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**THE BOARD OF COUNTY COMMISSIONERS OF
SAN MIGUEL COUNTY, NEW MEXICO**

ORDINANCE NO. SMC-_____

THIS ORDINANCE ESTABLISHES A COMPREHENSIVE “LAND DEVELOPMENT CODE” (LDC) FOR SAN MIGUEL COUNTY; INCORPORATING AN AMENDMENT TO THE COUNTY COMPREHENSIVE PLAN 2004-2014; RESERVING ARTICLES FOR INSERTION OF THE COMPREHENSIVE PLAN, ZONING REGULATIONS, SUBDIVISION AND PARCEL DIVISION REGULATIONS, BUILDING CODE, HOUSING CODE, AND OTHER ENVIRONMENTAL REGULATIONS, APPLICABLE TO THE UNINCORPORATED AREA OF THE COUNTY; AMENDING THE ZONING ORDINANCE TO CREATE TWO (2) NEW NATURAL RESOURCE ZONING DISTRICTS: PROVIDING FOR DEVELOPMENT APPROVAL PROCESS FOR OIL AND GAS PROJECTS AND FACILITIES; AND

ESTABLISHING FOR ALL OIL AND GAS PROJECT DEVELOPMENT APPROVALS PREREQUISITES TO INCLUDE: (1) A SITE PLAN COVERING ON AND OFF-SITE PROJECT DETAILS; (2) COMPREHENSIVE PLAN AND STATE AND FEDERAL STATUTORY AND REGULATORY CONSISTENCY REPORT; (3) AN ENVIRONMENTAL IMPACT REPORT; (4) A FISCAL IMPACT ASSESSMENT; (5) AN ADEQUATE PUBLIC FACILITIES AND SERVICES ASSESSMENT; (6) A WATER AVAILABILITY ASSESSMENT AND GEOHYDROLOGICAL REPORT; (7) AN EMERGENCY SERVICE AND PREPAREDNESS REPORT; (8) A TRAFFIC IMPACT ASSESSMENT; (9) A REPORT OR PLAN PROVIDING FOR TRANSFERS OF DEVELOPMENT RIGHTS; (10) PROVISIONS PROVIDING FOR BONDING AND INSURANCE REQUIREMENTS; (11) ESTABLISHING STANDARDS FOR: EQUIPMENT, OPERATIONS, AIR AND WATER QUALITY; PUBLIC NUISANCE AND SITE ABANDONMENT AND REMEDIATION; (12) LOCATION, NUMBER, DENSITY AND CO-LOCATION OF OIL AND GAS PADS AND WELLS; (13) GRADING AND SOIL DISTURBANCE, SPILLS AND LEAKS; NOISE, LIGHTING, BUFFERS, LANDSCAPING AND SCREENING; CLOSED LOOP SYSTEMS; OPERATING HOURS; ABANDONMENT AND REMEDIATION; A DISCRETIONARY QUASI-JUDICIAL BENEFICIAL USE AND VALUE DETERMINATION PROCESS; APPLICATION AND PERMIT FEES.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN
MIGUEL COUNTY:**

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ARTICLE I: GENERAL PROVISIONS

SECTION 1. SHORT TITLE

THIS ORDINANCE SHALL BE OFFICIALLY CITED AS THE SAN MIGUEL COUNTY “LAND DEVELOPMENT CODE” (“LDC”).

SECTION 2. PURPOSE, SCOPE AND AUTHORITY

This Land Development Code is promulgated pursuant to, but not limited to, the authority set forth in Arts. X and XIII of the New Mexico Constitution (1912); NMSA 1978 Sections 3-18-1; 3-19-1; 3-21-1; 3-21-13; 4-37-7; 4-38-1; and 19-10.4.1, 4.2 and 4.3. This ordinance constitutes an exercise of the County’s zoning, subdivision, parcel division, adequate public facilities and service provision, water availability, transportation management, fiscal balance, building and housing codes, and police power, planning, preservation and protection of environmentally sensitive lands, including but not limited to air and water resources, wetlands, floodways and flood plains, steep slopes, aquifers, vegetative and animal habitats, acequias, significant geological formations, archaeological, cultural and historic neighborhoods and places, and other health, safety and public nuisance powers to assure 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 the incorporated boundaries of any municipality without exception, including leased federal and state lands, and shall be consistent with all federal and New Mexico statutes, rules and regulations, and with the County Comprehensive Plan, including all area, regional, neighborhood, public improvement district and utility plans.

SECTION 3. STATE AND FEDERAL STATUTES

The LDC is complementary and supplementary to, does not replace, enhances and is consistent with the following federal and state statutes, executive orders and regulations:

- (a) Oil and Gas Act, NMSA 1978, §§ 70-2-1 et seq. and the Oil and Gas Regulations issued by the Oil Conservation Commission, §§ 9.15.2 et seq.;
- (b) Water Quality Act, NMSA 1978, §§ 74-6-1 et seq.;
- (c) Rangeland Protection Act, NMSA 1978, §§ 76-7B-1 et seq.;
- (d) Governor's Executive Order 2008-004;
- (e) Governor's Executive Order 2008-038;
- (f) Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 et seq.;
- (g) New Mexico Public Health Act, NMSA 1978 §§ 24-1-1 et seq.;
- (h) New Mexico Senate Joint Memorial 71;
- (i) Wildlife Conservation Act, NMSA 1978, §§ 17-2-37 et seq.;
- (j) Cultural Properties Act, NMSA 1978, §§ 18-6-1 et seq.;
- (k) Federal Land Policy and Management Act, 43 U.S.C. §§ 1701
- (l) National Historic Preservation Act, 16 U.S.C. §§ 470 et seq.;
- (m) Uniform Trade Secret Act NMSA 1978, §§ 57-3A-1 et seq.;
- (n) Prehistoric and Historic Sites Act, NMSA 1978, §§18-8-1 et seq.;
- (o) Cultural Properties Protection Act, NMSA 1978, §§18-6A-1 et seq.;
- (p) Archaeological Resources Protection Act, 16 U.S.C.A. § 470aa;
- (q) Surface Owners Protection Act, 70-2-1 et seq., NMSA 1978;
- (r) Solid Waste Act, 74-9-1 et seq., NMSA 1978;
- (s) Rangeland Protection Act, 76-7B-1 et seq., NMSA 1978;
- (t) National Environmental Policy Act, 42 U.S.C. A. 4321 et seq.;
- (u) Energy Policy Act, 42 U.S.C. 6301, et seq.;
- (v) Oil Pollution Act, 33 U.S.C. A. §§ 2701 et seq.;
- (w) Safe Drinking Water Act, 42 U.S.C.A. §§ 300F et seq.;
- (x) Clean Air Act, 42 U.S.C.A. §§ 7401 to 7671q, and Regulations, 40 C.F.R. § 52.21(b);
- (y) Clean Water Act, 33 U.S.C. §§ 1251 to 1387 and Regulations, 40 C.F.R. Part 130;
- (z) Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901 to 6992k and Regulations §§ 261.1 et seq.;
- (aa) Endangered Species Act, 16 U.S.C.A. §§ 1531 to 1544 and Regulations, 50 C.F.R. §§ 17.1 et seq.;
- (bb) Toxic Substances Control Act, 15 U.S.C.A. §§ 2601 et seq.;
- (cc) New Mexico Department of Energy, Minerals and Natural Resources Department, Oil Conservation Commission Regulations, NMAC §§19.15.39.9 and 19.15.39.10, dated

- November 10, 2008; OCD Rule 19.15.4.202 NMAC; and OCD Rule 19.15.17.1 et seq. (June 6, 2013);
- (dd) Arts. X and XIII of the New Mexico Constitution (1912);
 - (ee) NMSA 1978 Sections 3-18-1; 3-19-1; 3-21-1; 3-21-13; 4-37-1; 4-37-7; 4-38-1; and 19-10.4.1, 4.2 and 4.3;
 - (ff) Night Sky Protection Act, NMSA 1978, Sections 74-12-1 et seq..

SECTION 4. SEVERABILITY

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

SECTION 5. INTERPRETATION AND DEFINITIONS

5.1 Interpretation

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

The text shall control captions, titles, and maps.

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

Words used in the singular include the plural; words used in the plural include the singular.

Words used in the present tense include the future tense; words used in the future tense include the present tense.

Each purpose and findings 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 LDC. They are intended as a legal guide to the administration and interpretation of the LDC and shall be treated in the same manner as other aspects of legislative history.

In their interpretation and application, the provisions of the LDC are considered minimal in nature. Whenever the provisions, standards, or requirements of any other applicable chapter of the LDC are greater, or any other County Ordinance more restrictive, the latter shall control.

In computing any period of time prescribed or allowed the day of the notice or final application, after which the designated period of time begins to run, is not to be included. The last day is to

be included unless it is not a working day, in which event the period runs until the next working day.

5.2 Definitions

Words with specific defined meanings are as follows:

Abandonment or Abandoned: The permanent abandonment of a well or an Oil or Gas Facility, as established by filings of the owner or operator with the state OCD, from production records maintained by the OCD, and from information gathered by the Administrator. The County may presume abandonment of an Oil or Gas Facility based upon: (i) non-use or the lack of any production for one (1) year plus ninety (90) days, as established from records of the OCD; (ii) plugging and abandonment of a well pursuant to OCD Rule 19.15.4.202 NMAC; or (iii) any other evidence that the well has been abandoned or plugged and abandoned as established by filings of the owner or Operator with the OCD or other records maintained by the OCD or the Administrator.

Abut or abutting: Having property lines in common or connecting at a single point.

Adequate public facility or public service: An on or off-site public facility, system of facilities, or public services rendered including but not limited to: roads and transportation, fire, police, affordable housing, sewer, solid waste, stormwater management and substances retention, parks and recreation, and emergency service and preparedness, that has sufficient available facility capacity, personnel and equipment to service the oil or gas facility at an adopted Level of Service (LOS), whether provided by public improvement districts, utilities, and County, regional, state or federal jurisdictions. The transportation LOS shall include County roads, and state and federal highways passing through or adjacent to the County.

Adjacent: Two properties, lots, or parcels are “adjacent” where they otherwise would abut, except being separated by a roadway or street, right-of-way, or railroad line, or any stream, river, canal, lake, or other body of water.

Administrator: The Administrator is the County Planning and Zoning Supervisor or any person delegated by the Board of Commissioners, to perform any portion of the functions exercised by the Planning and Zoning Supervisor pursuant to the LDC.

Acidizing: The pumping of acid into the wellbore to remove near-well formation damage and other damaging substances.

Adopted level of service (LOS): The LOS standards adopted for Adequate Public Facilities and Services. All applications for development approval are evaluated for the purposes set forth in the LDC in accordance with these adopted LOS standards.

Adverse effect or impact: A negative change in the quality of the environment, (floodplains, floodways, streams, wetlands, hillsides, steep slopes greater than 10%, wildlife or vegetation habitats, air and water quality, water availability, open space, agricultural and ranch lands, global

warming, and greenhouse gas emissions), public facilities and services, transportation capacity, health and safety, historical, architectural, archaeological, or culturally significant lands.

Agricultural: Property currently used, or used for five of the last 10 years, for farming or ranching purposes, including pasture.

Appeal: An appeal to the Board where it is alleged that there is an error in any development order, requirement, condition, exaction, impact fee, decision, or determination made by the Administrator, a Hearing Officer or the Planning and Zoning Commission.

Applicant: The owner of a mineral estate or oil and gas lease of a mineral estate, or a production right owner or lessee of lands, leases, or mineral estates proposed to be developed or a duly designated agent or operator who shall have express written authority to act on behalf of the owner or lessee. Consent to file an application for development approval of an oil and gas facility or project shall be required from the legal owner of the premises, lessee of the mineral estate, and any person, corporation, partnership, sole proprietorship, association, fund, group, trust, or business entity in the same ownership. Applicant shall include a unit operator who is appointed under a unit agreement or pooling arrangement, including working interest, royalty interest, and overriding interest owners or lessees.

Applicant Expenses: Those expenses that shall include consultant and engineering costs, exactions, application fees, costs of obtaining a bond, trust agreement, or irrevocable letter of credit posted with the County to assure compliance with conditions of approval of an Oil and Gas Conditional Use Permit, other Grading and Building Permit Applications, as well as necessary development costs.

Application: Any application for a development order or a development approval of an Oil or Gas Facility or Project.

Area plan: An adopted Plan encompassing a specific geographic area of the County, which is prepared for the purpose of specifically implementing the County Comprehensive Plan by refining the policies of the Comprehensive Plan to a specific geographic area or containing specific recommendations with respect to detailed policies, standards and regulations applicable to authorized development within the area plan boundaries. An Area Plan shall consist of goals, objectives, policies, and implementing strategies for capital improvement plans, zoning; subdivision regulations, official maps, levels of service required for public facilities and services; physical and environmental conditions of the land; cultural, historic and archaeological resources, and land-use characteristics of the area; including maps, diagrams, and other appropriate materials showing existing and future conditions. An Area Plan may include plans for Oil and Gas facilities and projects.

Board: The Board of County Commissioners of San Miguel County, State of New Mexico.

Body of water: All water situated wholly or partly within or bordering upon the County whether surface or subsurface, public or private.

Bond: See security.

Buffer yard: The required area and setback, with appropriate installation of landscaping and screening materials.

Buildable Area: That portion of the property upon which buildings, structures, pads, wells or equipment may be placed, limited by floodplain, slope or other terrain constraints required by buffer zones and setbacks, including but not limited to the maximum number of wells and pads and collocation of wells and pads or other area or bulk design and development standards set forth in the LDC.

Building: A structure designed, built, or occupied for an Oil or Gas Facility, storage or equipment.

Building permit: See Grading Permit; and Certificate of Occupancy or Completion. A ministerial permit required by the LDC after all valid discretionary development approvals have been issued.

Bureau: The United States Bureau of Land Management also called BLM..

Capacity: The maximum demand that can be accommodated by a public facility or service without exceeding the adopted level of service (LOS). For roads and highways, “capacity” shall be measured by the maximum number of vehicles that can be accommodated by an intersection or road link, during a specified time period, under prevailing traffic and control conditions at that road’s adopted LOS.

Capital Improvement: A public facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the County, which shall also include equipment for roads, highways, fire, police, schools, affordable housing, stormwater or liquid material detention for treatment and re-use, or emergency service response.

Capital Improvements and Services Budget: A plan setting forth, by category of public facilities and public services, those capital improvements and public services and that portion of their costs that are separately attributable to serving new development and resolving existing deficiencies within designated service areas for such public facilities and public services over a five (5) year period.

Capital Improvements Plan: See “Planned Capital Improvement”

Carrying capacity: A measure to determine environmental infrastructure, water availability, traffic capacity, school, police, fire and emergency service and response capacity, or fiscal criteria upon which to ground development approval without degrading the adopted level of service.

Certificate of completion: Additional permit(s) required by Article XIV.

Certify: Whenever the LDC requires that the Board, Planning and Zoning Commission, Hearing Officer, Administrator or other agency or official certify the existence of some fact or circumstance, such certification shall be made in any manner, oral or written, which provides reasonable assurance of the accuracy of the certification.

Closed Loop System: A system for oil and gas drilling, fracking or production that utilizes a series of completely enclosed above ground tanks instead of an open pond or pit that is used for the management, treatment or re-use of drilling, workover or other waste fluids.

Cluster: A group of buildings, structures, facilities, or land uses, including but not limited to oil and gas wells and pads collocated on a single integrated commonly designed parcel.

Code: means the San Miguel County Land Development Code (“LDC”), and any successor LDC amendments.

Collector street/road: See road, collector.

Collocation: The placement of two or more well bores on a single drilling pad or site, or the placement of two or more drilling pads and sites contiguous to each other.

Commission: The New Mexico Oil Conservation Commission (“OCC”).

Common ownership: See Same Ownership.

Compatible – A situation where a building, structure, land use or Oil or Gas Facility or Facilities can co-exist or act together harmoniously and be consistent with the Comprehensive Plan, Area Plan, the LDC or other land uses taking into account: the substantial mitigation of adverse effects or impacts on environmentally sensitive habitats, wetlands, flood areas, steep slopes, historic, cultural and archaeological artifacts and sites; elimination of public nuisances including chemical and toxic material pollution, excessive noise levels, odors, glare, fire hazards, explosions, visual impacts, impacts or pollution of the air, surface water and groundwater; treatment and re-use of stormwater and solid waste; availability of water; adequacy of roads and the arterial highway system, schools, affordable housing, fire, police and emergency response service.

Compatible Oil and Gas Use: A use which has received a permit or license from the OCD or the U.S. Bureau of Land Management, together with development approval for the Oil and Gas Conditional Use Permit, Grading and Building permits and a Certificate of Completion.

