



Aquifer Water Protection & Oil and Gas Ordinance

Citizens Working Group (CWG) Ordinance Team

Preliminary Draft

August 9, 2018

Submitted to the Sandoval County New Mexico Planning & Zoning Commission



ORDINANCE MISSION

To preserve and protect the county's aquifers, groundwater, and surface water, the public health, safety and welfare, to preserve and protect Tribal and other historic, cultural and archaeological artifacts and sites while at the same time providing for the responsible and economically viable extraction of oil and gas minerals.

ORDINANCE DEVELOPMENT SUMMARY

Assembling a legally, technically competent, defensible, and enforceable oil and gas ordinance is a difficult and complex task, requiring significant time and expertise, as well as having many eyes check and re-check all sections thoroughly.

On March 15, 2018, the Sandoval County Commission voted to assign a group of citizens, the Citizens Working Group (CWG), to work on drafting an oil and gas ordinance for the county.

The Commission's proposal called for "maximum citizen participation" as well as technical and scientific reviews to inform the process of drafting an ordinance. On April 5th, the CWG voted in the CWG Ordinance Team to draft an ordinance with input from science and public awareness teams. The Team quickly became aware of the critical need for legal consultation and sought out that expertise as well.

The Ordinance Team includes members of the CWG and the public. The team began immediately working on an ordinance while soliciting public and Tribal input at every stage.

The Ordinance Team is deeply committed, both in process and product, to drafting an ordinance that is legally, technically competent, culturally sensitive, defensible, and enforceable.

The Team has solicited public input by conducting community outreach 'listening meetings' throughout the county, in rural and Tribal communities. Several such meetings have taken place and more will be scheduled. Citizen responses from those meetings have been carefully reviewed and incorporated into the Ordinance Team's ordinance.

The team has consulted technical experts in areas including; geology, hydrology, water, noise, health, air quality, cultural, Tribal, archeological, and others.

The Team has formally engaged with the UNM Law Clinic and other attorneys to review the draft ordinance for legal defensibility and advise the group on specific legal issues.

LEGAL ANALYSES

The legal analyses used in the preparation of this ordinance are attached which includes the UNM Law Clinic analyses. The 2015 Browning decision relating to the Mora County oil and gas ordinance is also attached since we think this decision is important for the county to understand. Significant state preemption passages in this decision are highlighted.

Draft Oil and Gas Ordinance
CWG-OT
8/9/18

Table of Contents

Article I. General		Temp Pages
Section A	Short title	1
Section B	Statutory Authority	1
Section C	Scope	1
Section D	Purpose	1-2
Section E	State and Federal Statutes	2-3
Section F	Findings. Declarations. Determinations	3
	<i>Findings still being worked on</i>	
Article II. Rules of Interpretation and Definitions		3-4
Section A.	Rules of Interpretation	
Section B	Definitions	4-''
Article III Provisions Applicable to O and G Permits		
Section A	Referrals	11
Section B	Consultants	11
Section C	Burden of Proof	11
Section D	Monitoring	11-12
Article IV. Temporary Preliminary Oil and Gas Exploration Permit		
Section A	Permit Required	12
Section B	Application Process	12
Section C	Application Completeness	12-13
Section D	Criteria for Approval	13
Section E	Application Fee	13
Section F	Appeal	13
Section G	Duration of Permit	13
Section H	Authority	13
Article V. Exploratory Drilling Well Permit		
Section A	Permit required	14
Section B	Onsite Visit	14
Section C	Application Process for Exploratory Permit	14
(1) & 2	Proof of OCD Permit and SOPA	14
(3)	Easements	14
(8)	Property Details	14
(9)	Site Plan	15
(10)	Narrative	15
	Road Plan	15
	Terrain Management	15-16
	Cultural Properties Plan	16
	Waste Management	16-17
Section D	Public Notice/Hearing Requirements	17

Draft Oil and Gas Ordinance
CWG-OT
8/9/18

Table of Contents

Section E	Review for Application Completeness	17-18
Section F	Review Process and Criteria	18
Section G	Effect of Approval	19
Section H	Authority	19
Section I	Application Fee	19
Section J	Appeal	19
Section 9	Expiration of Exploration Permit	19
Article VI. Oil and Gas Development Permit		
Section A	Permit required	19
Section B	Pre-Application Meeting	19
Section C	Onsite Visit	20
Section D	Application Completeness	20
Section E	Review Process/Criteria for Permit	20
Section F	Notification Requirements	21-22
Section G	Public Hearings. Locations.	22
Section H	P and Z Authority	22
Section I	Effect of Approvals	22
Section J	Application Fees	22-23
Section K	Appeal	23
Section I	Expiration of Conditional Use Permit	23
Article VII. Required Application and Documents		
Section A	General Information	23
Section B	Required Permits and Exploration Report	23-24
Section C	Scope of Operations	24
Section D	Property Details	24
Section E	Site Plan	24-25
Section F	Easement	25
Section G	Housing	25
Section H	Environmental Compliance History	25
Section I	Financial Solvency	25
Section J	Required Reports	25
	Water Protection Report	25-26
	Cultural Properties Report	26-17
	Wildlife Habitat and Livestock Report	27-28
Section K	Road Plan	28-31
Section L	Sound Management Plan	31
Section M	Emergency Response Plan	31-32
Section N	Air Quality Protection Plan	31
Section O	Water Use and Protection Plan	31-32
Section P	Waste Management Plan	33

Draft Oil and Gas Ordinance
CWG-OT
8/9/18

Table of Contents

Section Q	Terrain Management and Grading and Drainage Plan	33-34
Section R	Proof of Plugging Bond	34-35
Article VIII. General Provisions for Oil and Gas Facilities		
Section A	Light Direction	35
Section B	Visual Impacts	35
Section C	Setback Requirements	35-36
Section D	Fencing	36
Section F	Sound Control Standards	36-38
Section G	Waste Disposal	38-39
Section H	Flowlines and Gathering Lines	39
Section I	Storage Tanks	39
Section J	Trash and Debris	39
Section K	Roads and Traffic Standards	39-41
Section L	Well Sites and Facilities	41
Section M	Gas Flaring and Venting	41
Section N	Water Protection	41-43
Section O	Air Quality Protection	43
Section P	Emergency Response	43
	Hydrogen Sulfide Contingency Plan	43-44
Section Q	Cultural, Historical and Archeological Sites	44
Section R	Abandonment, Plugging and Restoration	44-45
Article IX. Insurance Requirements		
Section A	General Requirements	45
Section B	Standard Commercial General Liability	46
Section C	Pollution Insurance	46-47
Article X. Notice of Decisions		47
Article XI. Change of Operator		47
Article XII Nonconformities		47
Article XIII Variances		47
Article XIV Enforcement		47-49
Article XV Interpretation		48
Article XVI Assessment and Reports		48
Article XVII Severability		49
	Severability	50
	Effective Date	50

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

ARTICLE I. GENERAL.

A. Short Title.

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

B. Statutory Authority. Applicability.

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

C. 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.

D. Purpose

This Ordinance is a zoning and public nuisance ordinance enacted to protect and promote the health, safety and general welfare of present and future residents of the County while at the same time providing for the responsible and economically viable extraction of oil and gas minerals. This Ordinance is a police power, public nuisance and 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 the quality of life of Sandoval residents, to conserve the value of property and to protect the County from any possible adverse public nuisance effects and impacts, including economic,

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

resulting from oil and gas exploration, drilling, extraction (production) or transportation in the County.

This Ordinance ensures county public input into oil and gas development.

This Ordinance acknowledges that the Tribes and Pueblos located within Sandoval County are sovereign nations and therefore it includes processes that require reasonable efforts for the County to collaborate and receive input from the Tribes and Pueblos in order to protect ground and surface water, the environment and Cultural Properties on and off the reservations.

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 or 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 Statutes.

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

- (1) The Surface Owners Protection Act, N.M.S.A. 1978, §§ 70-12-1 et. seq.;
- (2) The Oil and Gas Act, N.M.S.A. 1978, §§ 70-2-1 et seq.;
- (3) The Water Quality Act, N.M.S.A. 1978, §§ 74-6-1 et seq.;
- (4) The Solid Waste Act, N.M.S.A. 1978, §§ 74-9-1 et seq.;
- (5) The Rangeland Protection Act, N.M.S.A. 1978, §§ 76-7B-1 et seq.;
- (6) The Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§ 11001 et seq.;
- (7) The New Mexico Public Health Act, N.M.S.A. 1978 §§ 24-1-1 et seq.;
- (8) The Wildlife Conservation Act, N.M.S.A. 1978, §§ 17-2-37 et seq.;
- (9) The Cultural Properties Act, N.M.S.A. 1978, §§ 18-6-1 et seq.;
- (10) The National Historic Preservation Act, 16 U.S.C.A §§ 470 et seq.;
- (11) The Uniform Trade Secret Act N.M.S.A. 1978, §§ 57-3A-1 et seq.;
- (12) The Prehistoric and Historic Sites Act, N.M.S.A. 1978, §§18-8-1 et seq.;
- (13) The Cultural Properties Protection Act, N.M.S.A. 1978, §§ 18-6A- 1 et seq.;
- (14) The Archaeological Resources Protection Act, 16 U.S.C.A. § 470 aa 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. 1978, 74-12-1 et seq.;
- (19) The New Mexico State-Tribal Collaboration Act, N.M.S.A. §§11-18-1 et seq.;
- (20) The National Environmental Policy Act, 42 U.S.C. § 4321 et seq.;
- (21) The American Indian Religious Freedom Act, 42 U.S.C. ch. 21, subch. I §§ 1996 & 1996a;

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (22) The Native American Graves Protection and Repatriation Act, 25 U.S.C. ch. 32 § 3001 et seq.;
- (23) National Scenic Byways Program 23 USC § Sec. 162 et seq.; and
- (24) Scenic Highway Zoning Act NMSA 1978 §§ 67-3-1 et seq.

F. Findings. Declarations. Determinations.

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

Findings are being worked on!!

ARTICLE II. RULES OF INTERPRETATION AND DEFINITIONS.

A. Rules of Interpretation

- (1) Words, phrases, and terms defined in this Ordinance shall be given the meanings set forth below. Words, phrases, and terms not defined in this Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning.
- (2) The text shall control captions, titles, and maps.
- (3) The word “shall” is mandatory and not permissive; the word “may” is permissive and not mandatory.
- (4) Words used in the singular include the plural; words used in the plural include the singular.
- (5) Words used in the present tense include the future tense; words used in the future tense include the present tense.
- (6) Within this Ordinance, sections prefaced “purpose” and “findings” may be included. Each purpose statement is intended as an official statement of legislative purpose or findings. The “purpose” and “findings” statements are legislatively adopted, together with the formal text of the Ordinance. They are intended as a legal guide to the administration and interpretation of the Ordinance and shall be treated in the same manner as other aspects of legislative history. Additionally, such purposes and findings shall be considered part of the County's Comprehensive Plan.
- (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 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,

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

in which event the period runs until the next day that is not a Saturday, Sunday or such holiday.

B. Definitions

Words with specific defined meanings are as follows:

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 permit for review by the Director for a Temporary Preliminary Oil and Gas Exploration Permit and an Oil and Gas Exploration Permit, and the Planning and Zoning Commission for an Oil and Gas Development Conditional Use Permit.

Area of Review (AOR): The area surrounding an oil and gas well within a two-mile radius of the vertical well bore, except any Tribal, Federal, State, or Incorporated land.

Board: The Board of County Commissioners of Sandoval County, New Mexico

Clear and Convincing Evidence: A medium level of burden of proof which is a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard to meet than proving evidence beyond a reasonable doubt. In order to meet the standard and prove something by clear and convincing evidence, a party must prove that it is substantially more likely than not that it is true.

Closed Loop System: A system that uses above ground steel tanks for the management of drilling fluids.

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

County Commission: The Board of County Commissioners of Sandoval County, State of New Mexico

CZO: The Sandoval County Comprehensive Zoning Ordinance

Critical Habitat: Areas of habitat essential for the conservation of endangered or threatened species under the Endangered Species Act.

