or gas facilities shall be granted by the Director upon satisfactory provision by the applicant of the requirements established in this Ordinance.

(B) In order to establish an Oil and Gas Facility, an applicant must secure an approved NMOCD C-101 and C-102 APD (Application for Permit to Drill) for exploration activities. The applicant is required to submit the approved NMOCD APD with an application to the County.

(C) The applicant shall provide additional Oil and Gas materials and information to address requirements as established in this Ordinance. The applicant shall submit the required Oil and Gas materials and information with the application for review by the Director. The Oil and Gas materials and information shall include, and may not be limited to, the following:

(1) Facility Plan: the applicant shall provide an Oil and Gas facility schedule with information addressing facility construction, facility operation start up, and

facility operation parameters. The applicant shall provide site plans, elevations, and equipment details for the facility.

(2) Road Plan: The applicant shall submit an Oil and Gas road route plan that identifies adequate roads for oil and gas related truck traffic for exploration and production. The County shall review and revise as needed. The County 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 County may require the applicant to provide a cash bond security, a letter of credit, escrow deposit or other method acceptable to the County, and/or Road Improvement Agreement for use of County roads.

(3) Fire/Police/Emergency Response Plan: the applicant shall provide documentation of all location of fire, police, and emergency response service facilities which may be contacted for these services. The documentation shall be reviewed and revised where needed by the County Fire Department, and municipal and other agencies where needed. The applicant shall provide to the County a vicinity map with these facilities indicated, and a document narrative of information that includes contact information, address, directions, and distance to each facility. The applicant shall provide documents indicating communication with these facilities, and financial arrangements with these facilities and agencies for fire/police/emergency response support.

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

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

- (a) A schedule and description of interim terrain management activities to be conducted following the completion of each phase of development within the Well Site; and
- (b) A schedule and description of proposed final restoration activities to be completed upon the final NMOCD approved plugging and abandonment of the Oil or Gas Well and a discussion of how those restoration activities will impact the anticipated future uses of the property.

(c) All restoration activities described in the Terrain Management Plan shall include a Grading and Drainage Plan which shall include the following, where appropriate, but may not be limited to;

- (i) Configuration of the reshaped topography and restored drainage;
- (ii) Soil treatments;
- (iii) Reseeding materials and revegetation methods;
- (iv) Backfill or grading requirements; and
- (v) Soil stabilization techniques.

(6) The applicant is required to provide documentation of an application to the NMOCD for an Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport) from the NMOCD. The applicant is required to submit the approved NMOCD Oil and Gas Form C-104 to the County prior to commencement of production activities.

(7) Where applicable, the applicant is required to secure an approved Air Quality Permit for Oil and Gas production activities from the New Mexico Environment Department (NMED), Air Quality Division.

3.7 APPLICATION PROCESS FOR SOUTHEAST ENERGY DEVELOPMENT AREA FOR EXPLORATION AND PRODUCTION.

(A) The County hereby establishes a Conditional Use Permit review procedure with the Planning and Zoning Commission for applications for oil and/or gas facilities in the Southeast Energy Development Area where exploration and production are proposed, and for which an applicant provides required materials and information that adequately addresses exploration and production activities.

(B) The process of application for a Conditional Use Permit for review by the Planning and Zoning Commission is established in Section 8 (2), Conditional Use Permit, Sandoval County Comprehensive Zoning Ordinance.

(C) In order to establish an Oil and Gas Facility, an applicant must secure an approved NMOCD C-101 and C-102 APD (Application for Permit to Drill) for exploration activities. The applicant is required to submit the approved NMOCD APD with an application to the County.

(D) The applicant shall provide additional Oil and Gas materials and information to address requirements as established in this Ordinance. The applicant shall submit the required Oil and Gas materials and information with the application for review by the

Director. The Oil and Gas materials and information shall include, and may not be limited to, the following:

(1) Facility Plan: the applicant shall provide an Oil and Gas facility schedule with information addressing facility construction, facility operation start up, and facility operation parameters. The applicant shall provide site plans, elevations, and equipment details for the facility.

(2) Road Plan: The applicant shall submit an Oil and Gas road route plan that identifies adequate roads for oil and gas related truck traffic for exploration and production. The County shall review and revise as needed. The County 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 County may require the applicant to provide a cash bond security, a letter of credit, escrow deposit or other method acceptable to the County, and/or Road Improvement Agreement for use of County roads.

(3) Waste Disposal Plan: Reserve pits are prohibited. Injection of produced water on-site must be approved by NMOCD.

(4) Fire/Police/Emergency Response Plan: the applicant shall provide documentation of all location of fire, police, and emergency response service facilities which may be contacted for these services. The documentation shall be reviewed and revised where needed by the County Fire Department, and municipal and other agencies where needed. The applicant shall provide to the County a vicinity map with these facilities indicated, and a document narrative of information that includes contact information, address, directions, and distance to each facility. The applicant shall provide documents indicating communication with these facilities, and financial arrangements with these facilities and agencies for fire/police/emergency response support.