Comprehensive plan: The statutorily defined long-range plan intended to guide the growth and development of the County which includes inventory, analytical sections, Oil and Gas, land use, future economic development, housing, recreation, parks, open space, environment, libraries, utilities, public safety, fiscal integrity, transportation, infrastructure, public services, facilities, and community design, and environmental sustainability, all related to the goals and objectives, policies, and strategies contained within the Plan. The comprehensive plan shall include all Area Plans.

Compressor: A device designed to increase the pressure of gas for transmission through a gathering system or transmission line.

Conditional Use Permit: A discretionary use permit issued by the Planning and Zoning Commission, Board or Hearing Officer, authorizing uses not permitted by right in a zoning district but allowed for specified uses set forth in the Zoning Ordinance, with required findings and standards set forth in the base zoning district or in a Planned Unit Development approval for the property.

Conservation easement: A non-possessory interest of a holder in real property that imposes limitations or affirmative obligations designed to: retain or protect natural, scenic, or open space land or assure its availability for agricultural, forest, recreational, or open space use; protect natural resources; maintain or enhance air or water quality; assure surface or ground water availability; or preserve the historical, architectural, archaeological, or cultural aspects of real property.

Consistency: The requirement that all land development regulations and applications for development approval be consistent with the comprehensive, area, regional, public utility and public improvement district facility plans, and the capital improvement program, including federal and state statutes, rules, regulations and development approvals.

Contiguous: Lots are contiguous when at least one boundary line of one lot touches a boundary line or lines of another lot through boundary lines that abut or connect at a single point.

County: San Miguel County, New Mexico.

County Assessor: The County Assessor of San Miguel County, New Mexico.

County Attorney: The County Attorney or his Deputy designated by the Board to furnish legal assistance for the administration, interpretation, enforcement and implementation of the LDC.

County Clerk: The County Clerk of San Miguel County, New Mexico.

County Manager: The County Manager of San Miguel County, New Mexico.

County Planning and Zoning Supervisor: see Administrator. The County Planning and Zoning Supervisor of San Miguel County, or any person delegated by the Board to act in lieu of the Planning and Zoning Supervisor, shall be the Administrator of the LDC and authorized to perform any portion of the ministerial functions assigned to the Administrator pursuant to the LDC.

Dedication: The transfer of fee simple title to, grant of an easement, restrictive or affirmative covenant, or other incorporeal hereditament over lands and improvements to the County or other governmental or non-for-profit entity subject to the conditions of a development order requiring such transfer and acceptance.

Degradation or Pollution of Water: Degradation or pollution of ground or surface water that unreasonably reduces the quality of such water below: (1) baseline quality measurements; or (2) 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 greater.

The quality of a representative sample of water is unreasonably reduced when such water is below: (1) baseline quality measurements; or (2) the standards established by the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 et seq., whichever is greater, or is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or the public health, safety, or welfare, or impairs the usefulness or the public or private enjoyment of the water for any lawful or reasonable purpose.

Demolition: Any act or process that destroys or razes in whole or in part, or permanently impairs the structural integrity, or allows deterioration by neglect of a building or structure or land, wherever located, or a building, object, site, or structure, including exterior or interior spaces, of cultural, archaeological or historic artifacts, whether on or off-site.

Derrick: Any portable framework, tower, mast, and/or structure which is required or used in connection with drilling or working a well for the production of oil or gas.

Development: Any man-made change or significant land disturbance involving improved and unimproved buildings, structures or land uses including, but not limited to: sub-surface mineral and surface estates, oil and gas drilling, dredging, filling, fracking, extraction or transportation of oil and gas, grading, paving, diking, berming, excavation, exploration, storage of equipment, or materials, whether in pits, closed loop systems, structures, ponds, containers, landfills, or any other detention facility.

Development Agreement: An agreement between the County and an Applicant for any development approval regarding the development and use of the property through which the County agrees to vest development use, density or intensity, vary any other provision of the LDC or refrain from adopting new regulations changing or adversely affecting approvals for subsequent phases of development, in exchange for the dedication or provision of public facilities or services, or mitigation of environmental or public nuisance effects and impacts by the Applicant and requiring satisfaction of accompanying conditions incorporated into a development order.

Development Approval: Any authorized action by the Board, Planning and Zoning Commission, Administrator, Hearing Officer or other officer or agency of the County that approves, approves with conditions, or denies applications for development approval of a parcel, tract, land, building, or structure, including but not limited to any of the following: zoning or rezoning; subdivision approval; site plans; beneficial use or value determinations; transfers of development rights; conditional use permits, variances, grading or building permits; certificates of completion or occupancy; or administrative appeals.

Development Order: An ordinance, regulation, resolution, determination or decision of the Board, Planning and Zoning Commission, Hearing Officer or an officer or agency of the County with respect to the approval, approval with conditions, or denial of an application for development approval, including but not limited to zoning or rezoning; subdivision approval; site plans; beneficial use or value determinations; transfers of development rights; conditional use permits, variances, grading or building permits; certificates of completion or occupancy; or administrative appeals.

Development Site: The designated and approved oil or gas surface drill site within a Buildable Area upon which an approved Oil or Gas Facility may be constructed. The development site of a lot, tract or parcel includes buildings and/or structures, accessory uses, retention facilities and landscape, buffer and screening areas.

Development standards: Standards and technical specifications for improvements to land required for an Oil or Gas Facility approval, including specifications for the placement, dimension, composition, and capacity of: derricks, drilling equipment, oil and gas wells, streets and roadways; signage for traffic control and other governmental purposes, including road signs, and other traffic control devices on roadways; highways, lighting of roads; water mains and connections, including facilities and connections for the suppression of fires; off-street parking and access; landscaping, screening and contouring of land, drainage, sedimentation, and erosion control; open space and storm drainage culvert facilities, including drains, conduits, and ditches; environmental, air and water quality, global warming, historic, cultural and archaeological site and artifact preservation.

Directional Drilling: Any method of drilling for oil or gas that can reach a subsurface reservoir containing oil or gas resources at a significant horizontal distance from the surface location of the bore or wellhead on a single or co-located drill site. For purposes of this Ordinance, directional drilling includes without limitation related current technologies variously called slant drilling, horizontal drilling, extended-reach drilling, multi-lateral drilling (branched directional techniques), coiled tube drilling, and any future oil or gas technology that can span horizontal distance between surface and subsurface locations.

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

Drill Site: The premises used during the drilling or re-working of an oil and gas well or wells and subsequent life of a well or wells or any associated operation. The area of land in which oil and gas derricks, equipment, buildings, structures, improvements, wells, excavations, dumps, waste piles, ponds and other features normally utilized in oil and gas operations are located.

Drilling Equipment: The derrick, together with all parts of and appurtenances to such structure, every piece of apparatus, machinery, or equipment used or erected or maintained for use in connection with drilling on an oil and gas development site.

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

Effect: See adverse effect or impact.

Engineer: a professional engineer whether employed by the County or acting as an independent contractor to the County.

Environmental Impact Report: A process to examine adverse on- and off-site environmental effects or impacts by an oil and gas project.

Environmentally Sensitive Lands: lands including but not limited to arroyos, acequias, steep slopes, hillsides, flood areas, flood plains and floodways, scenic vistas, wetlands, rivers and streams, lands containing rare or endangered species, other wildlife and vegetation habitats and corridors, ranch and agricultural areas, historic, cultural and archaeological resource artifacts, buildings, structures and sites, eco-tourist resources, scenic vistas, natural resources, and natural landscapes of the County.

Erosion: Soil movement due to wind or water.

Escrow: A deposit of cash with the County or escrow agent to secure the promise to perform some act.

Exaction: The requirement for an oil and gas project to dedicate a portion of land or render a payment in lieu of land for the costs of public facilities or services as a condition of a development order.

Existing structure: A structure that is built and completed as of the effective date of this code.

Expenditure: A sum of money paid out in return for some benefit or to fulfill some obligation. Includes binding contractual commitments, whether by development agreement or otherwise, to make future expenditures as well as any other substantial change in position.

Exploration: Geologic or geophysical activities related to the search for oil, gas, or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation, performed in the search and evaluation of oil and gas deposits

Facility or Facilities: See Oil and Gas Facility or Facilities.

Fire Department: The San Miguel County Fire Department – County professionally employed fire fighters, including volunteer personnel.

Fiscal Impact Assessment: The process of assessment of oil and gas development applications as to the positive or negative effects or impacts they will have on the community's revenues and expenditures for public improvements, delivery of services and net cash flow.

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

Floodplain: Any land area susceptible to being inundated by water from any source. See area of special flood hazard, flood or flooding, and 100-year floodplain.

Floodplain, 100-year: See 100-year floodplain.

Floodway: A channel, river, stream, creek or other watercourse and the adjacent land areas that shall be reserved in order to discharge the base flood; the 100-year floodplain.

Fracturing (“Fracking”): The use of water or other fluids as a stimulant injected into an oil or gas well to split or fracture subsurface geological formations to improve the productivity of the oil or gas well.

Gas: Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas; whenever “gas” is used in this Ordinance it includes “natural gas,” “helium,” “carbon dioxide” or “methane.”

Gas Well: A well having a pressure and volume of natural gas; specifically, producing methane, often in combination with a variety of other substances such as butane, propane and carbon dioxide, or an Oil well with a (gas-oil ratio) in excess of 100,000 cubic feet of gas per barrel of oil.

Gathering system: A system of pipes, auxiliary tanks and other equipment used to move oil, gas or water from the well to a tank battery or to a transmission line for eventual delivery to a refinery.

Geohydrologic report: A report, including baseline studies, on potential adverse effects and impacts of an oil and gas project on subsurface and ground water resources and identifying fractured geological formations that would permit degradation of the water resources.

Glare: The sensation produced by luminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility.

Groundwater: All subsurface water as distinct from surface water, specifically, that part of the water in the saturated zone (a zone in which all voids, large and small, ideally are filled with water under equal or greater than atmospheric pressure).

Height, building: The vertical dimension measured from the average elevation of an oil and gas building or structure.

Historical, Cultural or Archaeological Resource: Historic Sites, Cultural Sites, Archaeological Sites, Artifacts and Landmarks that are designated (or eligible for designation) by the State of New Mexico. A list, called the official register of Cultural Properties, and the list of the National Register for Historic Places, on file with the Administrator or with the New Mexico Department of Cultural Affairs.

Impact area: The area within which a proposed Oil or Natural Gas Facility creates a demand for public services and/or facilities and is evaluated for compliance with the provisions of this Ordinance; that area in which the capacity of public facilities and services will be aggregated and compared to the demand created by existing development, committed development, and the proposed oil and gas project.

Improvement District: A special district formed by the Board for the purpose of levying assessments, rates, or charges on public facilities and services needs generated by oil or natural gas facilities.

In the County, within the County: Areas within the boundaries of the County, but not within the limits of any incorporated municipality.

Infrastructure: Any physical system or facility that provides essential services, roads and highways, such as stormwater detention, transportation, fire, police and emergency services, and the management and use of resources regarding same. Includes other physical systems or facilities that may not be specifically enumerated in this definition.

Intensity: The number of oil and gas wells permitted per square mile or section.

Inventory: A systematic listing of cultural, historical, architectural, or archaeological resources prepared by the County, Indian Tribe or Pueblo, state, or federal government or a recognized local historical authority, following standards set forth by federal, state, and county regulations for evaluation of cultural properties.

Land development code (“LDC”): All ordinances in the County Code including this Oil and Gas ordinance, zoning, subdivision, official mapping, capital improvements programming, planning and budgeting, building, housing, public nuisance, safety, and environmental codes that relate to land use.

Landscaping: The process or product of installing vegetation, fences, screening, or material for purposes of screening or softening the appearance of an oil and gas project site, including grading and installation.

Lessee: A person, corporation or other legal entity that has been granted an Oil and Gas Lease from the Owner of a mineral estate in land or who has received an assignment of all or a portion of a previously granted Oil and Gas Lease.

Level of service: An indicator of the extent or degree of service provided by, or proposed to be provided by, a facility or public service based upon and related to the operational characteristics of the facility or service. Indicates the capacity per unit of demand for each public facility or service, including the cumulative impacts or capacity of a series of oil and gas and other development projects taken together to measure the joint and several impacts.

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.

Methane: See Gas.

Mineral: An inanimate constituent of the earth, in solid, liquid, or gaseous state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form of metal or metallic compound, a non-metal, a non-metallic compound, a chemical, an energy source, or a raw material for manufacturing road building or construction material or oil, oil shale, tar sands, natural gas, geothermal resources, but shall not include surface or subsurface water, or sand or gravel regulated under Article II, Section One.

Mitigation: A system by which an oil and gas facility causing adverse effects or impacts is required to counterbalance that impact by creating an equivalent benefit through dedication, payments, offsets, alternative construction of self-imposed restrictions, reduction in the number and location of wells, collocation of wells or purchase of development rights under the transfer of development rights program.

National Historic Preservation Act: 16 U.S.C. Part 470.

Natural Gas: See Gas.

Natural Resources Zoning Districts. The Natural Resources Zoning Districts shall consist of the A-2 Residential Agricultural Zone and the R-H Rural Holding Zone.

Natural State: The topography that exists at the time information is gathered for Flood Insurance Rate Maps or any subsequent approved revisions to those maps.

OCC: The New Mexico Oil Conservation Commission.

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

Official map: A map established by law showing the right-of-way lines for existing or proposed roads, highways, police, fire, and emergency service facilities, off-site retention facilities, and stream buffers laid out, adopted, and established pursuant to the LDC. The official map shall be amended from time to time to show any amendments or additions resulting from the recording and filing of approved subdivision plats or oil and gas projects.

Offset: The amount of the reduction of an exaction designed to fairly reflect the value of area-related facilities or other oversized facilities provided by an Applicant pursuant to rules or administrative guidelines in the LDC.

Off site: Any premises not located within the area of the property subject to development approval, whether or not in the same or common ownership of the Applicant.

Oil and Gas Development Rights: The rights of a subsurface or surface mineral, gas or oil estate owner and/or lessee to develop such property, dependent on the type of leasehold or ownership interest, and subject to the constraints of applicable law. Under certain circumstances, development rights may be transferred to other owners or lessees of mineral, oil or gas fee or leasehold interests thus permitting the recipient to develop more intensely than otherwise permitted; see also Transfer of Development Rights (defined below).

Oil and Gas Facility or Facilities: include(s), but is not limited to, the following:

- (i) A new well and the surrounding well or pad site, built and operated to produce crude oil and/or natural gas, including auxiliary equipment required for production (e.g., separators, dehydrators, pumping units, tank batteries, tanks, metering stations, and other equipment located within the perimeter of the well and pad site);
- (ii) Any equipment involved in the re-working of an existing well bore, including, but not limited to, a workover rig;
- (iii) A compressor station, including associated facilities that serve one or more wells employing engines and/or motors;
- (iv) A water or fluid injection stations including associated facilities;
- (v) A storage or construction staging yard associated with an Oil or Gas operation;
- (vi) A facility related to the production of crude oil and/or natural gas which contains engines and/or motors;
- (vii) A gathering System consisting of crude oil or natural gas gathering lines or water lines;
- (viii) Any facility associated with a gathering system or water collection line, such as a drip station, vent station, pigging facility, chemical injection station, transfer pump station and valve box;
- (ix) A gas treating facility that serves multiple wells, pads or gathering systems;
- (x) Any other structure, building or facility used in the exploration, drilling, fracking transportation or production phase of oil or natural gas development;
- (xi) A pipeline for transportation of oil, natural gas or water with the exception of facilities used for the transportation of natural gas under a tariff regulated by the New Mexico Public Regulation Commission (“NMPRC”) or the Federal Energy Regulatory Commission (“FERC”); and
- (xii) Any other capital facilities required for off-site roads, fire, police, emergency service and wastewater treatment plants.

Oil and Gas Lease: A conveyance of a fee simple determinable estate in oil, gas and subsurface minerals where the lessee is granted the power to explore for, drill, frack, produce, transport and market the subsurface oil and gas pursuant to its terms.

Oil Conservation Division: See OCD

Oil or Gas Project: An oil or gas project that includes any of the following: facilities, exploration, drilling, hydrofracturing, production and transportation; and subject to development approval of a Conditional Use Permits, Grading and Building Permits, and Certificates of Completion.

Oil and Gas Site Plan: A scaled development plan, not involving a subdivision, parcel split or family transfer, unless specifically provided for in the LDC, accompanying an application for an Oil and Gas Conditional Use Permit, that shows the proposed on-site and off-site development of the project including: all buildings and structures, closed loop systems, on or off-site drainage, retention, and waste water, sand, chemical, mineral and toxic and non-toxic waste re-use and treatment facilities and systems, location and collocation of all pad and well sites, elevations, depth and horizontal paths and distances for drilling and fracking, setback, buffering, landscaping, fencing, screening and open space areas; location of all buildings, structures and uses within one mile of the perimeter of the site; all on or off-site roads, schools, fire, sheriff, affordable employee housing, transmission lines and all lands, buildings, structures and uses within the same ownership throughout the unincorporated area of the County, including such drawings, illustrations, appendices, reports, studies, assessments, documents, maps or other information necessary to meet the requirements of the LDC for the oil and gas development project.