Cultural Properties – See Cultural Property

Cultural Property: A structure, place, site or object having historic archeological, scientific, architectural, or other cultural significance. [NM Stat § 18-6A-2 (2017)]

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Degradation of Water Quality: A change in ground or surface water chemical content that unreasonably reduces the quality of such water compared to the standards, as required by the EPA acting pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 to 1387 and Regulations, 40 C.F.R. Part 130 or the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 et seq., whichever is stricter.

Development: Any man-made physical change in improved or unimproved sub-surface mineral and surface estates, including, but not limited to: construction and erection of 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.

Director: 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: The act of boring a hole (1) to determine whether minerals are present in commercially recoverable quantities or (2) to accomplish production of the minerals (including drilling to inject fluids).

ED: The State of New Mexico Environment Department.

Easement: A right to the use of, or access to, land owned by another.

Exploration Activities: Activities that include geophysical surveys, seismic surveys, gravity surveys, magnetic surveys, and any other exploratory activity for the purpose of ascertaining the existence of or location of minerals.

Exploratory Well: A well that is drilled for the purpose of securing geological or geophysical information to determine whether oil and gas mineral resources are present in commercially viable quantities.

Floodplain: Any land area susceptible to being inundated by water from any source.

Flowback: A mixture of drilling, hydraulic fracturing and formation fluid that moves up the well bore to the surface after a well is completed.

Flowline: A segment of pipe transferring oil, gas, or condensate between a wellhead and processing equipment to the load point or point of delivery or a segment of pipe transferring produced water between a wellhead and the point of disposal, discharge, or loading. This definition of flowline does not include a gathering line.

Fracturing: A method of stimulating oil or gas production by opening new flow channels in the formation surrounding a production well. It involves pumping of crude oil, diesel, water, or

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

chemical into a reservoir with such force that the reservoir rock is broken and results in greater flow of oil or gas from the reservoir. Also known as hydraulic fracturing or fracking.

Gas: A combustible vapor composed chiefly of hydrocarbons occurring natural in a pool the New Mexico Oil Conservation Division has classified as a gas pool. Also known as natural gas.

Gas Well: A well producing gas from a gas pool, or a well with a gas-oil ratio exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

Habitat Fragmentation: The partitioning of larger habitats into smaller more isolated parcels, usually as a result of development.

Hazardous waste: A non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

Hydrocarbons: A compound formed from carbon and hydrogen including but not limited to oil and gas.

Injection Well: A well used for the injection of air, gas, water or other fluids into an underground stratum.

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.

Livestock: All domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico. Livestock does not include canine or feline animals.

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.

Luminaire or fixture: See **Outdoor Lighting Fixture**

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Major Release:

1. An unauthorized release a volume, excluding gases, of 25 barrels or more;
2. An unauthorized release of a volume that:
 - (a) Results in a fire or a fire causes;
 - (b) May with reasonable probability reach a watercourse;
 - (c) May with reasonable probability endanger public health; or
 - (d) Substantially damages property or the environment;
3. An unauthorized release of gases exceeding 500 MCF; or
4. A release of a volume that may with reasonable probability be detrimental to fresh water.

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.

Mitigation: Actions taken to avoid, minimize, rectify, or compensate for any adverse environmental impact.

Monitoring: Periodic or continuous surveillance or testing to determine the level of compliance with statutory requirements and/or pollutant levels in various media or in humans, plants, and animals. [Federal Remediation Technologies Roundtable. FRTR Glossary (2013)]

Material Safety Data Sheet or “MSDS”: A document containing important information about the characteristics and actual or potential hazards of a substance. It identifies the manufacturer of the material (with name, address, phone, and fax number) and usually includes (1) chemical identity, (2) hazardous ingredients, (3) physical and chemical properties, (4) fire and explosion data, (5) reactivity data, (6) health hazards data, (7) exposure limits data, (8) precautions for safe storage and handling, (9) need for protective gear, and (10) spill control, cleanup, and disposal procedures.

New Mexico State Historic Preservation Division: The Historic Preservation Division of the Department of Cultural Affairs of the State of New Mexico.

NORM: the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

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

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

Oil: Petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Oil and Gas Facility (or Facilities): A structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

Oil and Gas Permits: Sandoval County required oil and gas permits include: 1. Temporary Preliminary Oil and Gas Exploration Permit, 2) Oil and Gas Exploratory Permit; 3) Oil and Gas Development Permit.

Oil well: A well capable of producing oil and that is not a Gas Well.

Onsite Visit: The meeting conducted at the proposed Oil or Gas Well Site before consideration of a decision on a development permit, exploratory permit, or special use permit.

Operator: A person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation.

Outdoor Lighting Fixture: An outdoor artificial illuminating device, whether permanent or portable, used for illumination or advertisement, including searchlights, spotlights and floodlights, whether for architectural lighting, parking lot lighting, landscape lighting, billboards or street lighting.

Permitee: The Applicant/Operator who has been approved to receive one of the Oil and Gas Permits

Planning and Zoning Commission: The Planning & Zoning Commission of Sandoval County, State of New Mexico.

Planning and Zoning Department: The Planning & Zoning Department of Sandoval County, State of New Mexico.

Police Power: Delegated, or authorized legislative power for purposes of regulation to secure health, safety, and general welfare and to prevent public nuisances.

Pollution: introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

Produced Water: Water that is an incidental byproduct from drilling for, or the production of, oil and gas. [OCD]

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. [Staff draft and Rio Arriba]

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Public Works Department: The Public Works Department of Sandoval County, State of New Mexico.

Pueblo and Tribal Leadership: The Governors of Pueblos and the Presidents of Tribes and Chapters.

Rangeland: A type of land on which the native vegetation, climax, or natural potential consists predominately of grasses, grasslike plants, forbs, or shrubs. Rangeland includes lands revegetated naturally or artificially to provide a plant cover that is managed like native vegetation.

Re-use Water: any water that is generated from an oil or natural gas well, undergoes significant treatment, and is used again in an oil or natural gas well prior to disposal in an underground injection well.

Recycled water: Any water that is generated from an oil or natural gas well, undergoes significant treatment, and is used again in an oil or natural gas well prior to disposal in an underground injection well.

Registered Cultural Property: A cultural property that has been placed on the official register on either a permanent or temporary basis by the Cultural Properties Committee. [NM Cultural Properties Act, NM Stat § 18-6-3 (2017).]

Scenic Historical Marker Easily recognizable, large brown roadside signs dotting the New Mexico landscape providing vignettes on local history, geographic marvels, notable persons and political events that shaped New Mexico's heritage.

Seismic Disturbance: An instance of agitation of the earth's crust. (not defined by USGS)

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

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

Shielded: A fixture that is shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted

Shielding: See **Shielded**

Slope: The ratio of elevation change to horizontal distance, expressed as a percentage computed by dividing the vertical distance by the horizontal distance and multiplying the ratio by one hundred (100).

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Spill Light. The presence of lighted area(s) beyond the primary area which the source is intended to light. Also known as light trespass.

Storage Tank (or Tanks): A single tank or a combination of tanks, including underground pipes connected thereto, that are used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. [Ground Water Protection Section NM Stat § 74-6B-3 (2017)]

Surface Owner: A person who holds legal or equitable title, as shown in the records of the county clerk, to the surface of the real property on which the operator has the legal right to conduct oil and gas operations.

Surface Use Agreement: An agreement between an operator and a surface owner specifying the rights and obligations of the surface owner and the operator concerning oil and gas operations.

Toxic gas emissions: The emission of gases that are harmful to humans when inhaled or ingested in various quantities.

Traffic: pedestrians, bicyclists, ridden or herded animals, vehicles, streetcars, and other conveyances either singularly or together while using for purposes of travel any highway or private road open to public travel.

Tribe or Pueblo: Any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico.

Underground Source of Drinking Water (USDW): An aquifer that supplies water for human consumption or that contains ground water having a TDS (total dissolved solids) concentration of 10,000 mg/l or less and that is not an exempted aquifer.

Watercourse: 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 Pad: A work area (surface location) that is used for drilling an oil and gas well or wells and producing from the well once it is completed.

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.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Wildlife Corridor: Tracts of land or habitat that are linked and allow wildlife to travel from one location to another to find food, shelter, a mate and a place to raise their young.

Wildlife Habitat: The area where an animal that is not domestic lives under natural conditions and which provides all requirements for food and shelter.

ARTICLE III. PROVISIONS APPLICABLE TO OIL AND GAS PERMITS
COVERED BY THIS ORDINANCE

A. Referrals.

Unless required in the submittal of the Application, at any time during the review process for a permit hereunder, the Director, Planning and Zoning Commission, or the County Commission may refer an application to other government agencies, cities, counties, Tribes, Pueblos or entities having a statutory or regulatory interest in the matter, or otherwise affected by the application, for review and comment. The application review process shall not be delayed pending review or commentary from a referral agency(ies).

B. Consultants.

If at any time during the review process for a permit hereunder, the Director, Planning and Zoning Commission, the County Commission, the Public Works Department Director or the Fire Chief determines that the application for a permit for oil or gas development may present serious impacts on Wildlife Habitat, Cultural Properties, ground or surface water quality, air quality, sound, traffic or otherwise believe that they require outside expertise to discharge their duties, they may, at the expense of the Applicant, hire experts to review an application or to evaluate specific technical issues related to those matters. If they determine that the County should retain such experts, they shall notify the Applicant and the Applicant shall have the opportunity to provide recommendations of experts to the County; but the final decision on which consultant(s) to be used shall be that of the County official(s) involved. The Applicant shall give the County a certified or bank check, wire transfer or letter of credit deposit in an amount to be determined by the requesting authority for each application submitted, to cover all of the County's expenses incurred to engage such consultants and experts as are considered necessary and appropriate.

C. Burden of Proof.

It shall not be the responsibility of the County to disprove any claims or assertions made by an Applicant or Operator under this Ordinance. In every case where an application is made for any permit hereunder, the Applicant must demonstrate by clear and convincing evidence that any claim or assertion that it makes is true.

Monitoring.

Where the Director is charged in this Ordinance with the responsibility of monitoring compliance with Oil and Gas Permits, the Director may, at the expense of the Operator, hire such experts, consultants, companies or agencies as are deemed necessary to perform the

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

monitoring function. The Operator shall give the County a certified or bank check, wire transfer or letter of credit deposit in an amount to be determined by the Director to cover all of the County's expenses as are considered necessary for such monitoring.

ARTICLE IV. APPLICATION PROCESS FOR TEMPORARY PRELIMINARY OIL AND GAS EXPLORATION PERMIT.

A. Preliminary Oil and Gas Exploration Activities Permit.

A temporary preliminary oil and gas exploration permit (TPEP) is required for all Preliminary Oil and Gas Exploration Activities including geophysical surveys, seismic surveys, gravity surveys, magnetic surveys, and any other exploratory activity that may cause surface disturbance. A TPEP is not required for aerial surveys, mapping activities, and other exploratory activities that do not result in surface disturbance.

B. Application Process for a Temporary Preliminary Oil and Gas Exploration Permit

The application shall include the following information:

- (1) The name(s) and contact information for all companies that will conduct preliminary exploration activities and documentation of their liability and workers compensation insurance coverage.
- (2) A schedule describing the beginning and ending dates of the preliminary exploration activities.
- (3) A map showing all areas to be explored, access roads and the location of any historical, archeological or cultural sites (Cultural Properties) listed in the Register of Cultural Properties of the New Mexico Historic Preservation Division.
- (4) Certification, signed by an officer of the Company, that the Applicant will comply with all applicable local, state and federal laws listed under Article I, Section E of this Ordinance regarding the protection of Cultural Properties and describe the preventive measures to be taken to protect Cultural Properties from damage during the preliminary oil and gas exploration activities.
- (5) A list of the surface exploration technologies and equipment to be used in carrying out the activities.
- (6) A notarized letter from the Surface Owner(s) granting access for the exploration activities.
- (7) Copies of any Right of Way (ROW) necessary permits to and from the Oil and Gas Facility for County, municipal, and Pueblo and Tribal roads.
- (8) The Director may require the applicant to provide a cash bond security to cover any repairs or restoration of any site damaged during the Preliminary Oil and Gas Exploration Activities.
- (9) The Director may require a Road Improvement Agreement for use of County roads.
- (10) The Director may require public notice of the exploration activities, to be paid for by the Applicant.
- (11) Any additional information reasonably necessary, as determined by the Director.