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

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

- (a) A schedule and description of interim terrain management activities to be conducted following the completion of each phase of development within the Well Site; and
- (b) A schedule and description of proposed final restoration activities to be completed upon the final NMOCD approved plugging and abandonment of the Oil or Gas Well and a discussion of how those restoration activities will impact the anticipated future uses of the property.
- (c) All restoration activities described in the Terrain Management Plan shall include a Grading and Drainage Plan which shall include the following, where appropriate, but may not be limited to;
 - (i) Configuration of the reshaped topography and restored drainage;
 - (ii) Soil treatments;
 - (iii) Reseeding materials and revegetation methods;
 - (iv) Backfill or grading requirements; and
 - (v) Soil stabilization techniques.

(7) The applicant is required to establish and maintain a setback of seven hundred-fifty (750) feet surrounding each Well Site that is free and clear of any structures that are not owned and/or leased by the applicant, lessee, and/or operator.

(8) The applicant is required to provide a Sound Mitigation Structure surrounding any and all Well Equipment proposed in the application that produces noise above fifty-five (55) decibels at any of the property boundaries of the Well Site.

(9) The applicant is required to provide documentation of an application to the NMOCD for an Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport) from the NMOCD. The applicant is required to submit the approved NMOCD Oil and Gas Form C-104 to the County prior to commencement of production activities.

(10) Where applicable, the applicant is required to secure an approved Air Quality Permit for Oil and Gas production activities from the New Mexico Environment Department (NMED), Air Quality Division.

ARTICLE 4
GENERAL PROVISIONS FOR OIL AND GAS FACILITIES

4.1 GENERAL REQUIREMENT.

(A) All operations conducted at 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.

4.2 MINIMUM REQUIREMENTS.

(A) The application approval requirements are hereby declared to be general minimum requirements as set forth in this Ordinance. The Director may approve additional requirements for Oil and Gas Exploration and Production where health, safety, and general welfare of citizens warrants.

4.3 DOCUMENTATION.

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

4.4 FLOODPLAIN.

(A) No Oil or Gas Facility shall be permitted within a floodplain as mapped and designated by the Federal Emergency Management Agency (FEMA).

4.5 GAS FLARING.

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

4.6 ROAD IMPROVEMENTS, AGREEMENTS, STANDARDS.

(A) 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:

- (1) 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 Sandoval 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 Division.

(2) The operator shall provide a cash bond security, letter of credit, escrow deposit or other method acceptable to the County as deemed acceptable to the County.

(B) Roads and Traffic Standards:

(1) Chains on heavy equipment shall not be permitted on paved County roads. All damage to County roads directly attributable to the installation, construction and operation of Oil or Gas Facilities shall be promptly repaired at the Applicant's expense.

(2) Heavy equipment shall not be used on roads with ruts measuring six (6) inches or more in depth.

(3) Speed limits shall be set at a minimum level possible to prevent the creation of dust and erosion.

(4) The amount of traffic generated by the proposed development shall not cause public roads to operate at a level less than what can be met by current capacity and structural conditions.

(5) In the event that traffic generated by the development increase the burden on or cause a deterioration of County Roads, the Operator shall be required to pay a pro-rata share of the costs incurred to improve the County Road. The pro-rata share shall be determined by the County's Public Works Director and the Applicant.

4.7 STORAGE TANKS.

(A) Except as otherwise mandated by the NMOCD, tanks used for the storage of condensate, crude oil, or other liquid hydrocarbons produced by and/or used in conjunction with any Oil 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.

4.8 LIGHTING.

(A) 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.

4.9 TERRAIN MANAGEMENT PLAN STANDARDS.

(A) 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 Surface Disturbance Plan how the soil limitations are to be overcome or mitigated.

(2) All topsoil stripped from the surface and retained on the site shall be carefully stockpiled in a manner to prevent erosion and to facilitate its re-application to the disturbed areas during reclamation.

(3) Any necessary grading or clearing should, to the extent possible, follow, preserve, match, or blend with the natural contours and vegetation of the land and should not increase the possibility for erosion.

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

(5) All changes made to the existing soil composition and arrangement should be compatible with the soil stability and erodibility as demonstrated in the soil survey, if a soil survey was required in the application.

(B) Drainage and Erosion:

(1) To the extent possible, the Operator shall preserve natural drainage existing on the site prior to development.

(2) Water that drains from the Well Site shall not contain pollutants or sedimentary materials at a greater concentration than would occur without the presence of the development.

(3) Drainage from the Well Site shall not cause erosion outside of the site to a greater degree than would occur without the presence of the development.

(C) Vegetation:

(1) During development and operation, the Operator shall minimize damage to existing vegetation.

(2) There shall be no introduction of or increase in the prevalence of invasive or noxious plant species within the Well Site as a result of oil or gas activity.