One Hundred (100) Year Floodplain: The land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year, and the area designated as a Federal Emergency Management Agency Zone A, AE, AH, or AO on the Flood Insurance Rate Maps. See area of special flood hazard, flood or flooding, and floodplain.

On Site: Development, site disturbance, construction, installation of infrastructure, or any other activity that occurs on the site that is the subject of an application for development approval.

Operator or Owner (Oil and Gas): The owner of a sub-surface mineral estate or an oil and gas lessee, or other person, corporation, partnership, sole proprietorship, trust, association, or other legal entity who or which, being duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of a facility's operation or management of an Oil or Gas Facility.

Order: See development approval, or development order.

Ordinance: Any legislative action, however denominated, of the County that has the force of law, including any amendment or repeal of the LDC, an ordinance, the General Plan, an Area Plan, the Official Map, Capital Improvement Plan, or Capital Improvement Budget.

Organization: An organization operating on a membership basis with pre-established formal membership requirements and with the intent to promote the interests of its members.

Owner: The record owner of the fee, a contract purchaser holding equitable title, an oil and gas mineral estate owner or lessee, or a vendee in possession, including any natural person, organization, group of persons, association (including but not limited to homeowner or neighborhood associations), trust, partnership, sole proprietorship, firm, corporation, joint venture or any other entity having legal or equitable title to or sufficient proprietary interest in land.

Parcel: An area of land not dedicated for public or common use capable of being described with such definiteness that its location and boundaries may be established and, includes but is not limited to, lots or sections.

Performance Standards: Standards based on environmental, historic, cultural or archaeological, health, safety, adequate public facility or service, fiscal impact, emergency preparedness, General and Area Plan Consistency, water availability, traffic impact and other criteria in the LDC.

Permit: See Development Approval or Development Order; including but not limited to discretionary Conditional Use Permits, and ministerial building permits, zoning development permits, Grading Permits or Certificates of Completion or Occupancy.

Person: Any natural person, corporation, partnership, trust, entity, organization, sole proprietorship, joint venture, association (including homeowners' or neighborhood associations) or any other entity recognized by law.

Pit: See also, "Reserve Pits" and "Retention Facilities". A surface or subsurface impoundment, man-made or natural depression, or diked area on the surface that is earthen excavation used for the purpose of retaining or storing pollutants, chemicals, minerals, oil, gas, rocks, mud, sediments, gray water or materials. Pits are prohibited by the LDC for any Oil and Gas Project or Operation.

Planned Capital Improvement: A capital improvement that does not presently exist but which is included within the capital improvements plan or budget, and is funded, constructed, or otherwise made available within the time period prescribed.

Planning Commission: the San Miguel County Planning and Zoning Commission.

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

Pollution: The contamination or other degradation of the physical, chemical or biological properties of land, water or air, including a change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance onto the land or into the water or air that will, or is likely to, create a nuisance or render such land, water or air

harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to humans, domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wildlife, birds, fish or other aquatic life.

Pooling (Oil and Gas): See “Unitization”: A term frequently used interchangeably with unitization but more properly used to denominate the bringing together of small tracts sufficient for the granting of an oil or gas well permit under applicable spacing rules, as distinguished from unitization, which term is used to describe the joint operation of all or some portion of a producing reservoir of oil or gas. Pooling is important in the prevention of drilling of unnecessary and uneconomic wells, which result in physical and economic waste. The term pooling is also used occasionally to describe cross-conveyances of mineral or royalty interests by separate owners or conveyances of such interests to a trustee for the purpose of sharing the income from production of wells drilled anywhere on the consolidated tract. The former usage of the term related to the working interest alone or to the working and non-operating interests; the latter usage typically relates to the non-operating interests only.

Producing (Oil and Gas): The development stage in which marketable quantities of oil or gas, or both, are extracted from a well and may also signify the extraction level at which the quantitative terms of the lease are fulfilled.

Production Rights: The exclusive right to explore for, drill, frack, produce and develop oil, gas or mineral resources within an established natural resource zone.

Professional Engineer: An engineer licensed by the State of New Mexico.

Programmatic Environmental Impact Report: A programmatic EIR is an EIR which may be prepared for an applications for discretionary development approval of oil and gas projects in which portions of the EIR can be borrowed from prior EIRs that are related: (1) geographically; (2) as logical parts in the chain of development approvals; (3) in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of other oil and gas drilling; or (4) other individual actions carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

Project: The uses, structures, and buildings contained in an application for development approval; see also “Oil or Gas Project”.

Projected Traffic: Traffic generated by the project seeking development approval that is projected to develop in the future on an existing or proposed road.

Provider: A person, business, corporation, partnership, sole proprietorship, trust, association, joint venture or any other entity licensed by the federal or state government or the County.

Public Hearing (Administrative): A quasi-judicial or administrative hearing on an application for development approval heard by the Board, Planning and Zoning Commission or a Hearing Officer, notice shall be provided to the Applicant, the public and all property owners or lessees

within one mile of the property seeking development approval shall have legal standing to appear at the hearing. Interested parties with legal standing, including but not limited to County staff and County expert witnesses, shall have the right to testify and offer written documentary evidence. All lay and expert witnesses and County staff shall be sworn and are subject to cross-examination, by the County and parties with legal standing, through submittal of written questions to the Board, Planning and Zoning Commission or Hearing Officer. Site visits may be held at the discretion of the Board, Planning and Zoning Commission or Hearing Officer, upon the consent of the Applicant and with duly issued public notice and notice to all parties with standing. All witnesses, the Applicant, County staff and other parties may submit expert witness reports without the requirement that the expert appear for testimony.

Public Hearing (Legislative): A legislative proceeding before the Board which shall be preceded by statutorily required published notice, at which hearing all persons attending, including the Applicant, may present oral comments and/or written documentation subject to reasonable time limitations for speaking established by the Board.

Public Meeting: An administrative or legislative duly noticed public meeting to be held by the Planning Commission or Board. A public meeting, at the discretion of the Planning Commission or Board, does not require the taking of public or applicant comments, testimony or the receipt of documentary evidence.

Public Nuisance: Elimination of public nuisances including chemical and toxic material pollution, excessive noise levels, excessive lighting; odors, glare, fire hazards, explosions, visual impacts, impacts or pollution of the air, surface water and groundwater; and impacts upon environmentally sensitive lands.

Receiving Parcel: A parcel of land that is the recipient of a transfer of oil and gas development rights, directly or by intermediate transfer from a sending parcel or a TDR Bank. In the case of oil and gas TDRs, the receiving parcel may purchase the TDRs from the County Land Bank or from the sending oil and gas parcel in order to increase the number of oil and gas drill well and/or pad sites pursuant to Sections _____.

Reclamation (Oil and Gas): The employment during and after an oil and gas operation of procedures reasonably designed to minimize, to the maximize extent feasible, the disruption from the oil and gas facility and to provide for the rehabilitation of the affected land through the use of plant cover, soil, stability, water resources, or other measures appropriate to restoring the land to its status prior to the project, or subsequent non-oil and gas beneficial use of such reclaimed lands, as approved by the County. Any land or Oil or Gas Facility not required for production shall be reclaimed within one (1) year after abandonment or the cessation of drilling or production.

Regional Plans: Regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan, area-wide waste treatment and water quality control plans, regional transportation-land use plans, habitat conservation plans, natural community conservation plans, historic, cultural and archaeological site and preservation plans.

Reservation: The designation of a portion of a property for a proposed dedication of a fee simple, easement, right-of-way, or covenant running with the land prior to dedication.

Reserve Pit (Oil and Gas): See also, “Pits” and “Retention Facilities”. A pit that is created at the drilling site of an oil or gas well for storing drilling fluid, mud, waste water, chemicals and waste products, and other materials used in or produced during drilling and production. Reserve Pits for oil and gas operations, drilling, fracking and production are prohibited by the LDC.

Resource: A source or collection of buildings, objects, sites, structures, or areas that exemplify or contribute to the historical, cultural or archaeological history of San Miguel County.

Retention Facility: A facility used for storage of peak discharge rates of stormwater runoff, or which provides storage for pollutants, chemicals, minerals, oil, gas, rocks, mud, sediments, gray water or materials. Retention Facilities, other than Closed Loop Systems, are prohibited for oil and gas operations, drilling, fracking and production by the LDC.

Road, private: Any road not dedicated to the public and required to be maintained and repaired by the legally appropriate private entity. All private roads shall meet the same standards as provided for public roads by the LDC. Private roads will only be permitted as a condition of development approval if the Applicant enters into a development agreement for which construction, operation, maintenance and repair standards and financial terms are included in the development agreement.

Sale or Lease: Any immediate or future transfer of ownership, or any possessory interest in land, including contract of sale, lease, devise, intestate succession, subdivision, parcel split or family transfer or other transfer of an interest in the surface or subsurface, whether by metes and bounds or lot and block description.

Same Ownership: Ownership in whole or in part of the same or separate surface estates, subsurface mineral estates, leases, parcels, tracts, or lots, whether contiguous or not, by any person, corporation, partnership, trust, business, entity, association, fund, joint venture or any individual owning any stock or a legal or equitable interest in such common ownership, person, corporation, partnership, trust, business, entity, association, fund, joint venture or individually. For Oil and Gas ownership or leases, the effective date of these provisions shall be the date of the Oil and Gas Moratorium Ordinance adopted on March 13, 2013. Same ownership shall also include common operation, drilling, production, fracking and transportation or control of a single oil and gas unit consisting of multiple leases or varied ownerships, and common locations of existing pipelines.

Screen or Screening: Vegetation, fence, wall, berm, or a combination of any or all of these that partially or completely blocks the view of, and provides spatial separation of a portion or all of a site from, an adjacent property or right-of-way.

Security: Any form of a surety bond, letter of credit, or deposit of collateral in an amount and form satisfactory to the County attorney whenever security is required by the LDC.

Sediment: Soil or other surface material transported by wind or surface water as a product of erosion.

Sending Parcel: A parcel of land that is a transferor of oil and gas development rights and upon such transfer the right to develop oil and gas facilities is extinguished.

Site-generated Traffic: Vehicular trips attracted to, or produced by the proposed use on the site.

Site Plan: A development plan accompanying an application for an Oil and Gas Conditional Use Permit, not involving a subdivision, parcel split or family transfer, unless specifically provided for in the LDC, including such drawings, illustrations, appendices, reports, studies, assessments, documents, maps or other information necessary to meet the requirements of the LDC for the oil and gas development project.

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 100. For purposes of this appendix, a “slope” shall include only those areas with a horizontal distance of at least 50 feet.

Soils: Dirt, sand, earth matter, rocks and other solid or semisolid mass material, whether produced by man or by nature.

Solid waste: Any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid, or contained gaseous material.

Spacing (Oil and Gas Subsurface): The subsurface volume, as administratively calculated by OCD. The LDC does not determine subsurface spacing or drainage radius.

State: The State of New Mexico including all state departments and divisions, agencies, commissions, officers and staff under the executive branch.

State Engineer: The duly authorized State Engineer of New Mexico whose office has jurisdiction over certain surface and subsurface water rights.

Steep slope: A slope equal to or exceeding 11%.

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

Subject property: The property subject to an application for development approval.

Subsurface estate: See mineral estate or subsurface oil and gas lease.

Tank (Oil and Gas): A cylinder or sphere made of steel or other impervious material that is designed to store oil or other liquid hydrocarbons, water, produced water or other liquids or gases used in the drilling or production of an oil or gas well.

Tank Battery (Oil and Gas): A group of tanks located at a convenient point for storing oil prior to transportation by truck or pipeline to a refinery.

Transfer of Development Rights: The conveyance development rights to the County Land Bank or a receiving parcel by deed, easement, or other legal instrument.

Unit (Oil and Gas):

- (i) The total area incorporated in a unitization agreement. An area of land, deposit, or deposits of minerals, stratum, or pool or pools, or a part or parts thereof, as to which parties with interests therein are bound to share minerals produced on a specified basis and as to which those having the right to conduct drilling or mining operations therein are bound to share investment and operating costs on a specified basis. A unit may be formed by convention or by order of an agency of the state or federal government empowered to do so. A unit formed by order of a governmental agency is termed a “compulsory unit;” or
- (ii) The acreage allocated to a particular well.

Unit agreement (Oil and Gas): An agreement or plan of development and operation for the recovery of oil and gas made subject thereto as a single consolidated unit without regard to separate ownerships and for the allocation of costs and benefits on a basis as defined in the agreement or plan.

Unit operator: The person, association, partnership, corporation, trust, sole proprietorship, or other business entity designated under a unit agreement to conduct oil and gas operations on unitized land as specified in such agreement.

Use: The purpose for which a land or a structure is designed, arranged, or intended to be occupied or used, or for which it is occupied, maintained, rented, or leased.

Variance: A request to the Planning and Zoning Commission, the Board or a Hearing Officer for permission to vary or depart from a requirement of the LDC as to the use, height, FAR or density of the property, where due to special and exceptional conditions, not self-imposed by the Applicant, a literal enforcement of the LDC requirements will result in unnecessary and unconstitutional hardship resulting in a loss of all or substantially all use or value of the property in the same ownership. Where an area, set back, or bulk variance is sought because of environmental, topographical or a legal restriction consisting of an easement or covenant running with the land, unnecessary hardship is not required to be proven and the proof of practical difficulty will suffice.

Variance (Oil and Gas): A request for a beneficial use and value determination to the Board for permission to vary or depart from any development order denying, or conditionally approving an oil and gas project where a literal enforcement of the development order will result in an unnecessary and unconstitutional hardship resulting in a loss of all or substantially all use or value of the property interest in the same or common ownership.

Vista: A view through or along a street, which, as a view corridor, frames, highlights, or accentuates a prominent building, object, site, structure, scene, or panorama, or patterns or rhythms of buildings, objects, sites, or structures.

Walls: A solid upright barrier, usually constructed of, but not limited to, concrete block, adobe brick or stone, used to enclose or screen areas of land. Walls that are part of a building are not included in this definition.

Well: Any hole or holes, bore or bores, to any sand, formation, strata or depth for the purpose of exploring for, producing and recovering any oil, gas, liquid, hydrocarbon, water or any of them.

Well site: See Drill site.

Wetland: Land that has a predominance of hydric soil; is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and under normal circumstances supports a prevalence of that vegetation.

Workover (Oil and Gas): An operation on a producing well to restore or increase production. A workover is typically performed for routine maintenance or repair of downhole equipment.

SECTION 6. FINDINGS:

6.1. It is recognized under New Mexico state law, that surface and subsurface estates or leases are separate and distinct interests in land. Owners or lessees of subsurface oil and gas interests have certain rights and privileges to use that part of the surface estate reasonably required to extract and develop the subsurface oil and gas resources. Similarly, owners of the surface estate have protection under the common law and pursuant to the Surface Owner's Protection Act, NMSA 1978 §§ 70-12-1 through 70-12-12 (2007), including protection of existing surface uses and protection from, or compensation for, adverse land use effects and impacts associated with the development of the mineral estate, and/or oil and gas lease. This ordinance regulates, consistent with and supplementary to state and federal statutes and regulations, the use of that part of the surface estate that is occupied or utilized by owners or lessees of subsurface oil and gas interests so as to further protect surface owners' rights and privileges under the Surface Owner's Protection Act.

6.2. These Oil and Gas Regulations are enacted to protect and promote the health, safety and general welfare of present and future residents, businesses, communities, environmental and natural resources of the County. These Regulations shall take effect immediately upon the termination of the San Miguel County Oil and Gas Moratorium Ordinance. These Oil and Gas Regulations constitute additional zoning power, police power, planning, environmental, health, safety, public nuisance and land use legislative regulations for oil and gas project application approval, and are designed to establish separate land use, preservation and protection of environmentally sensitive lands (habitats, wetlands, hillsides, arroyos, acequias, flood plains, cultural, historical, archaeological and natural resources), avoidance of water and air pollution; assurance of water availability; air and water quality, achievement of county fiscal balance,

provision of adequate public facilities and services, provision of affordable employee housing, reduction of traffic congestion; elimination of health and safety risks, assurance of adequate fire, police, fire and emergency service and preparedness, and toxic chemical pollution standards to protect from adverse public nuisance, fiscal, environmental and/or land use effects and impacts resulting from oil and gas exploration, drilling, extraction or transportation, compressor stations, pipelines or other off-site oil and gas facilities within designated Natural Resource Zoning Districts in the County. In order to carry out oil and gas operations, the oil and gas operator shall be required to submit application for approval of a Conditional Use Permit, to fully mitigate all adverse zoning, planning, public nuisance, environmental, adequate public facility and service deficiencies and needs generated by the oil and gas project land use effects and impacts. The Land and Environmental Suitability Analysis ("LESA") as set forth in these regulations, legislatively determines areas of environmental suitability for oil and gas facilities and shall be applied, together with the site plan, assessments, reports and studies, review of the applications to specifically determine the extent and location of any oil and gas facilities and to fully mitigate any as applied land use, public nuisance, environmental, fiscal, water, health and safety effects and impacts upon the County. These regulations do not apply to the determination or adjustment of water rights or for the regulation of extraction of potable water.