C. Review for Administrative Completeness of Application.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (1) The Director shall review all submitted materials and information for the TPEP for completeness within 10 days. 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.
- (2) Applicants have thirty (30) days to submit the additional required materials unless the Director agrees in writing to a longer time period.
- (3) 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.
- (4) Upon submission of the additional materials, 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.

D. Review Process and Criteria for Exploration Permits.

- (1) Completed applications for exploration permits shall be reviewed by the Director within twenty (20) days.
- (2) Any decision denying an application for a TPEP 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, a final decision indicating denial shall be provided to the Applicant upon the expiration of that period.

E. Application Fee.

Each application shall be accompanied by a nonrefundable application fee in the amount of two hundred fifty dollars (\$250.00). The application fee shall be paid by certified or bank check, wire transfer or certified funds.

F. Appeal

A decision by the Director to approve or deny an exploration permit is subject to appeal in the same manner and in accordance with the procedures outlined in the CZO No. 10-11-18.7A, Section 22.

G. Duration of Temporary Preliminary Oil and Gas Exploration Permits.

A TPEP permit shall not exceed one hundred twenty (120) days and shall expire if the preliminary exploration activities have not commenced within that period.

H. Authority

The Director is granted the authority to monitor Permittees of TPEP Permits to insure compliance with the conditions imposed in those permits.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

ARTICLE V. OIL AND GAS EXPLORATORY WELL PERMITS.

A. Oil and Gas Exploratory Well Permit.

No oil and gas Exploratory Wells shall be permitted within the County unless an application in compliance with this Ordinance has been filed and an Oil and Gas Exploratory Well permit for such activities has been approved by the Planning and Zoning Commission.

B. 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.

C. Application Process for Exploratory Well Permit.

Applicants seeking to drill an Exploratory Well for hydrocarbons in areas of the County under county jurisdiction shall submit an application to the Director. The application shall include

- (1) All required drilling permits from OCD.
- (2) Signed and notarized letter from the Surface Owner stating that the Applicant has complied with the Surface Owner Protection Act NMSA 1978, §§ 70-12-1 et. seq. (SOPA) or proof of bonding as required by SOPA.
- (3) Copies of easement agreements including any such agreements with Tribes and Pueblos for access to and from the Oil and Gas Facility.
- (4) Copies of any other agreements or permits requested by the Director.
- (5) A schedule showing beginning and ending dates of exploration activities, including facility construction start-up dates.
- (6) The name(s) and contact information for all companies that will conduct exploratory well drilling and documentation of their liability and workers compensation insurance coverage.
- (7) The Director may also require the Applicant to provide Environmental Compliance History and verification of Financial Solvency as described in Article VI, Sections H and I in this ordinance.
- (8) Property Details
 - (a) 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. At a scale of 1:2000 feet.
 - (b) The number of exploratory wells to be drilled on each well pad.
 - (c) The estimated depth of each proposed well.
 - (d) The location of occupied dwellings, schools, churches, hospitals, clinics, assisted living homes or cemeteries, parks, recognized open space and wildlife corridors, ranches and farms, within one (1) mile of the well site;
 - (e) Fresh water supply wells, and fresh water storage reservoirs and Water Courses and lakes within one (1) mile of the well site.
 - (f) Major geographic features such as Slope and Floodplains;
 - (g) The location of any historical, archeological or cultural sites listed in the Register

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

of Cultural Properties of the New Mexico Historic Preservation Division and those identified by Tribes and Pueblos in Sandoval County within one (1) mile of the Well Site.

- (h) The location of all fire, police, and emergency response service facilities. If these facilities are not located on the map, the Applicant shall provide the contact information, address, direction, and mileage to the nearest emergency response facility.
- (9) A site plan shall provide the following information for the well at a scale of 1:2000 feet:
 - (a) The estimated location of tanks, compressors, dehydrators and other equipment and facilities, gates pump stations, tank batteries. The site plan shall be updated as built and include the permanent location and the GPS coordinates for each well, equipment and buildings on the well site.
 - (b) All state, county and private roads, including bridges, overpasses and culverts, that will be used to access the site within a one (1) miles radius of the site.
 - (c) Existing flowline routes, including gathering lines and transmission lines on and off the site.
- (10) A narrative of proposed exploration activities that includes the following:
 - (a) Road Plan.
 - (i) The applicant shall submit an Oil and Gas road route plan that identifies roads for oil and gas related truck traffic for exploration, including the average and maximum gross weights of any trucks and other heavily laden vehicles. The Plan shall identify access roads that used including roads what will be upgraded or new roads that need to be constructed. The Plan shall be reviewed and approved by the County Department of Public Works which may request revisions as needed.
 - (ii) The Plan must describe how all upgraded and new roads will comply with County Standards.
 - (iii) The County may require the applicant to secure Right Of Way (ROW) Permits for County roads, for municipal and/or State roads and Tribal and Pueblo roads where needed.
 - (iv) 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.
 - (b) Terrain Management Plan.
 - (i) The Terrain Management Plan shall address the restoration of all areas of the development where the surface will be disturbed should the Exploratory Well be plugged and abandoned as required by OCD.
 - (ii) The Terrain Management Plan shall include a narrative describing clear goals for post-production restoration and how those goals are to be achieved. These goals shall include preventing the appearance or spreading of noxious and invasive plant species as specified in communications with the local

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

agricultural extension office and returning the well site to its natural state, excluding noxious and invasive plant species, that existed prior to exploration.

- (iii) The Terrain Management Plan shall be approved by the Director. It shall include, but may not be limited to, the following information.
- (iv) A schedule and description of interim terrain management activities to be conducted following the completion of each phase of development of the Oil and Gas Facility.
- (v) A drainage map identifying natural drainage and a description how storm water will be managed with the project area to prevent the travel of runoff. Where appropriate, the drainage map shall include a watershed map showing all the upper watershed area draining into or through the site. The map and the description shall be reviewed and approved by the County Engineer;
- (vi) Should the exploration well site be plugged and abandoned, a schedule and description of proposed final restoration activities to be completed after the final NMOCD approved plugging and abandonment of the Exploration Well including a discussion of how those restoration activities will impact the anticipated future uses of the property.
- (viii) All restoration activities described in the Terrain Management Plan shall provide a Grading and Drainage Plan which shall include the following, where appropriate:
 - (aa) Configuration of the reshaped topography and restored drainage;
 - (bb) Soil treatments;
 - (cc) Reseeding materials and revegetation methods;
 - (dd) Backfill or grading requirements; and
 - (ee) Soil stabilization techniques.

(c) Cultural Properties Plan.

- (1) The Plan shall include steps that will be taken to protect Cultural Properties prior to the commencement of exploratory drilling. The Applicant must certify, signed by an officer of the company, that they will comply with all applicable local, state and federal laws listed under Article I, Section E of this ordinance
- (ii) It is the responsibility of the Applicant to pay for any damages to Cultural Properties. Violations under applicable state and federal laws listed under Article I Section E of this Ordinance may be subject to the enforcement provisions of Article XIV in this Ordinance.

(d) Waste Management Plan.

All solid and liquid wastes must be managed in accordance with Federal, State and County law and in a manner so as to prevent pollution of the environment, conserve fresh water, and protect the public health and safety.

- (i) Applicant must submit a waste management plan that identifies the type and volume of solid and liquid waste that will be generated at the site and how

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

that waste will be properly stored, transported and disposed of.

- (ii) To the maximum extent practicable and in accordance with OCD Rules, as required in 19.15.34 NMAC as amended, the applicant must describe if any Produced Water generated at the Well Site will be recycled or reused for onsite reinjection purposes.
- (iii) The applicant must include copies of the original agreements between the applicant and any OCD licensed waste disposal facilities, including injection wells, and copies of the OCD permits for such licensed waste disposal facilities.
- (iv) The applicant must include the following information regarding the transportation of off-site of any solid and liquid wastes.
 - (aa) Copies of the applicant's original agreements with companies that will transport solid and liquid wastes off-site; and copies of OCD permits authorizing the companies to transport solid and liquid wastes off-site to licensed OCD waste disposal facilities.
 - (bb) The Director may require that companies transporting solid or liquid wastes be fitted with GPS tracking systems in order to help identify responsible parties in the case of accidents or spills.
- (e) Any additional information as determined by the Director.

D. Public Notice and Hearing Requirements.

- (1) All Public Notification requirements under Article VI F in this Ordinance shall be in effect.
- (2) Hearings shall be held before the Planning and Zoning Commission.
- (3) Hearings may be held in a County municipality located within a reasonable distance from the site of the proposed Exploratory Well.

E. Review for Administrative Completeness of Application

- (1) The County shall review submitted applications for exploration permit completeness within ten (20) days of receipt.
- (2) If an application for a permit is deemed incomplete the Director shall provide a written determination to the Applicant explaining why the application is incomplete and the manner in which the application can be made complete.
- (3) Applicants have thirty (30) days to submit the additional required materials unless the Director agrees in writing to a longer time period.
- (4) If the required materials are not submitted within the given time period, the application shall be deemed withdrawn and the Applicant will not be entitled to a refund of any application fees,
- (5) Upon submission of the required submittals, the application shall be reviewed again for completeness according to the appropriate review schedule and the Applicant shall have

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

another opportunity, if necessary, to complete the application.

- (6) After an application is deemed complete, the Director 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 exploration that is the subject of a pending application.

F. Review Process and Criteria for Exploration Permits.

- (1) Completed applications for Exploratory Well permits shall be reviewed by the Director within sixty (60) days for compliance with the purpose, design and performance standards of this Ordinance.
- (2) Upon completion of the review, the Director shall submit a written report, together with a recommendation, on whether the Exploratory Well permit application should be granted or denied, to the County Planning and Zoning Commission.
- (3) Upon submission of the Director's report to the Planning and Zoning Commission, the matter shall then proceed through a review and final decision by the Planning and Zoning Commission.
- (4) The Planning and Zoning Commission shall consider the following criteria when making a determination for approval or denial of an application for a conditional use oil and gas development permit.
 - (a) Consistency with the goals and strategies of the Sandoval County Comprehensive Plan and the purposes and intent of the Sandoval County Comprehensive Zoning Ordinance.
 - (b) Whether the application has demonstrated reasonable efforts to mitigate any public nuisance or impacts on public safety, noise, glare, odors, property values, traffic, historic, cultural and archaeological resources, on wildlife and livestock, on roads and traffic, and on the county budget.
 - (c) Whether the proposed exploratory drilling may be undertaken while still protecting the public health, safety and welfare of the residents of the county.
 - (d) Whether the Applicant has submitted all required permits, agreements, including easements, and reports.
 - (e) Whether the Applicant has received approval of a Road Plan from the County Public Works Department.
 - (f) Whether the Applicant has demonstrated a capacity to handle emergency situations that may include explosions, fire, toxic spills and leaks.
 - (g) Whether the Applicant has provided to the County Fire Chief an emergency services map that includes all potentially dangerous Oil and Gas Facility buildings and equipment on the site, including a list of dangerous chemicals and where they are stored.
 - (h) Whether the Applicant has demonstrated adequate protections for ground and surface water and satisfactorily complied with the regulations of those tribes and pueblos that have TAS (Tribes as States) status as approved by the US Environmental Protection Agency.
 - (i) Whether the Applicant has demonstrated that the site will be properly restored to its natural state after the wells are plugged and abandoned.
 - (j) Whether the Applicant has consulted with and addressed concerns of Tribes and

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Pueblos in the area regarding the proposed Oil and Gas Facility.

G. Effect of Approval.

- (1) When an Exploratory Well permit has been granted, such permit, along with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for the commencement of the approved exploration well drilling activity.
- (2) Approval of an Exploratory Well Permit provides no vested rights in, or assurance of, the granting of any other permit for oil and gas activity by Sandoval County.

H. Authority

The Director is granted the authority to monitor Permittees of Exploratory Well Permits to insure compliance with the conditions imposed in those permits.