(3) Operators should consult the local agricultural extension office or the local Natural Resources Conservation Service to determine the appropriate materials needed to prevent or contain the spread of noxious and invasive plant species. Any materials used should be listed in the Terrain Management Plan.

(D) Restoration:

(1) The Operator shall begin interim and final restoration activities as soon as practical upon completion of each phase of development.

(2) The operator shall reseed by drilling on the contour, or another method as approved by the Director.

(3) The Operator shall obtain vegetative cover that equals seventy (70%) percent of the native perennial vegetative cover, which has not been impacted by overgrazing, fire, or some other damaging intrusion, and shall maintain that vegetative cover for at least two (2) successive growing seasons.

(4) 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.

4.10 ADDITIONAL FINANCIAL SECURITIES.

(A) Additional financial securities shall be evaluated by the County every five (5) years from the date of approval of the application, and may include:

(1) 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 One Million Dollars (\$ 1,000,000) 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.

(2) 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 One Million Dollars (\$1,000,000) per occurrence, issued by an insurance company approved by the New Mexico Superintendent of Insurance, and that names the applicant as insured. Such insurance policy shall be maintained in full force and effect from the date of approval of this Conditional Use Permit request by the Planning and Zoning Commission and continuing in force until the well is plugged and abandoned in accordance with the applicable State statutes, NMOCD regulations, and the Site Remediation 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. 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, 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.

4.11 VISUAL IMPACTS.

(A) Oil or Gas Facilities shall be painted or otherwise made to be harmonious with the surrounding environment as follows:

- (1) Uniform or camouflaging, non-contrasting, non-reflective color tones, based on BLM Visual Resource Management system.

4.12 FENCING.

(A) For the Southeast Energy Development Area only: Perimeter fencing and a locked gate for Oil or Gas Facility or Facilities shall be required surrounding the exploration and/or production facility within the Well Site. The design and construction of the required fencing shall be a chain link fence to a minimum height of six (6) feet as approved by the Director.

4.13 CHANGE OF OPERATOR.

(A) 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.

(B) The new Operator must also present proof of adequate insurance where applicable in this Ordinance.

ARTICLE 5
ADMINISTRATION

5.1 NOTICES OF DECISIONS.

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

5.2 NOTIFICATION REQUIREMENTS.

(A) 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 at least fifteen (15) days prior to the hearing. In addition, notice of the public hearing shall be mailed by certified mail, return receipt requested, to:

- (1) The applicant(s);
- (2) The owner(s), as shown by the records of the County Treasurer, of the land for which the approval is requested, if different from the applicant(s);
- (3) The owners, as shown by the records of the County Treasurer, of land within three hundred (300) feet, excluding public right-of-way, of the land for which the approval is requested. If any notice is returned undeliverable, the County shall attempt to discover the addressee's most recent address and shall remit the notice by certified mail, return receipt requested.

(B) All government and Native American Nation/Pueblo agencies within three (3) miles of subject site are notified by the County of any request for Oil and Gas Facilities as regulated by this Ordinance. Municipalities within five (5) miles of the subject site, with a population of over fifty thousand (50,000), are also notified by the County.

(C) Notice of Planning and Zoning Commission Meeting on Legislative Amendment. The meeting of the Planning and Zoning Commission regarding a legislative amendment shall be noticed by publication of the title and a general summary of the proposed amendment 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.

5.3 POSTING OF APPLICATIONS.

(A) The County shall post applications, within twenty-four (24) hours of receipt, for review of oil and/or gas facilities within the County's jurisdiction, on the County's

Planning and Zoning Web Page, and shall provide paper copies of applications for viewing in the County's Planning and Zoning Division Office within the time frame noted above.

5.4 FEES.

(A) Resolution No. 11-18-10.7C establishes a fee for submittal of an application for a Conditional Use Permit for review by the Planning and Zoning Commission. This fee is also applicable to review of an application through the Administrative process as established in this Ordinance.

5.5 VARIANCES.

(A) The procedures for application for a Variance of the standards in this Ordinance are established in Section 8 (3), Variances, Sandoval County Comprehensive Zoning Ordinance.

5.6 NONCONFORMITIES.

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

5.7 RELIEF.

(A) 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/or Gas Facility as established in this Ordinance. Such request shall be reviewed for approval by the Planning and Zoning Commission. 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.

5.8 APPEALS.

(A) The procedures for filing an Appeal of a decision by the Planning and Zoning Commission are established in Section 18 (5), Appeals, Sandoval County Comprehensive Zoning Ordinance.

5.9 ENFORCEMENT.

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

ARTICLE 6
SEVERABILITY, EFFECTIVE DATE

6.1 SEVERABILITY.

(A) 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.

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6.2 EFFECTIVE DATE.

(A) 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

Don G. Chapman, Chair

David J. Heil, Vice Chair

APPROVED AS TO FORM:

James Dominguez, Member

Natalia Sanchez-Downey, County Attorney

Jay C. Block, Member

F. Kenneth Eichwald, Member