6.3. The Board of County Commissioners ("Board") hereby finds, declares and determines that this Ordinance promotes the health, safety, and welfare of the County, its residents, and its environment by regulating public nuisance and/or land use impacts and effects resulting from the exploration, drilling, hydrological fracturing, operation and transportation of oil and gas. The Board further finds the following pursuant to the Mora-San Miguel-Guadalupe Regional Water Plan (Daniel B. Stephens, June 2005) and further studies that:

6.3.1. Surface water supplies more than 95% of the County's water demand and issued mostly for reservoir evaporation and irrigation. Average rainfall is approximately 16" per year, but storage of surface water is very limited. 89% of the County's water depletions (excluding reservoir evaporation) comes from acequia use. In the southeastern section of the County, the area in which oil and gas drilling would likely occur, the majority of surface water is found within the upper Canadian River and its tributary the Mora River. The Endangered Species Act can play a prominent role in river management, including the timing and release of flows. Removal of water for oil and gas drilling can result in major impacts to river flows, even upstream of designated habitats, and is required to have strict review and limitation. Species affected are the Pecos blunt nose shiner, and the Arkansas River shiner. Surface water in the Canadian River is fully appropriated. Under current drought conditions, the Canadian River system provides insufficient supply in the Conchas Reservoir, to meet current demands for water use. During recent drought years, in 2002 and 2003, only 16% of average demands were filled in 2002, and no diversions occurred at all in 2003.

The Canadian River Compact allows New Mexico the "free and unrestricted use of all waters originating in the drainage basin of the Canadian River above and below the Conchas Dam. However, the amount of water that may be stored or impounded is limited to 200,000 acre/ft. water resources in the County are at risk

as oil and gas drilling may negatively diminish or pollute local water supplies and sources of surface and groundwater, due to the importance of the hydrology of the Canadian River Basin, not only to the citizens of San Miguel County but to the interstate stream system through its contributions to the Arkansas River.

6.3.2. The groundwater in the Canadian Basin is stream-connected, which means that any new groundwater development that affects the Canadian River shall be offset, so that surface water rights shall be purchased and retired in order to offset the effects of the proposed groundwater pumping. An Applicant for an oil and gas permit would have to show that the new groundwater diversion would have no impact to the river at any time. Groundwater, aside from being only 5% of available water, has limited potential because of quality of the water, impacted by leaking gasoline storage tanks, elevated sulfates from mining, nitrates and bacteria from septic tank leakage.

6.3.3. The Board of County Commissioners finds that a **Water Availability Assessment and Geo-hydrologic Report** shall be conducted for all discretionary development approvals for oil and gas projects, such water availability assessment shall include an evaluation of water supply for the estimated life of the project, an assessment of available water supplies to determine if they can meet the demand associated with the project, identification of suppliers and an assessment identifying existing water rights, entitlements or contracts and the quantities of water received in prior years, and an assessment of the project's impact on water supplies to other users. If water supplies are insufficient, a plan identifying alternatives shall be included. If groundwater is included in the project, additional information is required. Finally, anticipated changes in the project that will substantially increase water demand shall be indicated. The geo-hydrologic report shall assess all geo-hydrologic information pertinent to the project area.

6.4. Setbacks: Some of the most intensive oil and gas development in the nation is occurring in regions where water is already at a premium. Prolonged drought conditions in many parts of Colorado, New Mexico and Texas, have created increased competition and conflict between farmers, communities and energy developers, which is only likely to continue. Even in wetter regions of the northeast United States, dozens of water permits granted to operators had to be withdrawn last summer due to low levels in environmentally vulnerable headwater streams. Due to the dire conditions of present day drought, the New Mexico Department of Game and Fish recommendations for enacting setbacks of .5 miles for oil and gas wells. The Board hereby finds that the Department of Game and Fish recommendations shall be supplemented in the County to require **1.5 miles setback from important underground aquifers**, and surface aquatic, acequia and riparian habitats such as floodplains, springs, wetlands and drainages including, but not limited to, the Canadian River Basin.

6.5. Public Nuisances: The County finds that oil and gas projects create public nuisances, including but not limited to chemical and toxic material pollution, excessive noise levels, traffic congestion and hazards, excessive lighting, glare, odors, fire hazards, explosions, visual impacts, impacts or pollution of the air, surface water and groundwater pollution; impacts on

environmentally sensitive lands, inadequate stormwater and solid waste disposal and treatment, danger to birds and other species, and pollution of floodways and flood plains. Pollution from oil and gas wells mixed with floodwaters carrying agricultural pesticides, sewage, gasoline from service stations, and other contaminants resulting in greater pollution. No drilling shall be allowed in any floodway or floodplain designated as such in any Flood Insurance Study (FIS) or shown on the Federal Emergency Management Agency (FEMA) maps.

6.6. Environmental Health and Safety: Occurrence of adverse public nuisance, environmental and land use effects and impacts will result from the drilling, fracking, production, transportation and abandonment of oil and gas activities within the County. Recent studies establish that 2 to 10% of wells are leaking upon completion or will leak over time, potentially releasing injected or naturally occurring pollutants into water sources and into the air. The County has complementary authority, supplemental to the authority of the State, to regulate adverse public nuisance, environmental and land use impacts and effects not inconsistent with state and federal legislation and regulation, stemming from oil and gas projects in the County and finds that the State has not expressly or impliedly preempted or occupied the field of oil and gas regulation.

6.6.1. The County adopts, in accordance with **Senate Joint Memorial 71**, the precautionary principle in public and environmental health assessment in New Mexico relating to oil and gas operations. Such principle is essential since all residents of the County have an equal right to live in a safe and healthy environment. This principle requires that when oil and gas activity raises threats of harm to human health or the environment, even if some cause and effect relationships are not fully and scientifically established, mitigation or abatement measures shall nonetheless be employed; and implementation of the precautionary principle promotes this premise as well as reduces potential effects on public health resulting from exposure to environmental toxins. **The Board finds that an Environmental Impact Report shall be prepared and submitted to the County.**

6.7. Adequate Public Facilities: Planning and land use regulation should assure that adequate public facilities and services are available to address the impact and effect of oil and gas projects by ensuring that such impacts as affordable employee housing, roads, fire, police, emergency response, storm water drainage, and water treatment, reuse and retention will be available for the duration of oil and gas projects without impacting the financial capacity of the County. **The Board finds that an Adequate Public Facilities and Services Assessment to include an adequacy determination and construction commitment shall be prepared and submitted to the County.**

6.8. Fiscal Impact Assessment: The effect and impact upon County revenue and costs necessitated by additional public facility and service costs generated by proposed oil and gas projects and the fiscal implications of oil and gas drilling in the County must be determined. **The Board finds that a Fiscal Impact Assessment shall be prepared** and submitted to the County.

6.9. Land and Environmental Suitability: Given the size, design and operational characteristics of oil and gas facilities, it is necessary to demonstrate that oil and gas facilities are

compatible with adjoining land uses and environmentally sensitive lands. Factors that should be considered include such issues as impacts to property values, air and water quality, public safety, scenic vistas, cultural, historical and archaeological resources, and fire protection, to name but a few. **The Board finds that a Land and Environmental Suitability Assessment be prepared and submitted to the County.**

6.10. Water Quality Protection Program: Oil and gas projects may cause irreparable harm to the County's air and water, and water contamination may occur during different stages of oil and gas drilling, fracking, extraction and production operations. Such contamination will affect human health as surface spills arising from the drilling and production of oil and gas are not uncommon and such fluids may be inadvertently injected into or come in contact with surface water, ground water and fresh water aquifers. **The Board finds that a Water Quality Protection Program must be prepared and submitted to the County.**

6.11. Noise: The Board finds that all construction, maintenance and operations of any Oil or Gas Facility shall be conducted in a manner to minimize the noise created to the greatest extent possible and, therefore, **noise requirements shall be established.**

6.12. Lighting, Visual Impacts and Flaring of Gas: As lighting and flaring of gas may have a visual impact, the Board finds that all Oil or Gas Facilities shall comply with the Code and the Night Sky Protection Act, NMSA 1978, Sections 74-12-1 et seq. (1999)(as amended) at all times, except as provided for in this Ordinance. All **lighting shall be limited** to the minimum required to meet security and safety standards consistent with the practices of a reasonable and prudent operator.

6.13. Fracking and Acidizing: The Board finds that fracking and acidizing of any well shall be performed in strict compliance with applicable OCD rules and the best industry and management practices. Fracturing pressures shall be controlled to limit the extent to which fractures escape the zone being fractured. Fracking operations may be monitored by the Oil and Gas Inspector to ensure compliance with these standards.

6.14. Abandonment, Plugging and Site Remediation: The Board finds it necessary to assure that the required reclamation, of oil and gas drilling areas that are disturbed by excavation activities, is sufficient to provide for short- and long-term development meeting all environmental, infrastructure, health, safety, and aesthetic needs of the County and of surrounding properties and neighborhoods. Upon the abandonment of a well or oil or gas facility, the Operator shall comply with County, OCD, Water Quality Control Commission, or federal agency regulations and all requirements of this Ordinance in connection with abandonment, plugging and remediation of all oil and gas facilities.

6.15. Finance Assurances: The Board finds that applicants seeking approval for an oil or gas facility in San Miguel County shall provide financial assurances acceptable to the County as provided in this Ordinance.

6.16. Impact Fees and Public Improvement Districts: New oil and gas development may require the construction of new infrastructure to address the needs of such items as public

facilities, emergency response, fire and police protection resulting from the impact of oil and gas development. The Board finds that impact fees and public improvement districts shall be established as needed requiring oil and gas projects to pay for such infrastructure needs generated by new oil and gas development.

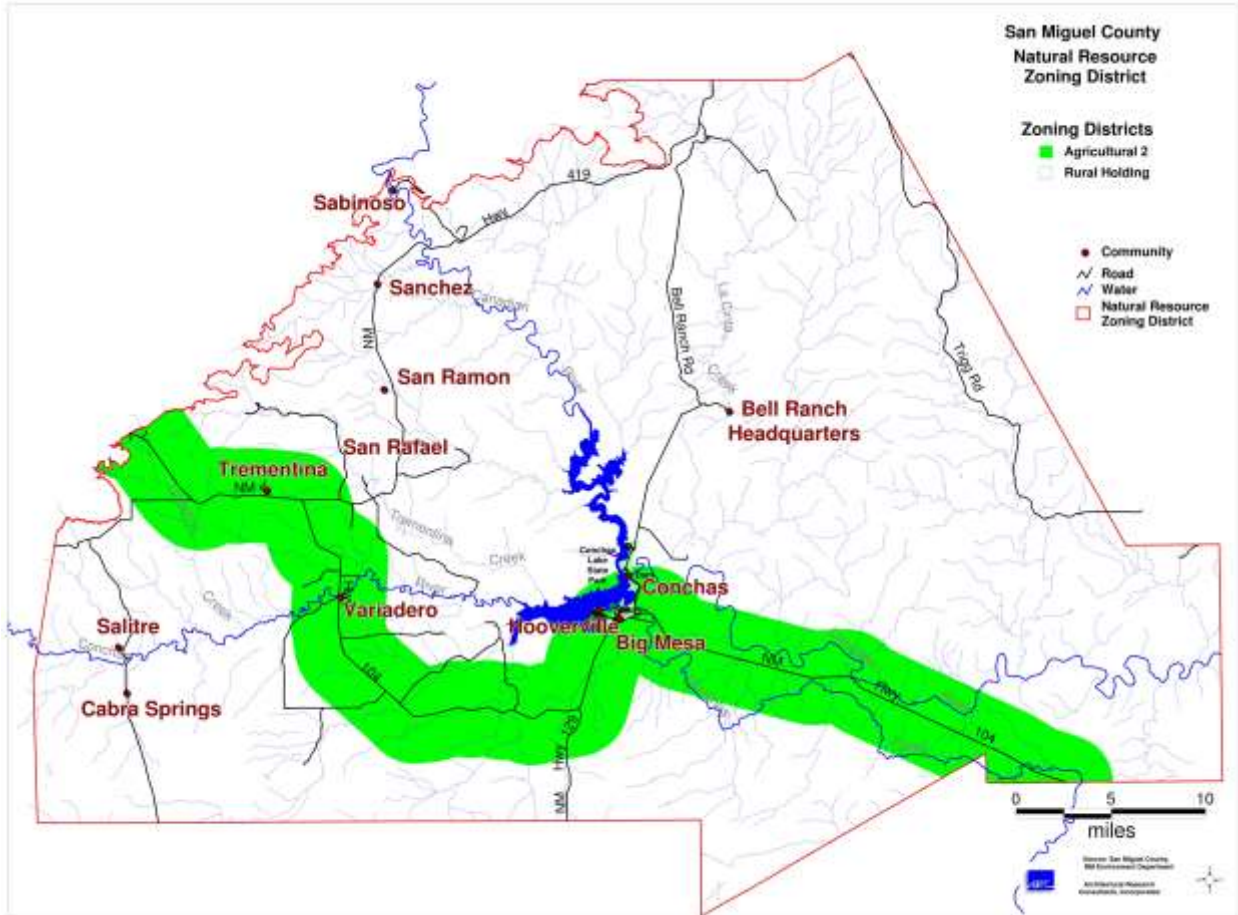
6.17. Environmental Setting: The Board has determined that oil and gas drilling shall not be permitted in the western part of the County which contains nearly all of the federally protected conservation land in the County to include the Santa Fe National Forest, the Pecos Wilderness and the Pecos National Monument; includes Interstate 25 and a major railroad line which parallels the historic Santa Fe Trail; traditional villages and communities; and scenic corridors as identified in the San Miguel County Comprehensive Plan. Oil and gas drilling will unreasonably threaten the Gallinas Watershed, which supplies 90% of the water supply for all of the higher density residential and non-residential areas of the County, including but not limited to the City of Las Vegas and 100% of the water for the surrounding communities and downstream users of the Gallinas River in the area. **The Board finds that this Ordinance shall protect the western part of the County and the Gallinas Watershed** and its unique and irreplaceable historic, cultural, archaeological resources, eco-tourist sites, scenic vistas from the effects and impacts resulting from the exploration, drilling, operation and transportation of oil and gas which will have significant impact on the archaeological, historical, cultural and environmental resources and sensitive areas of the western part of the County.

ARTICLE II: ZONING REGULATIONS AND ZONING DISTRICT MAPS

2.1. General.

2.1.1. All zoning districts except for the Natural Resources Zoning District 1 and Natural Resource Zoning District 2, as set forth in Article II, shall remain as set forth in the County's separate Zoning Ordinance. Natural Resources Zoning District 1 and Natural Resource Zoning District 2 designated in the separate zoning ordinance are hereby adopted by this section of the LDC and are shown on the map below, designating green areas as Natural Resource Zoning District 1 (A-2 Residential Agricultural Zone) and the remaining white areas as Natural Resource Zoning District 2 (R-H Rural Holding Zone).

2.1.2. The Natural Resource Zoning Districts 1 and 2, delineate an area in the eastern portion of the County where oil and gas development, as well as other uses, may be permitted. A Zoning District Map for Natural Resource Zoning Districts 1 and 2, outlined in red and incorporated below, generally follows the north and western escarpment along the Canadian River from the northern county line, then drops straight south to the southern county line. **The eastern area of San Miguel County encompasses 1,782 square miles. Oil and Gas development within the County is restricted exclusively to the Natural Resource Zoning Districts established in Section 2.1.1 above.**



2.2. Natural Resources Zoning District 1, A-2, Residential Agricultural Zone

The regulations set forth in this section amend the existing A-2 Residential Agricultural Zone. The purposes of this amended zone are to: (1) preserve the scenic and recreational values in the National Forests and similar adjoining land; (2) safeguard the County’s future water supply; (3) permit oil and gas exploration, drilling, production and transportation, pursuant to the procedures set forth in Article IV of the LDC; and (4) recognize the desirability of carrying on compatible ranching, agricultural operations and limited home development in areas remote from available public services, where there is no present demand for urban development.

2.2.1. Permitted Uses.

Uses permitted in the A-1 zone except that only one dwelling unit either single-family or mobile home, per two acres or per lot of record.

2.2.2. Conditional Uses.

2.2.2.1. The following uses may be permitted; if approved by the County, in accordance with the procedures and under the conditions set forth below:

2.2.2.1.1. Uses conditional in the A- 1 zone as listed under Section 3620 of the zoning ordinance.

2.2.2.1.2. One mobile home for a 4 year period in addition to an existing single family dwelling or mobile home on a lot of less than 4 acres, provided it complies with the following requirements:

2.2.2.1.3. The mobile home may be used only by members of the family residing in the principal dwelling unit on the property, or full-time employees, engaged in agricultural operations on the same or adjoining property.