I. Application Fee.

Each application shall be accompanied by a nonrefundable application fee in the amount of five thousand (\$5,000). The application fee shall be paid to the County by certified or bank check, or wire transfer. The County shall have authority to adjust from time to time the fee set forth in this Section.

J. Appeal.

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

K. Expiration of Exploratory 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. OIL AND GAS DEVELOPMENT PERMIT

- A. No oil or gas drilling, and no construction of an oil and gas facility, shall take place within the County unless an application in compliance with this Ordinance has been filed, and a Oil and Gas Development Permit has been approved and granted in accordance with this Ordinance.

B. Pre-Application Meetings.

No less than thirty (30) days prior to the submission of an application for an oil and gas and gas development permit, the Applicant shall meet with the Director and such other County employees, consultants or representatives as the Director may designate, in order to discuss the anticipated application including, but not limited to, a discussion of the application process, the

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

materials to be included in the application, the results of any prior exploration activities, including drilling, of the Applicant, the coordination of a required on-site visit, and the manner in which the Applicant intends to comply with the requirements for the submission and processing of the application.

C. Onsite Visit.

- (1) All oil and gas development permit applications require an onsite visit to be arranged and conducted by the Applicant.
- (2) Prior to the onsite visit, at the request of the Director the Applicant shall flag selected proposed access roads to and from the site.

D. Review for Administrative Completeness of Application.

- (1) Applications for conditional use oil and gas development permits must comply with the requirements of Articles VI and VII of this ordinance. The Director shall review submitted applications for conditional use development permits for completeness within ten (10) days of receipt.
- (2) If an application for a permit is deemed incomplete the Director shall provide a written determination to the Applicant explaining why the application is incomplete and the manner in which the application can be made complete.
- (3) Applicants will have thirty (30) days within which 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 re-reviewed for completeness according to the appropriate review schedule and the Applicant shall have another opportunity, if necessary, to complete the application.
- (6) After an application is complete, the Director 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.

E. Review Process and Criteria for Conditional Use Oil and Gas Development Permits.

- (1) Completed applications for conditional use oil and gas development permits shall be reviewed by the Director within sixty (60) days for compliance with the purpose, design and performance standards of this Ordinance.
- (2) Upon completion of his review, the Director shall submit a written report, together with a recommendation, on whether the oil and gas development permit application should be granted or denied, to the County Planning and Zoning Commission.
- (3) Upon submission of the Director's report to the Planning and Zoning Commission, the matter shall then proceed through a review and final decision by the Planning and Zoning Commission.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (4) The Planning and Zoning Commission shall consider the following criteria when making a determination for approval or denial of an application for a conditional use oil and gas development permit.
- (a) Consistency with the goals and strategies of the Sandoval County Comprehensive Plan and the purposes and intent of the Sandoval County Comprehensive Zoning Ordinance.
 - (b) Whether the application has demonstrated reasonable efforts to mitigate any public nuisance or impacts on public safety, noise, glare, odors, property values, traffic, historic, cultural and archaeological resources, on wildlife and livestock, on roads and traffic, and on the county budget.
 - (c) Whether the proposed conditional use may be undertaken while still protecting the public health, safety and welfare of the residents of the county.
 - (d) Whether the Applicant has submitted all required permits, agreements, including easements, and reports.
 - (e) Whether the Applicant has received approval of a Road Plan from the County Public Works Department.
 - (f) Whether the Applicant has demonstrated a capacity to handle emergency situations that may include explosions, fire, toxic spills and leaks.
 - (g) Whether the Applicant has provided to the County Fire Chief an emergency services map that includes all potentially dangerous Oil and Gas Facilities and equipment on the site, including a list of dangerous chemicals and where they are stored.
 - (h) Whether the Applicant has demonstrated adequate protections for ground and surface water and satisfactorily complied with the regulations of those tribes and pueblos that have TAS status.
 - (i) Whether the Applicant has demonstrated that the site will be properly restored to its natural state after the wells are plugged and abandoned.
 - (j) Whether the Applicant has consulted with and addressed concerns of Tribes and Pueblos in the area regarding the proposed Facility.

F. Notification Requirements.

- (1) Notification of the time and place of any public hearing held pursuant to this Oil and Gas Ordinance shall be displayed on the County website and published in a newspaper of general circulation in the County at least fifteen (15) days prior to the hearing. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish. In addition, the notice shall be posted on the proposed or existing facility entrance to the property on which the facility is or is proposed to be located and posted in at least four conspicuously publicly accessible places in the closest incorporated municipality located near the existing or proposed Oil and Gas Facility.
- (2) The notice shall give the name of the Applicant, and the location and description of the proposed hearing regarding oil and gas exploration and development
- (3). Notice of the public hearing shall be mailed, at the expense of the Applicant, by certified mail, return receipt requested, to:
 - (a) The applicant(s);

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (b) The owner(s), as shown by the records of the County Assessor, of the property on which the Facility is proposed to be located, if different from the applicant(s);
- (c) The owners, as shown by the records of the County Assessor, within a two (2) mile radius of the exterior boundary of the lot on which the proposed Oil and Gas Facility is to be located, excluding public right-of-way. 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;
- (d) All Native American Tribes and Pueblos located within the County shall be notified by the County of any request for any Oil and Gas Facility hearing as regulated by this Ordinance;
- (e) All state and federal agencies responsible for state and federal lands and incorporated municipalities within five (5) miles of the proposed well site shall be notified by the county.
- (f) The County shall provide notice by email to any other person, municipality, agency or organizations that has previously filed a request with the Director to receive notice of an Application for an Oil and Gas exploration or development permit, for variances or appeals hearings.

F. Public Hearings. Locations.

- (1) Public hearings on applications or variances for Oil and Gas Development Permits shall be held in a County municipality located within a reasonable distance to the site of the proposed Oil and Gas Facility.
- (2) Public hearings on appeals to the County Commission shall be held at the County Administration Building in Bernalillo.

H. Authority.

- (1) After receiving the Director's written report and recommendation, the Planning and Zoning Commission shall hold a hearing to determine whether to approve or deny a conditional use permit in accordance with the purpose, requirements and standards of this Ordinance.
- (2) The Planning and Zoning Commission has the authority to impose any conditions, on an Oil and Gas Development permit, as necessary, to carry out the intent, purpose, and the requirements and standards of this Ordinance,
- (3) The Director is granted the authority to monitor recipients of Development Permits to ensure compliance.

I. Effect of Approvals.

When an Oil and Gas Development permit has been granted within the County in accordance with this Ordinance, such permit, together with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for commencement of drilling, operation, production, maintenance, repair and testing, and all other usual and customary activities associated with oil and gas development.

J. Application Fees.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Each application shall be accompanied by a nonrefundable application fee in the amount of Ten thousand dollars (\$10,000.00). The application fee shall be paid by company check, cashier's check, wire transfer or certified funds. The County shall have authority to adjust from time to time the fee set forth in this Section

K. Appeal.

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

L. Expiration of Oil and Gas Development Permit.

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

ARTICLE VII: REQUIRED APPLICATION AND DOCUMENTS

A. General Information

- (1) The name, address and contact information of the Operator and the name, title and local contact information, if different.
- (2) The names and contact information for all companies that will conduct any operation at the drilling site. and proof that each company carries sufficient liability and workers compensation insurance coverage. Names and contact information should be updated at least three days before a previously unlisted company begins operations at the well site.
- (3) The name and contact information of property owners, lease owners and mineral rights owners.
- (4) A list of all Oil and Gas Facilities owned or operated in New Mexico by the Applicant.
- (5) A schedule showing beginning and ending dates for each major phase of operations at each well site including facility construction estimated start-up dates.

B. Required Permits

- (1) Approved permits to drill from OCD and an approved Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport.
- (2) If applicable, an approved Air Quality Permit from the Air Quality Division of the New Mexico Environment Department.
- (3) Approval from the Office of State Engineer where required
- (4) Copies of right of way or easement agreements including any agreements with Tribes and Pueblos.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (5) Signed and notarized letter signed from the Surface Owner stating that the Applicant has complied with the Surface Owner Protection Act NMSA 1978, §§ 70-12-1 et. seq. (SOPA) or proof of bonding as required by SOPA.
- (6) Copies of any other agreements or permits requested by the Director.

C. Scope of Operations

- (1) The number of wells to be drilled on each well pad.
- (2) The estimated depth of each proposed well.
- (3) 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.
- (4) The number and function of any necessary ancillary facilities.

D. Property Details

The Application shall include a map of the Facility, drawn at a scale of 1:2000 feet and depicting the following features:

- (1) Section, township, range.
- (2) The location of the proposed well(s) and Oil and Gas Facility equipment;
- (3) Major geographic and topographic features such as slopes, and floodplains.
 - a. Fresh water supply wells, fresh water storage reservoirs and Water Courses and lakes within one (1) mile of the proposed Oil and Gas Facility.
 - b. All state, county and private roads, existing and proposed, and bridges, overpasses and culverts, that will be used to access the Facility within a one (1) mile radius of the Oil and Gas Facility.
 - c. Existing and proposed flowline routes, including gathering lines and transmission lines;
 - d. The location of all fire, police, and emergency response service facilities. If these facilities are not located on the map, the Applicant shall provide the contact information, address, direction, and mileage to the nearest emergency response service;
 - e. Occupied dwellings, schools, churches, hospitals, clinics, assisted living homes or cemeteries, parks and recognized open space, farms, ranches, wildlife habitat as defined by the NM Fish and Wildlife Service, each within a one (1) mile radius of the Facility;
 - f. BLM and state lands within one mile of the Facility;
 - g. Incorporated and unincorporated municipalities within one (1) mile of the proposed Facility;
 - h. The location of any historical, archeological or cultural sites listed in the Register of Cultural Properties of the New Mexico Historic Preservation Division and those identified by Tribes and Pueblos in Sandoval County within one (1) mile of the Facility;
 - i. Recorded utility and access easements.

E. Site Plan.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

The site plan for the Oil and Gas Facility with a map showing the proposed location of:

- (1) Wells with GPS coordinates for each well
- (2) Tanks, pits, compressors, dehydrators, tank batteries, and other equipment
- (3) Parking facilities
- (4) 24Other ancillary buildings
- (5) Flowlines and gathering lines

F. Easement.

In order to allow for the county's post-abandonment monitoring and remediation the application shall include a 20-foot access easement to the proposed well and a 30-foot radius easement around each well. Within thirty days after the granting of a development permit, the Director shall have the easement recorded in the office of the County Assessor. If the permit is not granted, the Director shall destroy the easement document.

G. Housing.

The estimated number of non-local personnel for each phase of the Operation and a description of the housing plans for non-local personnel.

H. Environmental Compliance History.

The Applicant shall provide a list, certified by an officer of the company, of Oil and Gas Facilities where Applicant, or Applicant's parent company, has had a permit suspended or revoked or paid fine for violations of any laws or regulations or other, both in- and out-of-state, during the past five years, and whether any of these violations are still outstanding.

I. Financial Solvency.

The Applicant must submit financial statements audited by a certified public accountant for each of the past five years to demonstrate financial solvency. If the Applicant is a subsidiary of another company, the information provided must include five-year financial statements for the parent company that have been audited by a certified public accountant.

J. Required Reports

The following reports must be submitted with the Application for the Application to be considered.

- (1) Water Protection Demonstration Report - A Water Protection Demonstration Report describing the hydrology, geology and seismology within the Area of Review.
 - (a) The Applicant shall submit a Report, produced by qualified experts approved by the Director, that demonstrates the suitability of the Well Site for oil and gas drilling that will ensure the protection of Underground Sources of Drinking Water (USDWs).

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (b) The siting of oil and gas wells shall be limited to areas that are determined to be geologically and hydrologically suitable. The Applicant shall demonstrate that the Area of Review is suitable based on the following information:
 - (i) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;
 - (ii) An analysis of the local geology, hydrology and seismology of the Area of Review, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and
 - (iii) Unless it has been demonstrated that there is no USDW present in the Area of Review, the above analyses shall demonstrate that fluids from the Oil and Gas Well cannot move into any USDW.
- (c) Existing site specific geological, hydrological and seismological data from reputable sources and which are already available may be used in the Report.
- (d) The Director shall hire a Consultant, paid for by the Applicant, to review and evaluate the Applicant's report. Based on the information in that report, the Consultant shall make a recommendation to the Director on the suitability of the proposed site for oil and gas development.