2.2.2.1.4. The mobile home shall be connected to water and sewage disposal facilities approved by the Environmental Improvement Division.

2.2.2.1.5. The mobile home shall be placed on the property in conformance with the setback requirements and located at least 15 feet from the structures on the same or adjoining property.

2.2.2.1.6. Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.

2.2.3. Conditional Use Permits.

2.2.3.1. Conditional uses permitted in the A-1 Residential Agricultural Zone.

2.2.3.2. Any oil and gas conditional use permitted for oil and gas exploration, drilling, production and transportation, pursuant to the procedures set forth in Article IV of the SLDC.

2.2.4. Height Regulations. Buildings and structures shall not exceed 30 feet in height, except as provided in Section 4100 of the zoning ordinance and, for oil and gas facilities, Article IV of the SLDC.

2.2.5. Area Regulations.

2.2.5.1. Minimum Lot Area and Lot Width. Every lot shall have an area of not less than 2 acres and an average width of not less than 125 feet, and, for oil and gas facilities, Article IV of the SLDC.

2.2.5.2. Setbacks. Same as in the A-1 Zone, and, for oil and gas facilities, Article IV of the SLDC.

2.2.5.3. Parking Requirements. Same as in the A-1 Zone, and, for oil and gas facilities, Article IV of the SLDC.

2.3. Natural Resources Zoning District 2, R-H Rural-Holding Zone.

The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the R-H Rural Holding Zone. The purpose of this zone is to permit in appropriate areas a lower density of population than in residential agricultural zones and still maintain an environment supporting large farms and ranches, and oil and gas exploration, drilling, production and transportation, pursuant to the procedures and standards set forth in Article IV of the SLDC.

2.3.1. Permitted Uses. A building or premises may be used for the following purposes:

2.3.1.1. Any Permitted Use permitted in the A-1 Residential zone except that one dwelling or mobile home shall be allowed per five (5) acres or per lot of record, one dwelling for guests occupied not more than 90 days during the year not exceeding 800 square feet in gross floor area, and one dwelling for full-time employees, engaged in ranching operations on the same or adjoining property.

2.3.1.2. An existing homeowner may build, lease or place an additional single family dwelling or mobile home per five (5) acres or per lot of record provided adequate water and sewer is made available and the new structure is located at least thirty-five (35) feet from any other structure on the same or adjoining property.

2.3.1.3. One (1) dwelling for a ranch caretaker not exceeding 1,200 square feet in gross floor area.

2.3.2. Conditional Use Permits.

2.3.2.1. Conditional uses permitted in the A-1 Residential Agricultural Zone.

2.3.2.2. Any oil and gas conditional use permitted for oil and gas exploration, drilling, production and transportation, pursuant to the procedures set forth in Article IV of the SLDC.

2.3.3. Height Regulations.

Structures not within 100 feet of an R-1, A-1 or A-2 Zone may exceed 30 ft. in height. Structures within 100 feet of an R -1, A-1 or A-2 Zone may not exceed 30 feet in height except as provided in Section 4100 of the zoning ordinance.

2.3.4. Area Regulations.

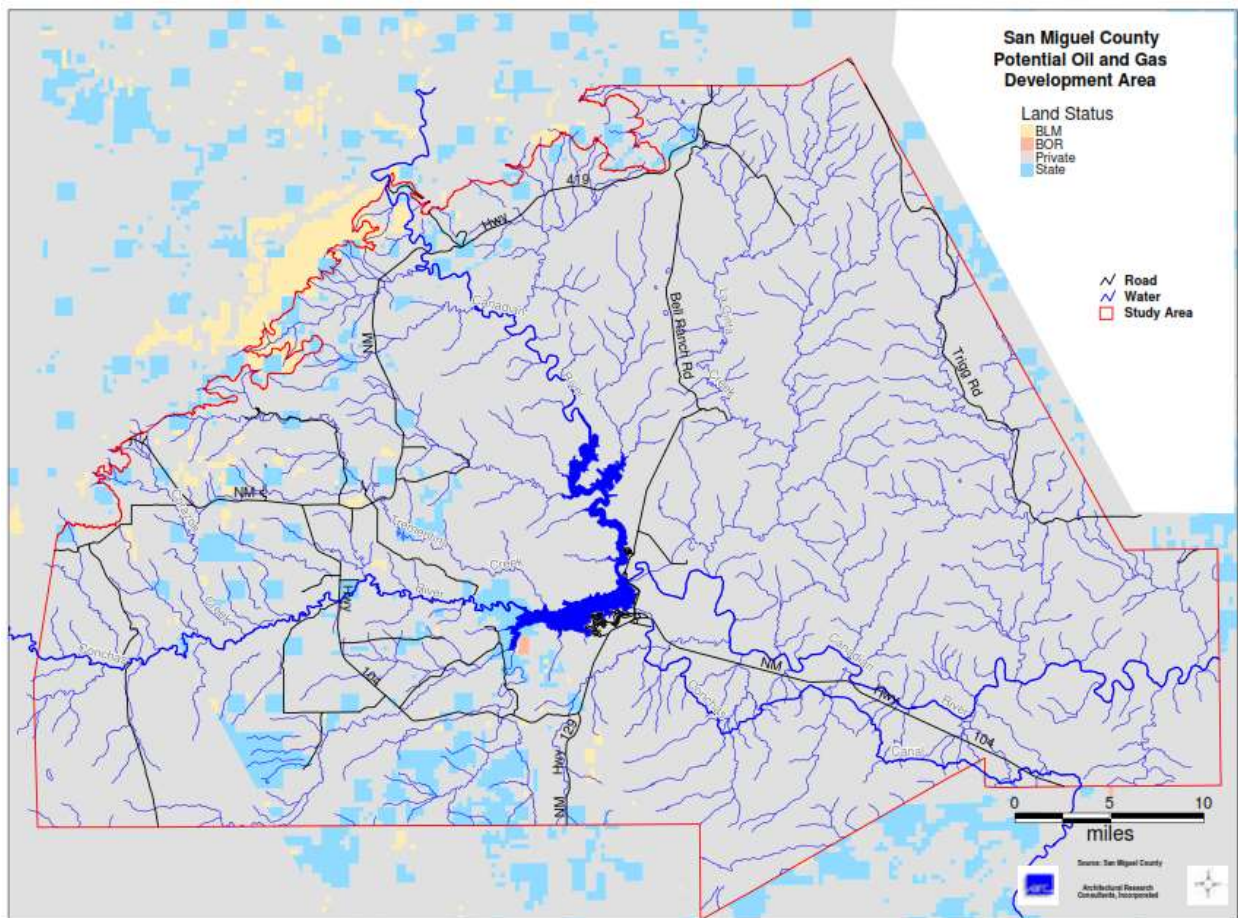
2.3.4.1. The yard regulations are the same as those in the A-1 Residential Agricultural Zone.

2.3.4.2. Minimum Lot Area and Lot Width. The minimum lot area shall be 5 acres and the minimum lot width shall be 125 feet.

2.3.4.3. Setbacks. The setback requirements are the same as those in the A-1 Residential Agricultural Zone.

2.3.5. Parking Requirements. Off street parking for all uses shall be provided in accordance with the regulations as set forth in Section 4400 of the zoning ordinance.

2.4. San Miguel County Potential Oil and Gas Development Area. The map shown below indicates that most of the potential oil and gas development area is private land. State Land Office and Bureau of Land Management properties are located mainly to the west of Conchas Reservoir. The Bureau of Reclamation manages federal land adjacent to Conchas Reservoir.

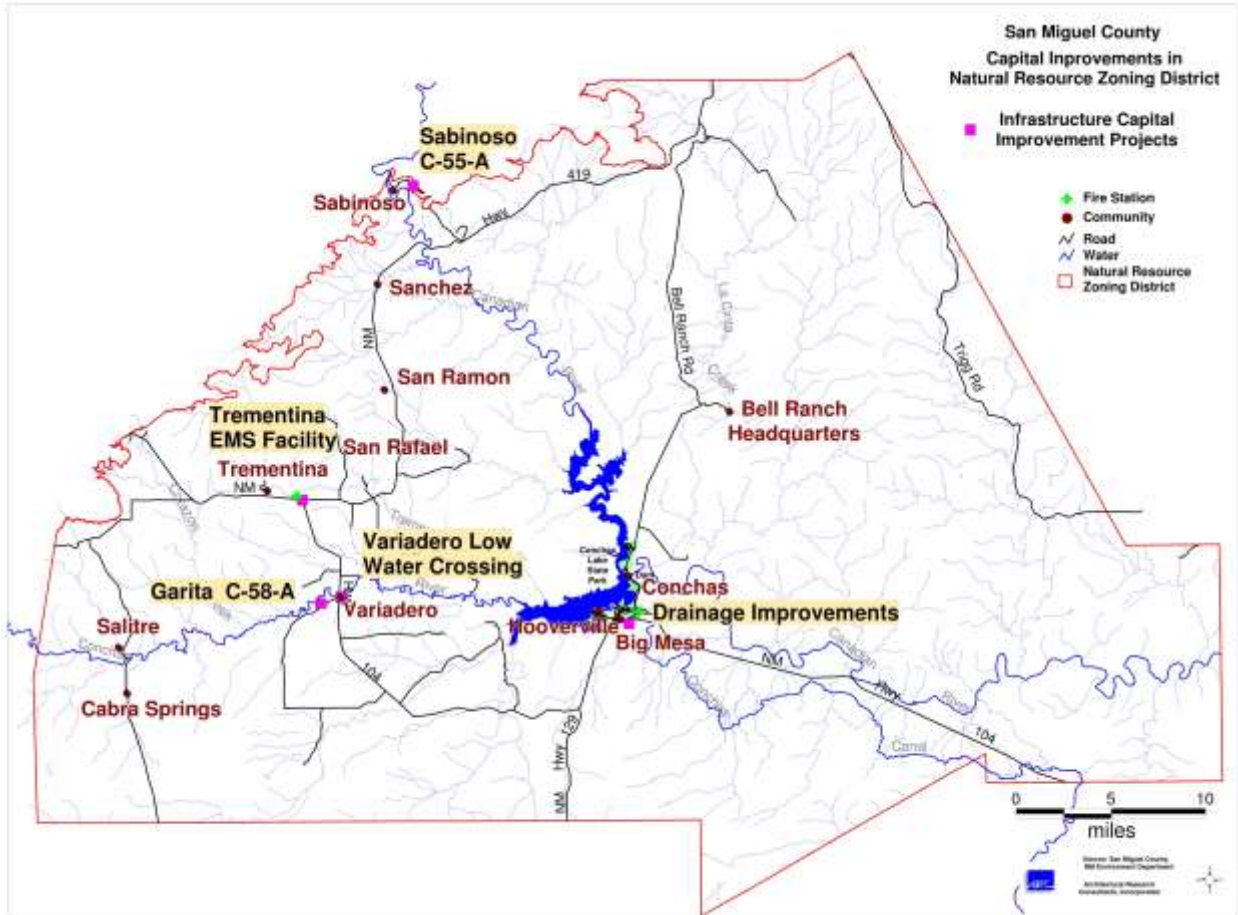


ARTICLE III: CAPITAL IMPROVEMENT FACILITIES AND SERVICES

3.1. The capital improvements and services shown on the map designated “Capital Improvements Plan in Natural Resources Zoning Districts 1 and 2,” set forth below, indicates present needs for capital improvements and services in the rural and agricultural Natural Resources Zoning Districts 1 and 2, absent facilities and services needed for oil and gas exploration, drilling, production and transportation. Article IV describes the requirements for availability of adequate public facilities and services regarding applications for development of oil and gas projects within the Natural Resource Zoning Districts.

3.2. The current need projects identified by the County are: (1) roads, Sabinoso C-55-A, Garita C-58-A, and Variadero Low Water Crossing; (2) fire stations, at Conchas and Trementina; (3) EMS Facility at Trementina; (4) emergency response facilities and services, including: ambulance unit for Conchas Dam, Conchas Fire Department expansion, first responder communication tower, two water tender pump trucks, two class A pump trucks, water supply and storage, and first responder training; and (5) drainage improvements at Conchas.

3.3. In addition to the location-specific projects identified in subsection 3.2 above, several countywide projects will provide higher levels of service in the area, including: cattle guard replacement in various locations of the County, fire department protective equipment; fire department hazmat equipment; fire department rescue equipment; sheriff patrol units; fire department training facility; sheriff emergency technology response; sheriff department protective equipment; Northeastern New Mexico Preparedness Center.



ARTICLE IV: OIL AND GAS REGULATIONS

Section 4.1. Application Process.

4.1.1. This Article is intended to address the regulation and application submittal process of oil and gas exploration, drilling, production, transportation, abandonment, remediation, including impacts and effects, within San Miguel County. No oil or gas facility is permitted as of right in the County. Prior to authorizing any oil or gas facility, the County shall require the owner of the mineral estate, or oil and gas lessee of the mineral estate, to apply for, and obtain: a quasi-judicial Conditional Use Permit (CUP), together with, ministerial Grading and Building Permits and Certificates of Completion. The application shall include a detailed written statement explaining in full the proposed project and shall be prepared in such a manner as to address exploratory drilling activity as a first phase and the oil and gas project as a second phase, such phases submitted as separate applications or together as one application.

4.1.2. Pre-Application Conference: Prior to the preparation and submitting of an application for an oil and gas project, applicant shall schedule a pre-application conference with the Administrator for the purpose of reviewing the requirements of this

Ordinance to include such ordinance requirements as application fees, required reports and assessments, agency review and completeness determinations.

4.1.3. Pre-Application Meeting: At least 30 days prior to the submission of an application for conditional use permit, the Applicant shall attend a meeting with all residents, owners/lessees of non-residential structures, and all owners of subsurface mineral estates and oil and gas lessees within one mile of the perimeter of the project area. The pre-application meeting will be held for the purpose of gathering data and information from the public in regard to the Environmental Impact Report, such data and information to be used by the applicant in the preparation of the Environmental Impact Report. The Applicant shall prepare a brief “concept plan” to be circulated at the meeting describing the proposed project including at a minimum: the Application submitted for a Permit to Drill “APD” on OCD Form C-101, and the order of the OCD approving or approving with conditions the APD; the location and size of the area, number of wells and pads, public facilities and services to be provided on and off-site, and information concerning any potential environmental, health, safety and public nuisance issues.

4.1.4. The Applicant shall furnish a mailing address list of **property owners for the one mile area to the Administrator who shall send out notices** to all affected parties at least ten business days prior to the meeting. Such meeting shall be conducted at the County offices and shall be presided over by the Administrator. The pre-application proceedings shall be informal and designed to resolve, to the extent possible, issues and problems between the parties. Such meeting shall last no longer than four hours without the consent of the Applicant, and the Administrator shall have the authority to request invitees to consolidate presentations and otherwise cooperate so that efficient, effective and cordial discussion of issues and problems takes place.

4.1.5 Application Fees: Within ten working days after the filing of an application, the Administrator shall determine the amount of the fixed application fee from the Schedule in Appendix “A”, together with the additional application fee in the amount calculated in Section 4.5.1.2 and require the Applicant to deposit the designated fee in a special trust fund. The application fee shall be paid by cashier's check, wire transfer or certified funds. Such application fees shall be non-refundable.

4.1.6. The application fee shall be calculated to cover: Administrator review and analysis; certificate of completeness; Administrator attendance at the pre-application meeting; reproduction costs (not including map and scientific exhibit reproduction costs); and mailing and posting of notices and newspaper notice publication costs. This deposit shall be required prior to any further processing of the application.

4.1.7. In addition to the application fee, the applicant shall subsequently pay, where appropriate and at the appropriate time, for the following costs and expenses: **Hearing Officer Fees and related expenses; County expenses for retention of expert consultants; and map and scientific exhibit reproduction.**

4.1.8. Completeness Determination.

4.1.8.1. Within forty (40) business days after receiving an application the County shall mail or provide in person a written determination to the Applicant, stating either that the application is complete, or that the application is incomplete.

4.1.8.2. If the Administrator determines that the application is incomplete, the Administrator shall identify the parts of the application which are incomplete, and shall indicate the manner in which they can be made complete, including a list and specific description of the additional information needed to complete the application. The Applicant shall then submit this additional information to the County within thirty (30) days of the determination, unless the County agrees in writing to a longer period.

4.1.8.3. The Administrator shall then determine in writing that an application is complete within fifteen (15) days after receipt of the additional information indicated in the list and description provided to the Applicant.

4.1.8.4. An application is deemed complete under this Section if the Administrator does not provide a written determination to the Applicant within the time periods specified above.

4.1.8.5. Agency Review:

4.1.8.5.1. Upon determining the application is complete and advising the applicant of such completeness, the Administrator shall refer the Application to other state and federal governmental agencies, cities, or entities having a statutory interest in the matter, or otherwise affected by the Application, for review and comment, to be returned to the Administrator within thirty (30) days, including but not limited to, specifically, the Department of Cultural Affairs Historic Preservation Division, the New Mexico Oil Conservation Division, the New Mexico Taxation and Revenue Department, the New Mexico Environment Department, the New Mexico State Engineer, North Central New Mexico Economic Development District, and the New Mexico State Land Office.

4.1.8.5.2. If any opinion from an agency is adverse, the Administrator shall forward a copy of the adverse opinion to the applicant and request that additional information be provided as necessary to address such adverse opinion within thirty (30) days to respond to the concerns of the appropriate agency.

4.1.8.6. Technical Review: The Board shall, at the expense of the Applicant, hire experts to review the Application, all SRAs, and additional submittals where necessary or to evaluate specific technical issues, and to review the reports of applicant's experts providing additional analysis and studies of relevant issues to support the Application.

Section 4.2. Application Requirements; Studies, Reports and Assessments:

4.2.1. Site Plan. **A Site Plan** consisting of a scaled drawing and documents for the project that shows the proposed exploratory drilling activity as the first phase of the project and development of the oil and gas project as the second phase and shall include: all buildings and structures, closed loop systems, on or off-site drainage, retention, and waste water, sand, chemical, mineral and toxic and non-toxic waste re-use and treatment facilities and systems, location and collocation of all pad and well sites, elevations, depth and horizontal distances for drilling and fracking, setback, buffering, landscaping and open space areas; location of all buildings, structures and uses within one mile of the perimeter of the site; and all lands, buildings, structures and uses within the same ownership throughout the County.

4.2.1.1. An accurate map of the project area including its relationship to surrounding areas, existing topography and key features;

4.2.1.2. A detailed description of the proposed oil and gas activities on the entirety of the owner or Applicant's property in the same ownership;

4.2.1.3. The planning objectives and the character of the development to be achieved through the plan and the approximate phases in which the exploration and drilling for and extraction of oil and gas from the property will occur;

4.2.1.4. The approximate location of all neighboring development areas, subdivisions, residential dwellings, neighborhoods, traditional communities and community centers, and other non-residential facilities and structures within five (5) miles of the concept plan site perimeter;

4.2.1.5. The number and type of wells to be drilled, and the approximate location, arrangement, size, floor area ratio of any buildings and structures and parking facilities related to the drilling activities;

4.2.1.6. The proposed traffic circulation plan, including number of daily and peak hour trips to and from the site and the proposed traffic routes to the nearest intersection with I-25 and I-40;

4.2.1.7. The approximate or exact location of all fire, police, and emergency response service facilities and all roads shown on the capital improvement plan, budget and program for the area, floodways, floodplains, wetlands or other natural resource areas surrounding the Applicant's property; location of historic, cultural and archaeological sites and artifacts, steep slopes greater than 11%, wildlife and vegetation habitats and habitat corridors within five (5) miles of the site plan perimeter;

4.2.1.8. A statement explaining **how the proposed site plan complies with the vision, goals, objectives, policies and strategies** of the County's Comprehensive Plan and any Area Plan covering the property;

4.2.1.9. A statement or visual presentation of **how the site plan will relate to and be compatible with adjacent and neighboring areas, within the five (5) mile radius** of the project site perimeter;

4.2.1.10. Additional application requirements set out in the LDC; and any additional information requested by the Administrator necessary to determine compliance with the standards for the approval of the conditional use permit;

4.2.1.11. The Applicant shall provide **certified evidence of public record registration of subsurface estate and oil or gas leases** within the same ownership in the County; and

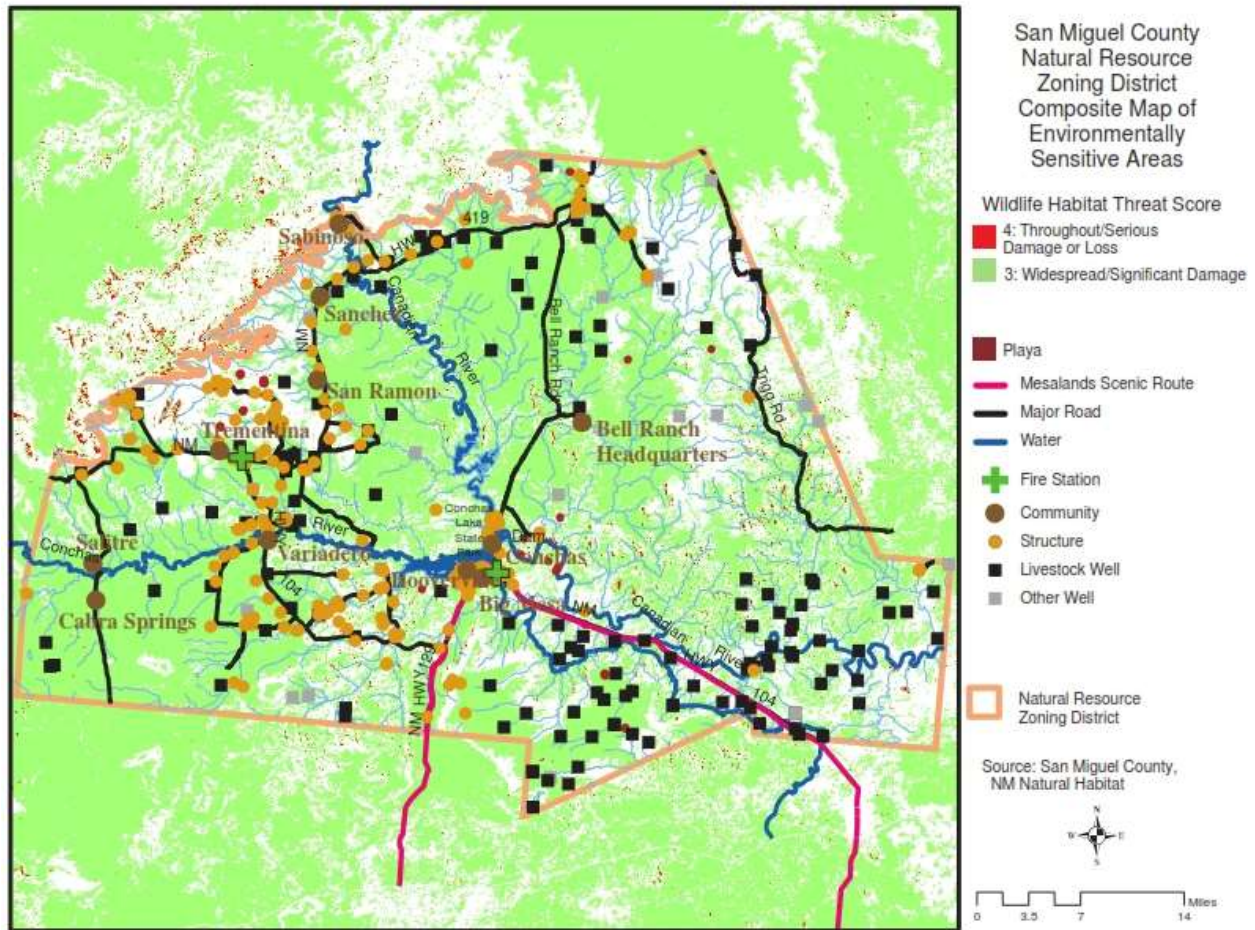
4.2.1.12. Existing water wells shall be documented by any official document such as deeds and surveys, not exclusively by registration with the Office of State Engineer.

4.2.2. Consistency Report. Applicant shall submit a **Consistency Report** demonstrating consistency with the Comprehensive Plan, any applicable Area, County or Regional plan, Utility and Public Improvement District facility plans, and state and federal statutes, regulations, permits and licenses and shall include a discussion of any inconsistencies between the proposed oil and gas facility and said plans, statutes, regulations, permits and licenses.

4.2.3. Environmental Impact Report.

An Environmental Impact Report (EIR) shall be prepared and such EIR shall assure that environmental effects and impacts identified in the required EIR **fully mitigated** within the application itself. Comments and concerns raised by the public at the pre-application meeting shall be addressed in a section of the EIR.

4.2.3.1. The EIR will analyze the oil and gas impacts and effects, upon the areas and sensitive lands in the following Environmentally Sensitive Areas Map.



4.2.3.2. The EIR shall also provide other available information, apart from the information on the Map shown in Section 4.2.3.1 hereinabove concerning environmentally sensitive lands within the Natural Resource Zoning District Areas upon the following elements: wildlife and vegetation habitats and corridors; open space and scenic vistas; agricultural and ranch lands; flood plains, floodways, stream corridors and wetlands; steep slopes and hillsides; surface water and groundwater pollution; air pollution, **greenhouse gas emissions and global warming**; energy consumption from vehicle miles traveled; archaeological, community, historical and cultural artifacts and resources reflecting Hispanic, Anglo and Indian civilizations; and toxic chemical pollution and related diseases and conditions affecting the health and safety of current and future residents. The EIR shall identify all consultants used for preparation, and federal, state, or local agencies, Indian communities, or other organization, and interested persons consulted in preparing the EIR.

4.2.3.3. The EIR shall be prepared as a separate document by the consultants to be reviewed by the County. No document prepared pursuant to this Section, that is available for public examination, shall require the disclosure of a trade secret, except where the use of any trade secret involves a significant threat to health and safety. However, only specifically identified chemicals shall be used for any project, including, but not limited to drilling, fracking and excavation. The Administrator shall supply a list to each Applicant of the approved chemicals, certified by a licensed petroleum engineer, which the Applicant shall certify as

exhaustive of all chemicals that will be used in the project. No specific location of archaeological, historical or cultural sites and/or sacred lands shall be released to the public, but the EIR shall thoroughly discuss all environmental issues relating to a proposed project and affecting any such sites.

4.2.3.4. The EIR is an informational document which will inform the County, the public and the Applicant of significant adverse environmental effects and impacts of the project, identify possible ways to minimize these adverse effects or impacts, and describe reasonable alternatives to the project. The County shall consider the information in the EIR along with other information which may be presented to the County by the Applicant or interested parties. While the information in the EIR does not control the County's ultimate discretion on the project, the County shall respond to each significant effect and impacts identified in the EIR by making findings. The information in an EIR shall constitute substantial evidence in the record to support the County's action on the project if its development order is subsequently challenged in court.

4.2.3.5. The EIR shall contain a table of contents, an index and a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical. The summary shall identify: Each significant adverse effect and impact with proposed mitigation measures and alternatives that would reduce or avoid that effect or impact; areas of controversy known to the County including issues raised by agencies and the public; and issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

4.2.3.6. The EIR for the project is authorized, to take into consideration the findings contained in related programmatic EIRs, and the project EIR need not perform additional studies or make additional findings if studies or findings of the related programmatic EIR can be adopted for the project EIR. Related programmatic EIRs can be: (1) other EIRs for oil and gas projects within the Natural Resource Zoning Districts; (2) comprehensive, area, regional, utility, facility and transportation plans; and (3) other state and federal environmental and resource plans covering, in whole or in part, the Natural Resource Zoning Districts.

4.2.3.7. The Project Description of the EIR shall contain the following information but shall not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

4.2.3.7.1. The precise location and boundaries of the proposed oil or gas facility containing all mineral estate fee interests, or oil and gas leases in the same ownership. Such location and boundaries shall be shown on a detailed topographical map. The location of the project shall also appear on a regional map.

4.2.3.7.2. A statement of the objectives sought by the proposed oil or gas facility. A clearly written statement of objectives will help the County develop a reasonable range of alternatives to evaluate in the EIR and will aid the Board in preparing findings. The statement of objectives should include the underlying purpose of the project.

4.2.3.7.3. A general description of the oil and gas project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

4.2.3.7.4. A statement briefly describing the federal or states uses of the EIR shall include: a list of the state, regional and federal agencies that may be expected to use the EIRs in their decision-making; a list of permits and other governmental approvals required to implement the project; a list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies; and all the development approvals required for the oil and gas project shall be listed in the order in which they will occur.

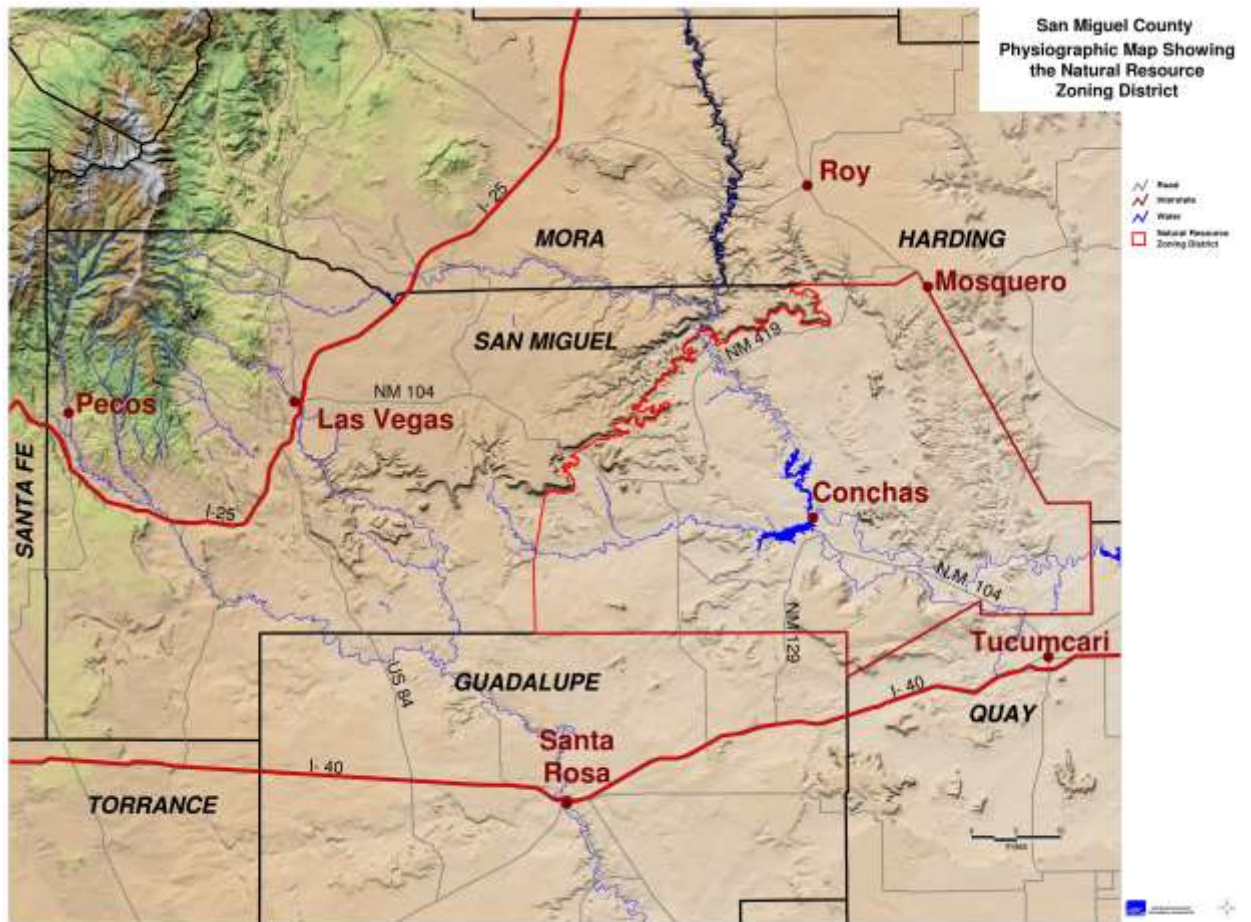
4.2.3.8. Project Setting.

4.2.3.8.1. The EIR shall include a setting of the physical environmental conditions in the vicinity of the project, as they exist in the following Physiographic Map and at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a County, sub-county area, regional, and state perspective. This environmental setting will normally constitute the baseline physical conditions by which the County determines whether an adverse effect or impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed oil project

and

its

alternatives.



4.2.3.8.2. Knowledge of the County and regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to the County and region and would be affected by the project. The EIR shall demonstrate that the significant environmental effects and impacts of the proposed project were adequately investigated and discussed and it shall permit the significant adverse effects or impacts of the project to be considered in the full environmental context.

4.2.3.8.3. Where a proposed oil or gas facility is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

4.2.3.9. Environmental Effects or Impacts. All phases of an oil and gas project shall be considered when evaluating its effect and impact on the environment: planning, acquisition, development, and operation. The subjects to be discussed shall include significant effects and impacts; mitigation measures; alternatives; and cumulative impacts, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed which subjects include: significant effects and impacts; mitigation measures; alternatives and cumulative impacts.