(2) Cultural Properties Report.

- (a) The Applicant shall make a good faith effort to obtain the following information prior to the submission of the Application for a Development Permit.
- (b) Identification of all Cultural Properties within a one (1) mile radius of the Facility, and of any upgraded or new roads to and from the Facility, that are listed under the National Register of Historic Place and the State Register of Cultural Properties.
- (c) The Applicant shall submit copies of all written communication with the NM Historic Preservation Division regarding any registered and unregistered Cultural Property that may be impacted by oil and gas development within one (1) mile of the proposed Facility and of any upgraded or new roads to and from the Facility. Copies of the NM Historic Preservation Division written recommendations to address potential threats to these Cultural Properties shall be included in the Cultural Properties Report.
- (d) The Applicant shall submit copies of written communication to Pueblo and Tribal Leadership ("Leadership") within the County by registered mail, return receipt requested. The written communication must inform the Leadership of the proposed oil and gas development including the specific location of the facility and all access roads as required under Article VII Section D. The Applicant shall also include information regarding estimated traffic and the type of drilling equipment that will be used, including vibrating equipment, during each phase of oil and gas development. The Applicant's written communication must contain the name, address and phone number of the individual with whom the Tribe or Pueblo shall communicate. Any responses from the Tribal or Pueblo Leadership must be in written form, including any requests for additional information, and submitted with the Application. If there is no response from a Tribe or Pueblo within twenty-one (21) calendar days, the Applicant shall state that in the Cultural Properties Report.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (e) A Tribe or Pueblo concerned about unmarked sacred sites or any cultural sites that are confidential to that Tribe or Pueblo may work with the Director to develop a confidentiality agreement to ensure the protection of those sites and their non-public disclosure.
- (f) When all required Cultural Property information and comments are received, as required in this Section, the Applicant shall describe how to ensure that cultural, historical, archeological sites or unmarked burial grounds within the Well Site and on improved and new roads will be protected from the impacts of oil and gas development. This information shall be submitted in the Cultural Properties Report.

(3) Wildlife Habitat and Livestock Report.

(a) Purpose of Report

Oil and gas development can have a significant impact on wildlife and critical wildlife habitats. Preserving these habitats is economically important to the County with tourism and recreation being important revenue generators. In addition to these direct economic benefits, indirect economic benefits to the County include pollination and pest insect predation by birds and bats, flood control, maintenance of or increased property values, rangeland productivity, and retention of the County's rural way of life. There are also unquantifiable cultural, spiritual, historic and other quality of life factors to consider.

In rural areas oil and gas development can also have a significant impact on livestock and rangeland due to such factors as, but not limited to, noise, odors, and traffic.

(b) The Report shall include the following information:

- (i) The location of key critical wildlife and habitat areas, as mapped and defined by the NM Department of Game and Fish and the US Fish and Wildlife Service, within ½ mile of the perimeter of the proposed Oil and Gas Facility.
- (ii) The identification of livestock and rangeland areas within ½ mile of the perimeter of the proposed Oil and Gas Facility.
- (iii) A list of mitigation measures recommended by the NM Department of Game and Fish to the Applicant for a specific drilling permit to address potential habitat fragmentation and other wildlife concerns.
- (iv) A list of mitigation measures recommended by the NM Livestock Board to the Applicant for a specific drilling permit to address potential livestock concerns.
- (iv) Input sought by the Applicant from any Tribes and Pueblos that may have concerns and suggestions for addressing wildlife and livestock issues. Written communications between these Tribes and Pueblos shall be included in the application along with the Report.
- (v) Mitigation measures may include the following:
 - (aa) Limiting the total area of disturbed ground for well pads
 - (bb) Limiting the number of and distance of new roads.
 - (cc) Reducing noise levels as required in Article VIII Section E

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (dd) Offsite monitoring systems to reduce vehicle traffic.
- (ee) Fencing or other measures to protect wildlife and livestock from oil and gas operations.
- (ff) Burying power and pipe lines in or adjacent to roads to eliminate or reduce clearing of vegetation and habitat fragmentation.
- (c) After review, the Director shall include appropriate mitigation measures as a condition of the Permit to Drill.

K. Road Plan

The Applicant shall submit a Road Plan, prior to the beginning of well site construction, to identify and mitigate the impact likely to be created by the proposed Oil and Gas Facility on existing roads, bridges, overpasses and culverts, including the impact on road capacity, traffic flow, the surface materials and conditions, safety, and any Cultural Properties in the area. The Road Plan shall include the following information:

(1) Plan Requirements:

- (a) The location of existing paved and unpaved private and public roads, highways, bridges, overpasses and culverts that will be used during each phase of oil and gas operations including construction, drilling, production, transportation and closure.
- (b) The structural integrity of bridges, overpasses and culverts and their ability to handle heavy oil and gas trucks and trailers carrying weights of 80,000 pounds.
- (c) heavily laden vehicles traveling to and from the site.
- (d) Identify roads that require upgrading to standards capable of handling heavy oil and gas trucks and trailers carrying weights of 80,000 pounds.
- (e) The proposed traffic route plan, including the number of daily and peak hour trips to and from the site, and the duration, for each phase of operations.
- (f) Identify any schools, licensed daycare or medical facilities, churches or public facilities that may be impacted by the proposed traffic route plan.
- (g) A description of existing traffic conditions of the proposed traffic circulation plan including weekday peak hours.
- (h) The projected daily traffic impact on residential roads, including weekends and evenings.
- (i) Existing traffic control measures including speed limits, traffic signals, and potential existing driveway and turning movement problems.
- (j) Where traffic from the proposed Oil and Gas project will impact any location with an incidence of high accident frequency, the accident history shall be evaluated. The Plan shall address how the increase in oil and gas traffic to and from the site will not further aggravate the situation.
- (k) Copies of right of way or easement agreements including any agreements with Tribes and Pueblos.
- (l) Onsite vehicle circulation, parking patterns and exits from the site.
- (m) Signs and Markers.
 - (i) The operator shall provide perimeter and other on-site and off-site signs and markers advising the public of the oil and gas activity and related hazards that may be present including, but not limited to, warning of truck traffic.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (ii) The operator shall submit a signage plan that shows the number, type, size and location of signs and markers.
- (n) Identify maintenance and upgrading costs of existing county and private roads.
- (o) The design and cost of any new roads projected to be constructed.
- (p) A schedule of any surface disturbance activity that may cause dust, and the proposed dust mitigation or remediation techniques, including, but not limited to, watering, surfacing, and speed control; and
- (q) Any additional information required by the Director.

(2) Other Plan Requirements.

- (a) The Plan shall include an identification of any Cultural Properties in or near the routes to and from the Oil and Gas Facility. If such sites are identified, the Plan, with input from the affected Tribes and Pueblos and the NM Historic Preservation Division, shall describe site protection measures and how these will be implemented prior to the commencement of drilling operations. Written communications between the applicant, the New Mexico Historic Preservation Division and affected Pueblos and Tribes shall be included in the application for a conditional use development permit. It is the responsibility of the applicant to ensure that any identified Cultural Properties are protected from any potential damages due to oil and gas operations including transportation.
- (b) The Plan must identify any federally and state designated historic and scenic highways and by-ways near or on the routes to and from the Oil and Gas Facility and how to mitigate potential damages to those highways.
- (c) The Plan must address how to minimize the impact of oil and gas related traffic in residential neighborhoods and near homes, schools, hospitals, churches, businesses, farms and ranches, and wildlife corridors.

(3) Road Plan Approval.

- (a) The Planning and Zoning Department Director or designee shall send the Road Plan to the Public Works Department Director or designee for review. The Public Works Department Director shall review the Road Plan. 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.
- (b) Public Works Department Director, as part of his/her 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 tribal/pueblo, municipal and/or state roads where needed.
- (c) The Public Works Department Director may require the Applicant to provide a cash bond security, a letter of credit, escrow deposit or other method acceptable to the County, and/or enter into a Road Improvement Agreement for use of County roads.
- (d) The Public Works Department Director shall accept or deny the Road Plan within thirty (30) business days of receipt of the Plan from the Planning and Zoning Department Director. The Applicant or the Public Works Director may ask the Planning and Zoning Department Director, in writing, for a reasonable amount of

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

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.

- (e) Applicant may appeal the Public Works Director's denial of a Road Plan to the Planning and Zoning Commission.

L. Sound Management Plan

- (1) Applicant must provide a Sound Management Plan that identifies hours of increased sound emissions due to oil and gas operations including the, type, frequency spectrum and intensity to be emitted and proposed mitigation measures for Oil and Gas Facility operations that include truck traffic, drilling and fracturing, well pumps and compressors.
- (2) Sound emitted from Facilities shall be limited to a level which protects the public health, welfare and quality of life of residents, conserves property values and does not harm livestock and wildlife, as required under Article VII E.
- (3) The Plan shall identify any sound sensitive locations within one-half (1/2) mile, including, schools, libraries, hospitals, group homes, recreation areas, livestock and wildlife habitats.
- (4) Sound mitigation measures shall ensure that sound sensitive locations shall not be subject to increases of more than five (5) A-weighted decibels (dBA) above site-specific ambient baseline sound levels, measured as specified in Article VIII.
- (5) Sound measurements shall be taken by a qualified sound Consultant approved by the Director and paid for by the Applicant.

M. Emergency Response Plan

The Emergency Response Plan shall include the following:

- (1) Name, address and phone number, including a 24-hour emergency number of at least two local persons responsible for emergency field operations at the Facility.
- (2) Describe any emergency services that will be available on-site.
- (3) Identify all fire, police and emergency response services in or near the County that are within two miles of the Facility. Identify other possible fire, police and emergency response services outside the two-mile area.
- (4) Letters from the local police, fire, and emergency services department heads confirming that they have the capacity, equipment and training needed to address potential emergencies that may occur including explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide, methane or other toxic gas emissions, or hazardous material vehicle spills or vehicle accidents.
- (5) An Oil and Gas Facility emergency services map showing the name, location and description of all potentially dangerous facilities on the site and their GPS coordinates and includes the size, type and content of all pipelines, wells and tanks. The information the emergency services map contains shall be held confidentially by the County Fire Chief and shall only be disclosed in the event of an emergency. The map shall be updated as built after permit approval and submitted to the County Fire Chief.
- (6) A written specific Emergency Response Plan for each type of potential emergency associated with the Oil and Gas Facility operations. These include: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide, methane or other toxic gas emissions, or hazardous material vehicle spills or vehicle accidents. The Emergency

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Prepared Plan should be site specific and take into account site topography and seasons. The Plan shall describe whether a reliable method of communication with these emergency services is in place or is planned and the circumstances that will cause the Applicant to seek outside emergency assistance.

N. Air Quality Protection Plan.

- (1) The Applicant shall submit copies of any permits that have been approved by the Air Quality Control Bureau of the New Mexico Environment Department. If no Air Quality Permit has been obtained, Applicant shall provide written documentation as to why the Oil and Gas Facility does not need an Air Quality permit. The Air Quality Protection Plan shall include specific regulated compounds projected to be released during each phase of the oil and gas operations and measures to be used to ensure air emissions will not exceed federal and state standards.
- (2) Air Quality Plan Approval.
 - (a) The Director may seek comments on the Air Quality Plan from the County Fire Chief, from County Health departments and other County departments, from municipalities and neighboring Tribes and Pueblos.
 - (b) The Director may approve the Air Quality Plans as submitted, request additional information, require changes before approval, or deny approval of the plan.
 - (c) The Applicant may appeal the Director's denial of the Air Quality Plan to the Planning and Zoning Commission.
 - (d) Once the Air Quality Plan is approved, the Director shall ensure that the plan is made available to County Departments, local municipalities and Tribes and Pueblos. The Fire Chief shall assist municipalities that request help in preparing for any potential air quality emergency identified in the plans.