4.2.3.10. Significant Effects and Impacts.

4.2.3.10.1. The EIR shall identify and focus on the significant environmental effects of the proposed oil and gas facility. In assessing the impact of a proposed oil and gas project on the environment, the County shall limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects and impacts of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects and impacts. The discussion shall include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, changes induced in the human use of the land, health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical, cultural and archaeological resources, scenic quality, and adequacy of public facilities and services. The EIR shall also analyze any significant environmental effects the facility might cause by bringing development, and/or subsurface drilling projects into the area affected. For example, the EIR on an oil and gas facility astride an active fault line or other geological condition threatening to degrade ground water resources should identify as a significant effect the seismic and geo-hydrological hazard.

4.2.3.10.2. The EIR shall describe significant adverse effects and impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are effects and impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the oil and gas project is being proposed shall be described.

4.2.3.10.3. Uses of nonrenewable resources during the initial and continued phases of the oil and gas project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary effects and impacts and, particularly, secondary effects and impacts (such as highway improvements required to provide access to a previously inaccessible area) generally commit future generations to similar uses. Irreversible damage can result from environmental accidents, spills, explosions or fires associated with the oil and gas project. Irrecoverable commitments of resources should be evaluated to assure that such current consumption is justified. Any and all potential effects on global warming attributable to the Oil or Gas Facility shall be thoroughly analyzed, including necessary mitigation to minimize such effects and impacts. Applicant shall comply with all New Mexico state statutes and regulations regarding global warming. In addition, Applicant shall use the best available technology to analyze, report and mitigate any global warming effect associated with the Oil or Gas Facility.

4.2.3.10.4. Other Adverse Effects or Growth-Inducing Impacts of the Proposed Project: Discuss other characteristics of the project which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. Discuss the characteristics of the project, especially the drilling aspect of the project, which may decrease the area's suitability for other uses such as residential, commercial, historical, cultural, archaeological, environmental, eco-tourism or scenic uses.

4.2.3.11. Mitigation Measures: The EIR shall describe feasible measures which could minimize significant adverse effects and impacts, including inefficient and unnecessary consumption of energy and irreversible pollution attributable to the project that contributes to global warming. All mitigation measures shall be consistent with all applicable constitutional requirements.

4.2.3.11.1. The discussion of mitigation measures shall distinguish between the measures which are proposed by oil and gas facility proponents to be included in the project and other measures proposed by the County or other interested persons which are not included but the County determines could reasonably be expected to reduce adverse effects and impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

4.2.3.11.2. Where several measures are available to mitigate an effect or impact, each shall be discussed and the basis for selecting a particular measure shall be identified. Formulation of mitigation measures shall not be deferred. Measures shall specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

4.2.3.11.3. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.

4.2.3.11.4. If a mitigation measure would cause one or more significant effects and impacts in addition to those that would be caused by the project as proposed, the adverse effects and impacts of the mitigation measure shall be discussed. Mitigation measures are not required for effects or impacts which are not found to be significant.

4.2.3.11.5. Mitigation measures shall be fully enforceable through the development order conditions, a development agreement, or other legally-binding instruments.

4.2.3.11.6. Mitigation Measures Related to Effects and Impacts on Historical, Cultural and Archaeological Resources. In some circumstances, documentation of a historical, cultural, or archaeological resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the adverse effects and impacts of demolition of the resource will not mitigate the effects and impacts to a point where clearly no significant effect or impact on the environment would occur. The County should, whenever feasible, seek to avoid adverse effects and impacts on any historical resource of a cultural or archaeological nature.

4.2.3.11.7. The following factors shall be considered and discussed in the EIR for an oil and gas facility involving such a cultural, historic or archaeological site: preservation in place is the preferred manner of mitigating impacts to historic, cultural or archaeological sites; preservation in place maintains the relationship between artifacts and the historical, cultural, and archaeological context; preservation shall also avoid conflict with religious or cultural values of Indian communities associated with the site; and preservation in place may be accomplished by, but is not limited to, the following: planning construction to avoid all historical, cultural or archaeological sites; and incorporation of sites within parks, green space, or other open space.

4.2.3.11.8. When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical, cultural, or archaeological resource, shall be prepared and adopted prior to any excavation being undertaken. If an artifact shall be removed during project excavation or testing, curation shall be considered for appropriate mitigation in consultation with the New Mexico State Historic Preservation Division. Data recovery shall not be required for an historical, cultural or archaeological resource if the County determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR.

4.2.3.12. Alternatives. The EIR shall describe a range of reasonable alternatives to the project, or to the location, number of wells or co-location of wells of the project, which would feasibly attain some of the basic objectives of the project but would avoid or substantially lessen all of the significant and adverse impacts or effects of the project, and evaluate the comparative merits of the alternatives. The EIR is not required to consider alternatives which are infeasible. The County shall select the range of project alternatives for examination and shall publicly disclose its reasoning for selecting those alternatives.

4.2.3.12.1. The discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede the attainment of the project objectives, or would be more costly.

4.2.3.12.2. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish some of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the County but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the County's determination.

4.2.3.12.3. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant or adverse environmental effects and impacts of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant or adverse effects or impacts in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed.

4.2.3.12.4. The specified alternative of "no project" shall also be evaluated along with its effects and impacts. The purpose of describing and analyzing a no project alternative is to allow the County to compare the adverse effects and impacts of approving the proposed project with such effects and impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental effects or impacts may be significant or adverse, unless it is identical to the existing environmental setting analysis which does establish that baseline.

4.2.3.12.5. The “no project” analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the oil and gas project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the “no project” alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

4.2.3.12.6. The “no project” alternative is the circumstance under which the oil and gas project does not proceed. Discussion shall compare the environmental effects of the property remaining in its existing state against the environmental and adverse public nuisance effects and impacts which would occur if the project were to be approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other oil and gas project, this “no project” consequence should be discussed. In certain instances, the no project alternative means “no build” and/or “no drill” so the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project’s non-approval.

4.2.3.12.7. After defining the no project alternative using one of these approaches, the County shall proceed to analyze the effects and impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

4.2.3.12.8. The range of alternatives required in the EIR is governed by a “rule of reason” that requires the EIR to set forth those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant adverse effects or impacts of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

4.2.3.12.9. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic use and value viability, availability of infrastructure, general plan and area plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a significant effect or impact should consider the county wide context), and whether the Applicant can reasonably acquire, control or otherwise have access to an alternative site in the same ownership. No one of these factors establishes a fixed limit on the scope of reasonable alternatives.

4.2.3.12.10. The EIR shall analyze whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location within the same ownership. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR. If the County concludes that no feasible alternative locations within the same ownership exist, it shall disclose the reasons for this conclusion, and should include the reasons in the EIR. The EIR need not

consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

4.2.3.13. Cumulative Impacts. The EIR shall discuss cumulative effects and impacts of a project when the project's incremental effect and impact is cumulatively considerable. A cumulative effect and impact is created as a result of the combination of the project evaluated in the EIR together with other oil and gas projects causing related effects and impacts. The EIR should not discuss other project effects and impacts which do not result in part from the oil and gas project evaluated in the EIR. The discussion of cumulative effects and impacts shall reflect the severity of the effects and impacts and their likelihood of occurrence. The discussion should focus on the cumulative effects and impacts to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative effect and impact. One of the following elements is necessary to adequately discuss significant cumulative impacts:

4.2.3.13.1. A list of past, present, and probable future oil and gas projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the County; or

4.2.3.13.2. A summary of projections of other residential, commercial, industrial, agricultural or mining development contained in the Comprehensive Plan or in the LESA Map and factors describing the Canadian River Basin area conditions contributing to the cumulative impact.

4.2.3.13.3. Factors to consider when determining whether to include a related oil and gas project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue or when an impact is specialized, such as a particular air pollutant or mode of traffic.

4.2.3.13.4. The EIR shall define the geographic scope of the area affected by the cumulative effect and impact and provide a reasonable explanation for the geographic scope utilized.

4.2.3.13.5. A summary of the expected environmental effects to be produced by those cumulative impacts with the specific reference to additional information stating where that information is available.

4.2.3.13.6. A reasonable analysis of the cumulative impacts of the relevant projects. The EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects or impacts; and approved land use documents including the Comprehensive Plan, Regional and Area Plans shall be used in cumulative impact analysis. A pertinent discussion of cumulative effects and impacts, contained in one or more previously certified final EIR oil and gas projects may be incorporated by reference.

4.2.4. Adequate Public Facilities and Services Assessment: The **Adequate Public Facilities** and Services Assessment (“APFA”) shall indicate whether current facilities and services, at established levels of service standards, related to affordable employee housing, roads, stormwater management, treatment and retention, fire, police, and emergency response services are adequate to service the proposed oil and gas facilities and project.

4.2.4.1. The APFA ties development approval of the application to the availability of infrastructure and public service capacity as set by the **adopted levels of service** (LOS) in the LDC. The APFA shall be used in determining whether to approve or deny a conditional use permit application or to modify such application by timing, phasing, or sequencing the oil and gas project based on availability of public facilities and public services at the time of the issuance of a certificate of completion. **Impact fees or public improvement or assessment district assessment, rates, taxes or charges may also be used for financing** off-site infrastructure and public services attached to development approvals.

4.2.4.2. Levels of service are hereby established in the LDC. If the LOS is not met, development approval of the application shall either be denied or modified so that the development will be timed and sequenced so that each phase of the project is approved only when adequate public facilities and services are available.

4.2.4.3. The adequate public facilities assessment shall consider the following mitigation measures for alleviating public facility and service inadequacy:

4.2.4.3.1 Phasing, timing and sequencing the development so that **no development approval is granted before roads, fire, police, and emergency service facilities needed to achieve the LOS standard are constructed;** and

4.2.4.3.2. Measures that allow the road network to function more efficiently by adding sufficient capacity to the off-site road system. Such mitigation measures may include, but are not limited to, pavement widening, turn lanes, median islands, access controls, or traffic signalization. **All private roads shall meet the same standards as provided for public roads.** Private roads will only be permitted if the Applicant enters into a development agreement for which construction, operation, maintenance standards and financial terms will be provided in the development agreement.

4.2.4.4. In addition to the requirements related to Adequate Fire Protection Facilities and Services, each Oil or Gas Facility shall maintain adequate **fire-fighting** apparatus, equipment and supplies at the site of the facility at all times during drilling and production operations, including, but not limited to, all of the following:

4.2.4.4.1. During drilling operations, a minimum of four portable fire extinguishers, the size, rating, distribution and maintenance of which shall be in accordance with National Fire Protection Association (NFPA) Standard No. 10 ("Portable Fire Extinguishers) and NFPA Standard No. 30 ("Flammable Liquids Code");

4.2.4.4.2. Where flammable vapors may be present, precautions shall be taken to prevent ignition by eliminating or controlling sources of ignition. Sources of ignition may include open flames, lightning, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical and mechanical), spontaneous ignition, chemical and physical-chemical reactions and radiant heat. NFPA Standard No. 77 ("Recommended Practice on Static Electricity") and NFPA No. 78 ("Lightning Protection Code") shall be adhered to;

4.2.4.4.3. All hazardous materials and/or special hazards at the facility shall be protected as set forth in applicable NFPA standards. **Copies of the Material Safety Data Sheet (MSDS) for each chemical or substance present at the Oil or Gas Facility shall be posted in a conspicuous place at the Facility;**

4.2.4.4.4. Lightning protection equipment shall be provided at each facility containing crude or water storage tanks. The lightning protection equipment shall be in accordance with recommendations of the NFPA.

4.2.4.4.5. Crude oil and water tanks shall be installed with a vent system approved by the OCD and the Oil and Gas Inspector. A flame arrestor approved by the Oil and Gas Inspector shall be installed on the vent line;

4.2.4.4.6. Safety paint shall be used to highlight and mitigate potential hazards of the Oil and Gas Facility such as tripping hazards or protruding mechanical edges that could harm an employee or the public.

4.2.4.4.7. Hazard labels shall be protected from weathering and maintained in a manner so that they will at all times be legible and eye-catching to employees and the public.

4.2.4.4.8. When traffic or safety is a concern, on-site security shall be provided during active drilling phases.

4.2.4.4.9. The exhaust from all engines, motors, coolers and other mechanized equipment, including compressor station fans, shall be **vented in a direction away** from the closest existing building units or platted subdivision lots.

4.2.5. Water Availability Assessment and Geo-hydrologic Report: Applications shall be analyzed with respect to the availability of adequate water supply which shall be determined pursuant to the following information: **demand for water generated by the Oil and Gas Project drilling, fracking and production**; other demands for water from uses within the Natural Resources Zoning District and countywide; County and regional water capacity; capacity of groundwater wells; and historical average flow of surface water; historical peak flow of ground water from wells and aquifers; and available adjudicated water rights or contractual commitments for water rights dedicated to the oil and gas project for the life of the oil and gas facility. A geo-hydrologic report shall be prepared to assess all geo-hydrologic information pertinent to the oil and gas project area including information from existing geology, hydrology or hydrogeology reports in the region of the oil and gas project area.

4.2.5.1. Water Availability Assessment: The water availability assessment shall include the following:

4.2.5.1.1 An evaluation of the sources of water supply for the oil and gas project for the estimated duration of the project with an assessment of water supplies which addresses whether the total projected water supplies available during normal, single-dry and multiple-dry water years during a 50-year projection will meet the projected water demand associated with the proposed project, in addition to existing and planned use.

4.2.5.1.2. The Applicant shall identify sources of water supply, including any public water system or private water system that is capable of supplying water for the project and request an assessment from each and request that such assessment be provided to Applicant within ninety (90) days of such request.

4.2.5.1.3. If there is no public water system, then the Applicant shall prepare the assessment after consulting with any domestic water supplier whose service area includes the project site and any public water system adjacent to the project site.

4.2.5.1.4. The assessment shall identify existing water supply entitlements, water rights, or water service contracts, and describe the quantities of water received in prior years. The identification shall be demonstrated by the Applicant providing information related to all of the following: written contracts or other proof of entitlement to an identified water supply; copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public or private water system; federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply; any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

4.2.5.1.5. A detailed description and analysis of the amount and location of groundwater pumped or projected to be pumped by the public water system for the past five years from any groundwater basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including historic use records.

4.2.5.1.6. If no water has been received in prior years under an existing entitlement, right, or contract, the assessment shall identify other public water systems, private water systems, or water service contract holders that receive a water supply or have existing entitlements, rights, or contracts, to the same source of water.

4.2.5.1.7. If the public or private water system's total projected water supplies available during the estimated project life are insufficient, then the Applicant shall identify plans to acquire additional supplies that may include, but are not limited to: the estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies for the oil or gas facility; all federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies; and the estimated timeframes within

which the public or private water system is capable of acquiring additional water supplies.

4.2.5.1.8. If a water supply includes groundwater, the following additional information shall be included in the water supply assessment:

4.2.5.1.9. A review of any information contained in a water management plan relevant to the identified water supply for the proposed project and projected water demand within the County, including current and projected future withdrawals and consumption due to population growth and business demands; and

4.2.5.1.10. A description of any groundwater basin or basins from which the proposed project will be supplied. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the public water system has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the State Engineer has identified the basin or basins as over-drafted or has projected that the basin will become over-drafted if present management conditions continue, in the most current information of the State Engineer that characterizes the condition of the groundwater basin, and a detailed description by the public water system of the efforts being undertaken in the basin or basins to eliminate the long-term overdraft condition.

4.2.5.1.11. In its final determination of development approval of the application, the County shall determine whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to all other existing and planned future uses and shall have the ability to override the determination of the public or private water system.

4.2.5.1.12. If the project has been the subject of a water availability assessment that complies with the requirements of this Section, then no additional water supply assessment shall be required for subsequent projects that were part of a larger oil and gas project for which water supplies were found sufficient. Exceptions include: changes in the overall oil and gas project that will increase water demand; changes in circumstances that affect the ability to provide a sufficient water supply, and any relevant new information.

4.2.5.2. Geo-hydrologic Report: The geo-hydrologic report shall adequately characterize the aquifer and the vadose zone from proposed well sites. The Borehole Geophysics segment of the Report shall include the following data: electric logs; long and short resistivity; and spontaneous potential involving neutron porosity, gamma-gamma, caliper, temperature and fluid movement (spinner).

4.2.5.2.1. Pump tests shall be designed to record drawdown at the well for a sufficient time to determine transmissivity of the aquifer. The duration of each test shall be a minimum of 24 hours. All tests shall monitor the recovery of the water levels in all

wells for the amount of time necessary for the water levels to return to the original level. Standard values for storage or specific yield shall be utilized unless sufficient data is presented to justify an alternate storage or specific yield.