O. Water Use and Protection Plan.

The Water Use and Protection Plan shall contain sufficient information to demonstrate to the County that the proposed well site protects surface and ground water for present and potential use as domestic, agricultural and wildlife water supply.

- (1) The Applicant shall submit a Water Protection Demonstration Report as required under Article VII, Section J (1) that demonstrates that the proposed oil and gas well site will not cause Degradation according to USDW standards.
- (2) If, after receiving the Consultant's evaluation of the Water Protection Demonstration Report, there is no potential for Degradation of USDW, the monitoring requirements described below may be waived by the Director.
- (3) The Water Use and Protection Plan shall describe in detail how the Operator will meet the requirements of Article VIII Section M that include:
 - (a) Initial Baseline testing of surface and groundwater;
 - (b) Ongoing testing and monitoring of on-site groundwater during Drilling and

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Production;

- (c) Leak and spill Protection measures; and
 - (d) Other Protection measures as determined by the Director.
- (4) The Applicant shall demonstrate how the Plan complies with downstream water quality standards established by Tribes having “Treatment as a State” status.
- (5) The Applicant shall include a certification signed by an officer of the company that it will comply with requirements relating to water of the NM Oil Conservation Division, NM Department of the Environment and the NM State Engineer.

Water Usage and Sources.

- (1) The following information regarding water usage shall be submitted as part of the application:
- (a) volume of water to be used, the type of water to be used including fresh, effluent, brackish and produced, and the source of the water; and
 - (b) copies of written approvals from any public or private well owners, from the appropriate governmental agencies and any Tribes and Pueblos must be provided for all sources of water to be used in the drilling and the production of oil and gas.
 - (c) Non-potable water shall be used whenever possible.

Baseline Water Testing and On-Site Monitoring Measures.

Unless the Applicant has received a waiver as described in Article VII, Section O (2), the Water Use and Protection Plan shall describe the Applicant’s proposed design and plans for baseline and on-site monitoring to protect water quality according to USDW Quality standards.

- (1) These on-site measures, at a minimum, shall include the following:
- (a) On-site monitoring wells that must be designed and constructed according to the New Mexico Environment Department’s Monitoring Well Construction and Abandonment Guidelines (March 2011);
 - (b) A system of prompt detection and reporting of Degradation of water quality according to the requirements and standards of the NM Water Quality Control Act.
 - (c) A set of analytes for baseline and ongoing measurement, including methane, which will be used as tracers, to ensure the County that there will be timely and accurate detection of leaks or spills.
 - (d) A description of measures that the Operator will implement to ensure the containment of any leaks or spills that may include the following:
 - (i) physical barriers to be installed and maintained under and around the facility or group of facilities;
 - (ii) a description of the method and frequency of on-site inspections for spills or leaks that will be performed by the Operator.
 - (iii) the methods the Operator will use to perform an initial baseline sampling of any Watercourses and lakes in the Area of Review.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

P. Waste Management Plan.

All solid and liquid wastes must be managed in accordance with Federal, State and County law and in a manner so as to prevent pollution of the environment, conserve fresh water, and protect the public health and safety.

- (1) Applicant must submit a waste management plan that identifies the type and volume of solid and liquid waste that will be generated at the site and how that waste will be properly stored, transported and disposed of.
- (2) To the maximum extent practicable and in accordance with OCD Rules, as required in 19.15.34 NMAC as amended, the applicant must describe how any Produced Water generated at the Facility will be recycled or reused for onsite reinjection purposes, if any.
- (3) The applicant must include copies of the original agreements between the applicant and any OCD licensed waste disposal facilities, including injection wells, and copies of the OCD permits for such licensed waste disposal facilities.
- (4) The applicant must include the following information regarding the transportation off-site of any solid and liquid wastes.
 - (a) Copies of the applicant's original agreements with companies that will transport solid and liquid wastes off-site; and copies of OCD authorizing the companies to transport solid and liquid wastes off-site to licensed OCD waste disposal facilities.
 - (b) The Director may require that companies transporting solid or liquid wastes be fitted with GPS tracking systems in order to help identify responsible parties in the case of accidents/spills.
- (5) The Plan shall describe the roads that will be used to transport off-site the solid and liquid waste produced by the oil and gas facility and the estimated number of trips per week needed to remove that waste from the site. This information must be included in the Road Plan required under Article VII Section K to be reviewed and approved by the Department of Public Works.

Q. Terrain Management Plan.

- (1) The Terrain Management Plan shall include restoration activities that will be conducted before and after each phase of development with the site. The Terrain Management Plan shall include but not be limited to the following information:
 - (a) Number of acres disturbed during each phase of development and a description of current land use and reasonably foreseeable future land use on the property. The description of current land use should, at a minimum, list the current land use designation of the property as designated by the County Planning and Zoning Department.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (b) The pre-drilling grades of the entire site.
 - (c) A soil analysis describing the soil characteristics of the site and any limitations those characteristics may pose to the proposed development.
 - (d) A description of any erosion mitigation techniques to be used such as silt fencing, vegetative buffers, and berms.
 - (e) A description of the noxious and invasive plant species of concern within the vicinity of the Well Site and the proposed mitigation techniques to prevent the appearance or spread of these species. The Applicant shall consult with the local agricultural extension office and the local Natural Resources Conservation Service office for information about noxious and invasive plant species that exist in the area and the best methods available to contain or eliminate them. Any written recommendations from these offices shall be submitted with the Plan.
 - (f) A schedule and description of interim activities following the completion of each phase of development within the Facility to include but not be limited to, grading, erosion control, revegetation methods and materials, and soil amending.
 - (g) A schedule and description of proposed final restoration activities to be completed once OCD final approval has been received for the plugging and abandonment of the well. These final restoration activities described in the Terrain Management Plan may include but are not limited to the following:
 - (i) Configuration of the reshaped topography and restored drainage to its natural state that existed on the site prior to development.
 - (ii) Soil treatments
 - (iii) Reseeding materials and revegetation methods
 - (iv) Backfill or grading requirements
 - (v) Soil stabilization technique
 - (h) A description of how those restoration activities will impact the anticipated future use of the property, including written approval from the surface owner and the owner of the mineral rights.
 - (i) A drainage map identifying natural drainage and a description how storm water will be managed with the project area to prevent the travel of runoff. Where appropriate, the drainage map shall include a watershed map showing all the upper watershed area draining into or through the site. The map and the description shall be reviewed and approved by the County Engineer.
- (2) The Terrain Management Plan shall be submitted to the local Flood Control Authority and the Soil and Water Conservation Districts, if any, located near the Oil and Gas Facility for their review.
- (3) The Terrain Management Plan shall be submitted to Pueblo and Tribal Leadership within the County located near the Oil and Gas Facility.
- (4) The Applicant shall submit a certification signed by the chief officer of the company that the Applicant shall not deposit, drain or divert into or upon any public highway, street, alley, drainage ditch, arroyo, storm drain, sewer, gutter, creek, stream, river, lake or lagoon, any oil or liquid containing any chemicals, hydrocarbons, or any drilling mud, sand, water or saltwater, or in any manner permit, by any means, any of such substances to escape from any property owned, leased or controlled by the Applicant.

R. Proof of Plugging Bond.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Proof of Bond. Applicant must provide certification that OCD's financial assurance requirements, as set forth in 19.15.8 NMAC as amended, have been satisfied.

ARTICLE VIII. GENERAL PROVISIONS FOR OIL AND GAS FACILITIES.

A. Light Direction

- (1) All lighting must comply with the New Mexico "Night Sky Protection Act", *NMSA 1978, supra*.
- (2) The Oil and Gas Facility shall use lighting Fixtures or Luminaires that are hooded, shielded, directed downward and inward to prevent glare and Spill Light that goes beyond the primary area where the light source is intended.
- (3) Light sources should be chosen for energy efficiency, long life and low maintenance.
- (4) Nothing in this section should be construed to compromise the safety of operations at the drilling site in accordance with the requirements of the Federal and State Occupational Health and Safety laws and rules.

B. Visual Impact

- (1) Oil & 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, similar to BLM Standard Environmental and Supplemental Colors coding system. Color matched to land, not sky, and slightly darker than adjacent landscape.
- (2) To the extent possible, Oil and Gas Facilities shall not be located so as to impair or obstruct federally or state designated historic and scenic byways and sites designated as Scenic Historic Markers by the NM Historic Preservation Commission. Such sites and byways are significant to New Mexico and the County's visual beauty and are important to tourism and to local property owners. Any agreements with the Surface Owner as required under the SOPA shall be taken into consideration.

C. Setback Requirements

- (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 residential structure is present: 1,500 feet;
 - (b) Distance from lot line or property where schools or playgrounds: ½ mile;
 - (c) Distance from lot line or property where places of worship, hospitals or institutions are present: 1,500 feet;
 - (d) Distance from lot line of property where electrical, natural gas, solar, wind and

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- related public water utility structures are present: 1 mile;
- (e) Distance from lot line of property where non-residential occupied structures are used, excluding A (4) (b) and (c), including agricultural and livestock structures: 400 feet;
 - (f) Distance from existing water wells permitted by the NM Office of the State Engineer: 1,000 feet for individual wells; 2,000 feet for wells serving 5 or more households;
 - (g) Distance from Continuously Flowing Water Courses and Lakes: 1,000 feet;
 - (h) Distance from a cultural, historic, or archaeological resource as recommended by NM Historic Preservation Division. This distance may be increased upon written request by a Tribe or Pueblo for the preservation of a Cultural Property;
 - (i) Distance from a county, state or federal designated trail or open space, whether part or not part of a state or federal forest or preserve: 500 feet;
 - (j) Distance from a public road or highway: 250 feet;
 - (k) Distance from lot line of property where non-occupied agricultural facilities are used including acequias, stock ponds and irrigation structures: 500 feet.
- (5) These setbacks are minimal standards. The Director may recommend greater setbacks depending on topography, Cultural Properties, livestock, wildlife habitat and other factors.
- (6) Surface Owner agreements establishing setbacks shall not be subject to A (4).

D. Fencing.

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

E. Sound Control Standards

- (1) All operations during the construction, maintenance, and operation of the oil and gas facility shall be conducted in such a manner as to minimize to the greatest extent practical all types of sound emissions at the boundary of the permitted Oil and Gas Facility.
- (2) Intermittent operations including mobile vehicles or equipment, drilling and work-over rigs, will conduct their operations in a manner that does not create a noise nuisance to surrounding residents, schools, hospitals, group homes, public gathering areas, or to livestock and wildlife.
- (3) Continuous operations including well site compression and pump- jacks, shall use the following noise mitigation measures to minimize disturbance
 - (a) Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented away from the closest existing residences unless otherwise specified by New Mexico Environmental Department permit restrictions.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (b) All facilities with engines or motors not electrically operated shall be equipped with hospital grade mufflers. Such equipment shall be installed and maintained in proper working condition.
 - (c) All mechanized equipment associated with the oil and gas facility shall be anchored or mounted on vibration dampeners so as to minimize transmission of vibration through the ground.
 - (d) All Oil and Gas Facilities that have compressors, engines or motors which generate sound will be placed behind a maintained, acoustically designed barrier or be contained within a maintained, acoustically insulated structure to further reduce sound and to provide less visual impact.
 - (e) The Director may require additional noise abatement measures, which include, but are not limited to, the following:
 - (i) Installation of electric engines and/or motors.
 - (ii) Vegetative screening consisting of trees and shrubs placed within the fenced enclosure.
 - (iii) Solid wall or fence of acoustically insulating material surrounding all or part of the facility.
- (4) Acceptable Sound Levels
- (a) Based on the default baseline limits on noise levels for areas zoned as rural, residential, commercial or industrial in the Sandoval County Comprehensive Zoning Ordinance, the following acceptable sound levels shall apply.
 - (b) Sound levels during daytime hours from 7AM to 7PM shall not exceed 15 dB(A) above the following default baseline ambient noise levels for rural, industrial, commercial or industrial areas where the Oil and Gas Facility is located.

Zone	Default Baseline	Increase	Day Maximum
Rural	30 dB(A)	+15 dB(A)	= 45 dB(A)
Residential	40 dB(A)	+15 dB(A)	= 55 dB(A)
Commercial	50 dB(A)	+15 dB(A)	= 65 dB(A)
Industrial	60 dB(A)	+15 dB(A)	= 75 dB(A)

- (c) During nighttime hours from 7PM to 7AM, sound levels shall not exceed 5 dB(A) above the following default baseline ambient noise levels for rural, industrial, commercial or industrial areas where the Oil and Gas Facility is located.

Zone	Default Baseline	Increase	Night Maximum
Rural	30 dB(A)	+5 dB(A)	= 35 dB(A)
Residential	40 dB(A)	+5 dB(A)	= 45 dB(A)
Commercial	50 dB(A)	+5 dB(A)	= 55 dB(A)
Industrial	60 dB(A)	+5 dB(A)	= 65 dB(A)

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

(5) Sound Measurement.

- (a) Prior to the start-up of a new well or modification to an existing well, the operator shall demonstrate initial compliance with this section by requesting a site-specific ambient baseline sound level measurement from a qualified sound expert to be approved by the Director and paid for by the Applicant.
- (b) The sound pressure level shall be measured at the property boundary in the direction of the area receiving the noise, or as close as practical to this location.
- (c) In all sound level measurements, the existing ambient noise level from all other sources in the area shall be considered to determine the contribution to the sound level by the oil and gas operation.
- (d) Sound pressure levels shall be measured to determine average dB(A) over a period of time in order to be able to compare the site specific ambient daytime and nighttime noise levels to the default baseline levels as described in Section A (4) (b) and A (4) (c)).

(6) Emergencies.

The provisions of this section shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work. (Ord. 840 (part), 1997: prior code § 19-53.1(D))

(7) Complaints.

- (a) Upon receipt of a noise complaint that appears to originate from the oil and gas facility, the Director shall within 24-hours investigate the complaint. The Director may hire a qualified sound consultant, who shall be paid for by the Operator, to set up an independent monitoring system to verify the situation. The Operator shall be given 24-hours to correct the problem from the source.
- (b) The Director shall maintain records of all noise complaints, the dates when filed and how the outcome, including any mitigation measures, the Operator may have been required to take.

F. Waste Disposal.

- (1) On-site surface disposal of wastes of any kind is prohibited.
- (2) All solid, liquid and sewage waste shall be securely contained on the site and properly disposed of according to all applicable Federal, State and County regulations. On site Oil and Gas Facility Produced Water must be removed from the site unless it is stored and used for reuse or recycling.
- (3) All oil and gas produced solid and liquid waste must be transported and disposed of in permitted NM Oil Conservation Division facilities.
- (4) All solid Drilling Wastes including cuttings, spent drilling muds, membranes, filters and other solid wastes and Produced Water shall be tested and disposed of as required by New Mexico Oil Conservation Division rules (19.15.35 NMAC as amended).
- (5) To minimize the volume of waste, whenever possible the applicant shall reuse or recycle Produced Water on the pad site where the waste was generated in accordance with NM Oil Conservation Division rules. These include provisions requiring that the recycling or

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

re-use of Produced Water not be permitted for any use which involves contact with fresh water zones. In addition, the permittee shall comply with the New Mexico Oil Conservation Division rules regarding hydrogen sulfide gas and NORM (19.15.11 NMAC as amended and 19.15.35 NMAC as amended.)

- (6) Closed-loop systems for Produced Water are required. The use of on-site injection wells, pits, temporary or permanent, and ponds will require that the applicant apply for a variance as described in Article XIII and that includes the following information:
- (a) A detailed statement explaining the need for a variance; and
 - (b) A detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment. [19.15.34.16 A NMAC]

H. Flowlines and Gathering Lines

(1) Operator may construct flowlines and gathering lines on the approved site but no pipeline shall exceed the size necessary for transporting oil and gas produced on the site. Applicant/Operator shall bury all permanent flowlines and gathering lines no less than thirty-six (36) inches below the surface, include a leak detection system that includes pressure flow meters, flow balancing, and a computer alarm and communication system in the event of a suspected leak and restore the Surface as nearly as possible to its former condition. Operator shall use steel pipe in all pipelines in which pressure is anticipated to be in excess of 300 psi unless the material transported is highly corrosive, in which case other types of pipe meeting industry standards may be used.

(2). Applicant must ensure that all flowlines and gathering lines are platted and filed as built in the office of the Sandoval County Assessor.

I. Storage Tanks

- (1) Except as otherwise specifically mandated by the OCD, tanks used for the storage of condensate, crude oil, or other liquid hydrocarbons produced by and/or used in conjunction with any Oil and/or Gas Facility or Facilities, shall be equipped with vapor recovery units and managed such that no emissions leave the permitted facility site.
- (2) All above ground storage tanks shall be equipped with a secondary containment system including lining to protect against leaks and spills, sufficient to contain the volume of fluid in the tanks, as approved by OCD.
- (3) All below grade tanks shall be constructed and maintained according to applicable NMOCD regulations.

J. Trash and Debris.

Operator will maintain all locations and well sites upon which operations have taken place clear of all litter, trash, and other waste and shall not store unused equipment at the location or site.

K. Road and Traffic Standards.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

(1) Road Improvements Agreement

In order for the County to be assured of the completion of required road improvements, the Operator shall agree to one of the following:

- (a) The Operator shall install and construct such roads, bridges, overpasses and culvert improvements, if any, as are required by this Ordinance and in the manner and to the design standards provided in Chapter 32, Article II of the Sandoval County New Mexico Code of Ordinances, or industry standards acceptable to the County. Prior to the construction of any improvements or the submission of any bond or other improvement guarantee, the Operator shall furnish the County with all plans necessary for the construction of such improvements. These plans shall be reviewed and approved by the County Public Works Department.
- (b) The Operator shall provide a cash bond security, letter of credit, escrow deposit or other method acceptable to the County, in which case, the County shall install and construct such road improvements.

(2) Roads and Traffic Standards

- (a) Chains on heavy equipment shall not be permitted on paved County roads. All damage to County roads directly attributable to the installation, construction and operation of oil or gas facilities shall be promptly repaired at the Operator's expense.
- (b) Heavy equipment shall not be used on roads with ruts measuring six (6) inches or more in depth.
- (c) Speed limits shall be set at a level to prevent the creation of excessive dust and erosion.
- (d) The amount of traffic generated by the proposed development shall not cause public roads to operate at a level less than what can be met by current capacity and structural conditions.
- (e) 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.
- (f) Trucks and all other vehicles shall not exceed the regulated weight limits as defined by the New Mexico Department of Transportation for each class and type of vehicle on any roadway, bridge, overpass or culvert.

(3) Timing of Transportation Activities

- (a) Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation, and other related work conducted on the oil or gas facility shall be limited to between the hours of 8:00 AM and 5:00 PM except in cases of fires, blowouts, explosions and any other emergency or where the delivery of equipment is necessary to mitigate the emergency.
- (b) In coordination with County and/or municipal officials and the Pueblo and Tribal

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Leadership of any impacted tribes or pueblos, the Operator shall avoid truck traffic under the following conditions:

- (i) During times of school bus transport of children to and from school locations.
- (ii) During public events, festivals and feast days.

L. Well Sites and Facilities.

- (1) The Well Site shall not be used for the storage of flowlines 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 flowlines 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.
- (2) 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.

M. Gas Flaring and Venting.

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

N. Water Protection.

The Operator shall take all measures necessary to avoid degradation of surface water and ground water.

- (1) Ground water monitoring requirements at the well site:
 - (a) In consultation with the Consultant, the Operator shall establish an appropriate on-site monitoring system, and proceed to conduct baseline and ongoing monitoring in accordance with the Water Protection Demonstration Report and the Water Use and Protection Plan;
 - (b) If an Operator who has received a waiver as provided in Article VII, Section O (2) encounters a USDW during drilling operations the Operator shall immediately cease drilling operations and report this information to the Director. After consultation with the County Consultant, the Operator shall install a monitoring well system before drilling or production operations continue;
 - (c) Prior to commencing construction of the well site, the Operator shall, in consultation with the County Consultant, take water samples from County approved monitoring wells.
 - (d) The Operator shall also sample monitoring wells for baseline data after drilling commences and before any hydraulic fracturing activity takes place. The analysis,

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

not the sampling, of fracturing chemicals deemed proprietary may be delayed until after the Operator provides OCD with the list of substances actually used as required by NMAC 19.15.16.19 B and 19.15.16 C;

- (d) The Operator shall report all baseline and ongoing sampling analysis results to the Director, to OCD and to ED.

(2) Public and Private Wells Baseline Testing Requirements

- (a) Subject to owner permission and prior to the commencement of drilling, the Operator, at his expense, shall sample each private and public water well within the Area of Review of the well site for the analytes identified in the Water Use and Protection Plan to establish baseline information.
- (b) The Operator shall provide the baseline testing results to the public and private water well owners, to the Director, OCD and to ED;
- (c) If a private water well owner refuses to have the Operator test the well, a good faith effort shall be made to ensure that a waiver form, developed by the Director, is signed. The form, requesting a signature, shall be sent to the well owner by registered mail, return receipt. Both the Director and the Operator shall maintain a copy of the signed waiver form and a list of those who have not signed.

(3) Surface Water Baseline Testing Requirements

- (a) Subject to owner permission and in consultation with the County Consultant the Operator shall sample Water Courses, and lakes within the Area of Review prior to prior to the commencement of drilling to establish baseline information;
- (b) All sampling and testing required in this Section must be conducted by an independent consultant and analyzed in a certified laboratory, both of which are to be approved by the Director. These services are paid for by the Operator.
- (c) In the event that ongoing, on-site, groundwater monitoring samples at the well site indicate a potential violation of the NM Water Quality Act or The Clean Water Act the Operator shall have the test repeated. If the violation is confirmed by the laboratory the Operator shall immediately take measures to reduce these contaminants to acceptable legal standards. The Operator shall immediately notify private and public well owners within the Area of Review as well as Tribes and Pueblos whose land is within the Area of Review, the Director, NMED and NMOCD, providing them with copies of the results of the tests and the measures taken to reduce contaminants to acceptable legal standards.

(4) Spills, Leaks

- (a) The Operator shall install and maintain the spill and leak protection measures described in the Water Use and Protection Plan.
- (b) The Operator shall perform regular inspections of the facility to detect leaks, spills or maintenance needs as described in the Water Use and Protection Plan.
- (c) In the event of a detected spill or leak, the Operator shall comply with OCD protocols as required by 19.15.29 et seq. NMAC, and, in addition to the required notification of ED and OCD, notify and inform the Director of the OCD required remediation plan and the results.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (d) The Operator shall promptly notify Pueblo and Tribal Leadership, the Mayors of municipalities, as well as private land owners, within the Area of Review of any Major Release, as defined by OCD, and inform them of the measures that are being taken to remedy the problem. Copies of these notices shall be filed with the Director, who shall maintain a record of each Operator's spill and leak history.

O. Air Quality Protection

The oil and gas operations shall, to the maximum extent practicable, avoid causing degradation to air quality. In no event shall the oil and gas operations be operated in a manner that allows emissions from the operations to create a public nuisance, and specifically, venting or flaring operations shall not be carried out in a manner that is injurious to the health, safety or property of adjacent landowners.

P. Emergency Response

- (1) A list including quantities of chemicals, fluids, and other potentially dangerous materials used in drilling, fracking, production and transportation, where they are stored, and any corresponding Material Safety Data Sheets, must be provided to the County Fire Chief before beginning operations. The list of fluids used in the fracturing of a well shall be provided in a sealed envelope which shall be securely stored but immediately accessible should an incident posing a threat to health, safety and the general welfare occur.
- (2) If the Operator, or any of the Operator's contractors, store any chemicals and other materials used for fracturing or other purposes at any location in Sandoval County, the following information shall be provided to the Fire Chief.
 - (a) The GPS coordinates of each location where the chemicals are stored;
 - (b) A complete list of all materials stored at each location in a sealed envelope, to be securely held by the Fire Chief but immediately accessible should an incident occur;
 - (c) The location of the nearest fire station or fire-fighting equipment; and
 - (d) Assurances that any fire, flood or other incident at a storage site posing a threat to health, safety or the general welfare will be immediately reported to emergency services, and that Applicant or contractor will fully cooperate with emergency services efforts to contain the threat.
- (3) The County must be immediately notified of any emergency contact information changes.
- (4) The Emergency Response Plan, including the list of chemicals, shall be updated and resubmitted to the county on a semi-annual annual basis or within ten working days if the conditions change such as change of ownership or Operator.
- (5) The County shall be immediately notified of any emergency even those that may be handled on-site.
- (6) If the County determines that emergencies are due to Operator negligence the County may request reimbursement for its share of the cost of those emergency services.
- (7) Hydrogen Sulfide Contingency Plan.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (a) Applicant shall provide a copy of the Hydrogen Sulfide Contingency Plan submitted to the NM Oil Conservation Division according to 19.15.9 NMSA to the Director.
- (b) The Director shall send a copy of the Applicant's Hydrogen Sulfide Contingency Plan to the municipalities – incorporated and unincorporated Pueblo and Tribal Leadership within one mile of the Facility.

Q. Cultural, Historical and Archeological Sites.

- (1) All Cultural Properties as identified in the Cultural Properties Report must be protected. Prior to the commencement of oil and gas operations, there shall be written agreements between the Applicant and the NM Historic Preservation Division and between the Applicant and all Tribes and Pueblos that have identified Cultural Properties. These agreements shall specify all measures to be taken to ensure the protection of identified Cultural Properties.
- (2) In the event that a cultural, historical or archeological site, including unmarked burial grounds, is discovered or identified during any phase of the development and the production of oil and gas at the Site, or during the repair of roads and the construction of new roads that are required for traveling to and from the site, the Operator shall comply with all applicable local, state and federal laws listed under Article I, Section E of this Ordinance. These include: the American Indian Religious Freedom Act; the Archaeological Resources Protection Act; the NM Cultural Properties Protection Act; the National Environmental Policy Act; the National Historic Preservation Act; the National Scenic Byways Program; the Native American Graves Protection and Repatriation Act; the NM Prehistoric and Historic Sites Act; and the NM Scenic Byways Program.
- (3) A violation under this section shall be subject to the enforcement provisions of Article XIV in this Ordinance.

R. Abandonment, Plugging and Restoration.

- (1) The Operator shall submit to the County copies of all OCD approved plugging and abandonment forms.
- (2) The Operator shall include a written certification that all gathering lines have been removed and a statement of the use to be made of the site following restoration, including a discussion of the utility and capacity of the reclaimed land to support the surface owner's preferred use and the consideration which has been given to making restoration operations consistent with surface owner plans, and the terrain in its natural state prior to drilling.
- (3) Soils.
 - (a) Soils having severe limitations, or which are shown as unsuitable for the intended purposes, shall not be used for those purposes unless the Operator has clearly demonstrated in the Terrain Management Plan how the soil limitations are to be overcome or mitigated.
 - (b) All topsoil stripped from the surface and retained on or off the site shall be carefully stockpiled in a manner to prevent its erosion or loss, contamination by on-site operations, and in a state to facilitate its re-application to the disturbed areas during restoration.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (c) Any necessary grading or clearing should, to the extent possible, follow, preserve, match, or blend with the natural contours and vegetation of the land and should not increase the possibility for erosion.
 - (d) All changes made to the existing soil composition and arrangement shall be compatible with the soil stability and erodibility as demonstrated in the soil survey, if a soil survey was required in the application.
 - (e) The Operator shall take sufficient measures to prevent dust arising from any area where the surface is disturbed; however, oil and gas waste water shall not be used for dust suppression.
- (4) Drainage and Erosion.
- (a) Using appropriate grading and erosion control methods throughout all Oil and Gas operations, including any soil and terrain restoration, the maintenance and restoration of natural or well-controlled drainage flows shall be preserved.
 - (b) To the extent possible, the Operator shall preserve the natural drainage existing on the site prior to the development.
 - (c) Water that drains from the well site shall not contain pollutants or sedimentary materials at a greater concentration than would occur in the absence of the development.
 - (d) 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.
- (5) Vegetation.
- (a) During development and operation, the Operator shall minimize damage to existing vegetation.
 - (b) There shall be no introduction of, or increase in the prevalence of, invasive or noxious plant species within the well site or associated areas also under restoration as a result of Oil and Gas activity.
- (6) Restoration.
- (a) The Operator shall begin interim and final restoration activities as soon as practical upon completion of each phase of development.
 - (b) The Operator shall reseed by drilling on the contour, or any other method approved by the Director.
 - (c) The Operator shall obtain vegetative cover that equals at a minimum 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 seasons.
 - (d) The Operator shall remove from the areas under restoration all buildings, equipment, materials, waste and debris related to the Oil and Gas activities.
 - (e) The Operator shall notify the County at least 10 days in advance of the date that final restoration activities are to begin and also notify the County when restoration activities have been completed.
 - (f) Revegetation shall be monitored semi-annually for three (3) years; planted vegetation or seedlings which are not established after two (2) years shall be replaced.

ARTICLE IX. INSURANCE REQUIREMENTS.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

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

A. General Requirements.

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

B. Standard Commercial General Liability Policy.

- (1) This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources and equipment hazard damage, broad form property damage, fire, independent contractors’ protective liability and personal injury.
- (2) This coverage shall further provide a limit of liability of not less than Five Million Dollars (\$5,000,000) per occurrence.
- (3) The policy or policies shall provide that they may not be cancelled without written notice to the County of at least thirty (3) days prior to the effective date of such cancellation.

C. Pollution Insurance:

- (1) Unless the policy or policies under B include environmental damages, the County shall require a pollution insurance policy or policies that provide standard pollution liability insurance with a coverage of not less than \$ 15,000,000 per occurrence, issued by an insurance company authorized to do business in the State, and that names the applicant as insured and the County as additional insured.
- (2) Such insurance policy shall be maintained in full force and effect from the date of approval of the Oil and Gas Development permit by the County Planning and Zoning Commission and continuing in force until the well is plugged and abandoned in accordance with the applicable state statutes, OCD regulations, and the Terrain Management Plan as approved by the County Engineer.
- (3) A separate policy is not required if pollution coverage is included as part of the commercial general liability insurance policy required by this Section as long as the pollution coverage is not less than Fifteen Million Dollars (15,000,000).

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (4) 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.
- D. The Applicant, if offering a plan of self-insurance, may provide a certificate of insurance as required by this Section issue pursuant to such plan provided that such plan has been approved by the New Mexico Division of Insurance and the County Manager.

ARTICLE X. NOTICE OF DECISIONS.

The County shall notify Applicants in writing of decisions regarding application for Oil and Gas Facilities by the Director and by 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 the Leadership of the Tribes and Pueblos who received notices of meetings for application review.

ARTICLE XI. 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 OCD permits within ten (10) business days of the permit being approved by OCD.
- B. The new operator shall provide updated emergency and other contact information within ten (10) days of the change.
- C. The new operator shall also present proof of adequate insurance as required in Article IX.
- D. The Director may request financial solvency and environmental violation history of the Applicant.

ARTICLE XII. NONCONFORMITIES

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

ARTICLE XIII. VARIANCES.

Application for variance of any of the standards associated with any permit contained within this Ordinance shall be submitted in accordance with the CZO No. 10-11-18.7A, Section 18

No such variance shall be approved unless the Applicant and/or property owner demonstrates by clear and convincing evidence that, if granted, the variance will have no significant effect on the health, safety and welfare of the County, its residents and other service providers and is consistent with the intent and purpose of this Ordinance.

ARTICLE XIV. ENFORCEMENT

A permittee who fails to comply with the Oil and Gas Ordinance, the Sandoval County

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

Comprehensive Zoning Ordinance or the terms or conditions of any permit issued pursuant to the Oil and Gas Ordinance, shall have committed a violation and shall be held responsible for the violation and be subject to administrative, civil or criminal penalties as well as other equitable and legal remedies.

A. Minor Violations

- (1) If any permittee violates any provision of this Ordinance or any provision of the conditional use permit granted under this Ordinance, and such violation does not directly cause material harm to the public health and safety of county residents, to the environment and to Cultural Properties, the Planning and Zoning Division Director shall issue a written citation to such person describing the violation and the corrective actions required giving the permittee no more than thirty (30) days to mitigate the violation.
- (2) The citation shall conspicuously and in bold face type state: “If not paid, this fine shall constitute a lawful debt which will be collected pursuant to legal process and may be assessed as a lien upon the property upon which the violation exists. If the violation is remediated by the County or by a contractor hired by the County, the actual costs of remediation shall be added to the fine.”
- (3) The fine for violating Section 10.2 Subsection A of this ordinance shall not exceed \$300 or the maximum legally allowable, or imprisonment for ninety days, or both the fine and imprisonment. The fine shall be payable to the County. The fine may be waived at the sole discretion of the County if the alleged permittee commences and completes satisfactory actions to remediate the alleged violation within the time allotted to mitigate the violation.
- (4) Each day that a violation exists shall constitute a separate violation of the Ordinance.
- (5) Nothing in this section shall preclude the County from taking such other lawful action as is necessary to prevent or remedy any violation, such as seeking injunctive relief, abatement, suspension or revocation of a permit, or forfeiture of any financial assurance deposited with the County to prevent or remedy a violation of the Oil and Gas Ordinance.

B. Major Violations.

When a violation of the Sandoval County Oil and Gas Ordinance or the terms and conditions of the conditional use permit, results in a significant public safety, health or Environmental risk, the permittee shall be electronically or personally delivered a Cease and Desist Letter, giving the permittee up to thirty (30) days, depending on the seriousness of the alleged violation, in which to correct the violation. The permittee must immediately cure the alleged violation. Failing to do so may result in the permittee receiving a summons for violating the Sandoval County Oil and Gas Ordinance and the provisions of the permit and having the permit suspended or revoked.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

- (1) The Director may suspend or revoke the permit after notice and an opportunity for a public hearing. In assessing whether to suspend or revoke the permit, the Division may consider the seriousness of the violation and any good-faith efforts to comply with the applicable requirement.
- (2) The Director may suspend or revoke the permit when the permittee has received a Compliance Order from the New Mexico Oil Conservation Division or from the New Mexico Environment Department.
- (3) Nothing in this section precludes the County from filing a criminal, civil and administrative action simultaneously to stop the permittee from harming the health, safety, environment and the Cultural Properties of the County.
- (4) The violation citations under Subsection A or B shall be issued to the permittee. When possible, the citation shall contain the address of the property on which the violation is alleged to exist, the legal description of the property or both. The citation shall be hand-delivered to the alleged permittee if possible, or may be mailed to the alleged permittee and posted upon the property. Any of the previously listed forms of notice shall constitute sufficient service of notice under the law.
- (5) Any citation issued for violation of this Ordinance shall state the name of the alleged permittee, the date the citation was issued, the type of violation, and the section of this Ordinance under which the violation is issued. The citation shall, if possible, list the action necessary to cure the alleged violation.
- (6) The Director shall maintain a record of minor and major violations committed by permittees, the dates the violations occurred, the type of violations, any mitigating circumstances, the dates when the violations were resolved and the corrective actions taken to resolve the violations.
- (7) The Director is granted the authority to monitor Oil and Gas Facilities to insure compliance with the Oil and Gas Ordinance, including permit conditions, and the Comprehensive Zoning Ordinance.

ARTICLE XV. INTERPRETATION.

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

ARTICLE XVI. ASSESSMENTS AND REPORTS.

A. Assessment of Oil and Gas Ordinance

- (1) The Director shall conduct an ongoing assessment of the Oil and Gas Ordinance to determine whether any procedural or operational improvements are needed and to assess any new changes in state or federal laws or regulations or relevant court decisions
- (2) By March of 2021 the Director shall report to the Planning and Zoning Commission the experiences and challenges of the oil and gas ordinance and whether the Commission should consider any additions or modifications to discuss and recommend to the Board of County Commissioners.

Citizens Working Group Ordinance Team
Preliminary Draft – Oil and Gas Ordinance

ARTICLE XVII. SEVERABILITY. EFFECTIVE DATE.

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