4.2.5.2.2. All such monitoring wells shall be constructed, plugged and abandoned when no longer required according to technical specifications provided by the Office of the State Engineer. A 20 foot water table or potentiometric surface contour map shall be prepared covering a 2 mile radius from the project site showing depth to water and direction of groundwater flow, and geologic maps shall be prepared detailing cross-sections and descriptions of the aquifer and surface water systems including information of recharge areas, springs, boundaries and estimated thickness of saturated units.

4.2.5.2.3. Included shall be an analysis of all single or multiple units or aquifers within a 1.5 mile radius of the project site; an analysis of all contaminant pathways leading from the project site to the aquifers, including saturated sandy units within aquifers and unsaturated or vadose zone map; an unsaturated or vadose zone map; and an analysis of baseline water quality relating to: up gradient monitoring wells; down gradient monitoring wells; and existing wells, together with recommendations for the location and type of groundwater monitoring stations.

4.2.6. **Emergency Services and Preparedness Report:** The emergency services and preparedness report shall include the following:

4.2.6.1. Name, location and description of all facilities and Material Safety Data Sheets describing all additives, chemicals and organics used in drilling and fracking in wells, including but not limited to pipelines, wells, pads and isolation valves, and providing for a written fire prevention, health and safety response plan for any and all potential emergencies, including explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide methane or other toxic gas emissions or hazardous material spills or vehicle accidents.

4.2.6.2. A printed map, including GPS coordinates, showing the name, location, and description of all potentially dangerous facilities, including, but not limited to, the size and type of all pipelines, wells, and isolation valves. The map shall be prepared digitally on the County geographic information system parcel maps. The as-built facilities map that includes the information regarding the location of isolation valves shall be held confidentially by the County's emergency management officer or other County designee, and shall only be disclosed in the event of an emergency, pursuant to the provisions of the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A and 57-3A-D.

4.2.6.3. A written response plan for the potential emergencies that may be associated with the operation of the facilities addressing any or all of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide, methane or other toxic gas emissions, chemicals with relevant Material Safety Data Sheets, additives and organics or hazardous material vehicle spills or vehicle accidents. Plan

should include the name, address and phone number, including a twenty-four (24) hour emergency number, of at least two (2) persons responsible for emergency field operations.

4.2.6.4. A fire prevention, response, and health and safety plan.

4.2.6.5. Project-specific emergency preparedness plans are also required for any project that involves drilling or penetrating through known or likely zones of hydrogen sulfide or methane gas, as determined by the County. This plan shall be coordinated with and approved by the County's emergency management officer prior to beginning field operations.

4.2.6.6. The Report shall include a provision for the oil and gas operator to reimburse the appropriate emergency response service providers for costs incurred in connection with an emergency at an oil and gas facility.

4.2.7. **Traffic Impact Assessment**. Which shall provide information necessary to meet the LOS standards in Article VI, Section 6.2, and assess all transportation effects and impacts of traffic generated by proposed oil and gas projects, including isolated and cumulative effects and impacts to the traffic shed, traffic congestion and traffic capacity, the passage of public safety and emergency response vehicles and any contribution to hazardous traffic conditions by heavily laden vehicles going to and from project sites.

4.2.7.1. The traffic impact assessment shall identify the improvements needed to:

4.2.7.1.1. Ensure safe ingress to and egress from the site;

4.2.7.1.2. Maintain adequate road capacity and design on the County and State road system to accommodate all traffic generated by the project, from the site to the nearest arterial road; and ensure safe and reasonable traffic operating conditions on such roads and applicable intersections;

4.2.7.1.3. Avoid creation of or mitigate unsafe and hazardous traffic conditions from heavy weights of oil trucks and tankers travelling to and from the site and minimize the impact of nonresidential traffic on residential homes and neighborhoods in the County;

4.2.7.1.4. Protect the public investment in the existing road system, and provide an analysis of the cost of installing additions to existing roads and for new road construction;

4.2.7.1.5. Provide a basis for approving, modifying, or denying an application based upon the adequacy of the County and State road systems to handle the needs generated by the project;

4.2.7.1.6. Provide a basis for Applicant financing of all County and State road improvements;

4.2.7.1.7. Evaluate whether adequate traffic capacity exists or will be available at the time a development order is granted to safely and conveniently accommodate the traffic generated by the project on the County and State road system;

4.2.7.1.8. Evaluate traffic operations and impacts at site access points under projected traffic loads;

4.2.7.1.9. Evaluate the impact of site-generated traffic on affected intersections in the County;

4.2.7.1.10. Evaluate the impact of site-generated traffic on the safety, capacity and quality of traffic flow on public and private roads within the County; and evaluate the impact of the proposed project on agricultural, ranch and residential roads from the traffic to and from the site;

4.2.7.1.11. Ensure that site access and other improvements needed to mitigate the traffic impact of the development utilize County and State accepted engineering design standards and access management criteria;

4.2.7.1.12. Ensure that the proposed road layout is consistent with the public roadway design standards;

4.2.7.1.13. Ensure the proper design and spacing of site access points and identify where limitations on access should be established;

4.2.7.1.14. Ensure that potential safety problems on all roads to be used within the County have been properly evaluated and addressed;

4.2.7.1.15. Ensure that internal circulation patterns will not interfere with traffic flow on the existing County and State road system.

4.2.7.1.16. The traffic impact assessment shall include a site description, containing illustrations and narratives that describe the characteristics of the site and adjacent land uses as well as future oil and gas projects for all transportation to and from the site to the nearest interchange on I-25, I-40, State Road 104 and State Road 3. A description of potential uses and traffic generation to be evaluated shall be provided.

4.2.7.1.17. The traffic impact assessment shall identify the geographic area under study and identify the roadway segments, critical intersections, and access points to be analyzed for all transportation routes from the site to the nearest interchange on I-25, I-40, State Road 104 and State Road 3.

4.2.7.1.18. The traffic impact assessment shall contain a summary of all data utilized in the study and an analysis of existing traffic conditions, including:

4.2.7.1.18.1. Traffic count and turning movement information, including the date(s) when such information was collected;

4.2.7.1.18.2. Correction factors that were used to convert collected traffic data into representative design-hour traffic volumes;

4.2.7.1.18.3. Roadway characteristics, including the design configuration of existing or proposed roadways, existing traffic control measures (e.g., speed limits and traffic signals), and existing driveways and turning movement conflicts in the vicinity of the site;

4.2.7.1.18.4. Identification of the existing LOS for roadways and intersections without project development traffic using methods documented in the Highway Capacity Manual or comparable accepted methods of the latest ITE (International Traffic Engineers) evaluation. LOS should be calculated for the weekday peak hour and, in the case of uses generating high levels of weekend traffic, the Saturday peak hour, in order to achieve the LOS C identified in Section _____;

4.2.7.1.18.5. Identify the horizon year(s) that were analyzed in the study, the background traffic growth factors for each horizon year, and the method and assumptions used to develop the background traffic growth. The impact of the project shall be analyzed for the year after the project is completed and 10 years after the development is completed and for each defined horizon year, specific time periods are to be analyzed. For oil and gas operations, this time period will be the weekday peak hours;

4.2.7.1.18.6. Summarize the projected peak hour and average daily trip generation for the proposed project and illustrate the projected trip distribution of trips to and from the site to the nearest interchange on I-25 or I-40, and identify the basis of the trip generation, reduction, and distribution factors used in the study;

4.2.7.1.18.7. The traffic impact assessment shall identify projected design-hour traffic volumes for roadway segments, intersections, or driveways in the study area, with and without the proposed development, for the horizon year(s) of the study and shall address the impact of traffic volumes of the projected horizon year(s) relative to each of the applicable traffic service standards and shall identify the methodology utilized to evaluate the impact. The weekday peak- hour impact shall be evaluated as well as the Saturday peak hour for those uses exhibiting high levels of weekend traffic generation.

4.2.8. Traffic Assessment: Service Standards and Evaluation: The standards for traffic service that shall be used to evaluate the findings of traffic impact assessment are as follows:

4.2.8.1. A volume-to-capacity (V/C) ratio of 0.80 shall not be consistently exceeded on any arterial, and a V/C ratio of 0.90 shall not be exceeded on any collector street;

4.2.8.2. For corridors, including mainline, merging areas, and ramp junctions, a LOS C shall be maintained on any highway, freeway, or arterial, and a LOS C on any other designated non local road on the transportation plan. At all intersections, a LOS C shall be maintained on any arterial or higher-order road and a LOS C on any other nonresidential road. Where the existing LOS is below these standards, the traffic impact report shall identify those improvements or transportation demand management techniques needed to maintain the existing LOS, and what additional improvements would be needed to raise the LOS to the standards indicated for the Conditional Use Permit to be approved.

4.2.8.3. The number of access points provided shall be the minimum needed to provide adequate access capacity for the site. Evidence of LOS C operations for individual County and State road movements at access locations is a primary indication of the need for additional access points. However, the spacing and geometric design of all access points shall be consistent with the access management criteria of the LDC.

4.2.8.4. Average daily traffic impinging on residential roads shall be within the ranges spelled out in the transportation plan for the class of road involved. No oil and gas project traffic shall increase the traffic on a residential road with at least 300 average daily trips by more than 15 percent, and shall contribute no more than 10 percent of the traffic on any road segment providing residential access.

4.2.8.5. The location of new traffic signals or proposed changes to cycle lengths or timing patterns of existing signals to meet LOS standards shall not interfere with the goal of achieving adequate traffic flow and progression on major public roads in the County.

4.2.8.6. The capacity of storage bays and auxiliary lanes for turning traffic shall be adequate to insure that turning traffic will not interfere with through traffic flows on any public road.

4.2.8.7. On-site vehicle circulation and parking patterns shall be designed so as not to interfere with the flow of traffic on any public road and shall accommodate all anticipated types of site traffic.

4.2.8.8. Access points and travel along all County and State roads shall be designed to provide for adequate sight distance and appropriate facilities to accommodate acceleration and deceleration of site traffic as per County and New Mexico Department of Transportation requirements where applicable. Any location with an incidence of high accident frequency the accident history should be evaluated and a determination made that the proposed site access or additional site traffic will not further aggravate the situation.

4.2.8.9. Access Roads shall not exceed 1.08 miles per section of road and shall contain a maximum width of twenty (20) feet paved surface based upon County road construction standards for heavy vehicles. Access roads shall be sited in a manner that mitigates or minimizes their impact on the environment and neighboring land uses.

4.2.8.10. All private roads shall meet the same standards as provided for public roads in the subdivision regulations. Private roads will only be permitted if the Applicant enters into a development agreement for which construction, operation, maintenance standards and financial terms will be provided in the development agreement.

4.2.9. **Fiscal Impact Assessment:** The fiscal impact assessment describing the effect and impact upon County revenue and costs necessitated by additional public facility and service costs generated by the proposed oil and gas projects and the feasibility for financing such facility and service costs. The fiscal impact assessment shall determine whether, and to the extent, an oil and gas project is fiscally and economically positive, as to whether forthcoming revenues (operating and capital) exceed the forthcoming costs (operating and capital) of the oil and gas project.

4.2.9.1. The fiscal impact assessment involves a study of the fiscal implications of oil and gas drilling in the County and in the Canadian River Basin. Drilling will be permitted only after a determination of the adequacy and financial provision for roads, highways, surface water runoff and detention facilities, emergency response service, fire and police substations and operational costs for additional police, fire and emergency response service full time employees and technicians have been met. This includes the County public works costs to maintain roads, drainage areas, environmentally sensitive areas and historic, cultural and archaeological artifacts and sites.

4.2.9.2. The fiscal impact assessment shall project urban levels of police, fire and emergency response service to affected areas of the County and the Canadian River Basin. The assessment shall estimate the threshold minimum number of full time paid public service workers necessary to provide fire, police, emergency response service, road, drainage, environmentally sensitive areas and historic, cultural and archaeological artifacts and site necessary for maintenance and operation of the facilities and services.

4.2.9.3. The assessment shall estimate the public service costs for new workers and worker families brought into an oil and gas project area for the exploration and drilling period and beyond.

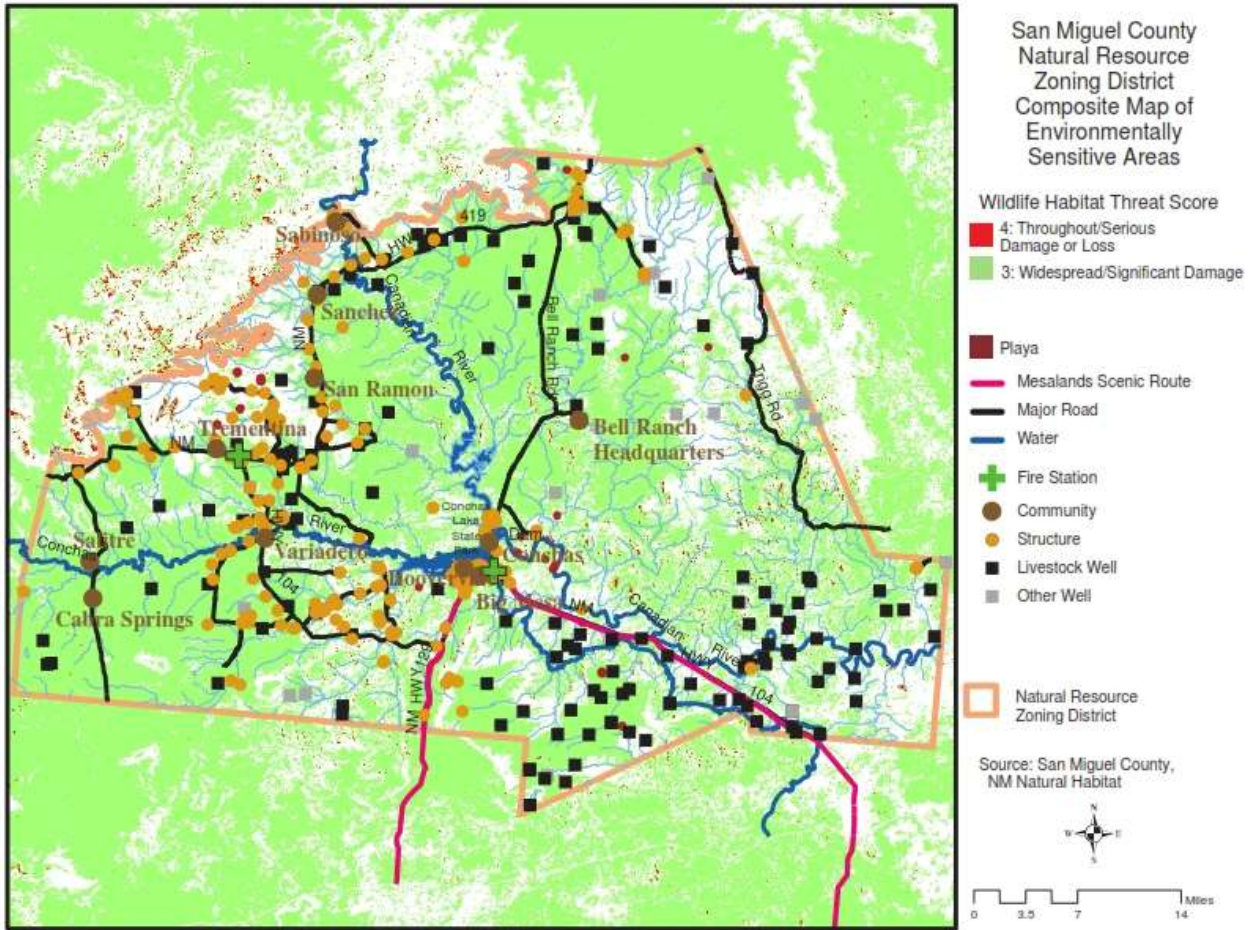
4.2.9.4. The fiscal and economic effects of oil and gas drilling shall be determined using nationally accepted and longstanding fiscal and economic models and shall project what will be needed in terms of public operating and maintenance services and provision of capital facilities and determine what funds will be available to pay for these facilities and services.

4.2.9.5. Costs shall be determined using current budgets, both operating and capital interviews with service providers to determine areas of deficient capacity and service where additional expenditures will be necessary.

4.2.9.6. Revenues shall be determined using budgets and formulas for calculating additional taxes, infrastructure and service fees, licenses, administrative fees, grants and improvement district assessments.

4.2.10. **Land Evaluation Suitability Assessment:** The assessment shall demonstrate that the proposed oil and gas facilities and locations are compatible with adjoining land uses and environmentally sensitive lands, given the size, design and operational characteristics of the proposed Oil or Gas Facility or Facilities, and whether the facility or facilities can be made compatible with the surrounding area by using reasonable efforts to mitigate any public nuisance or land use effects or impacts of operation of the Oil or Gas Project. Factors to be considered include impacts on property values, air and water quality, water availability, public safety, scenic vistas, cultural, historical and archaeological resources, emergency service response, environmentally sensitive lands (wetlands, floodplains and floodways, rivers and stream corridors, agricultural and ranch lands, hillsides, steep slopes, vegetative and fauna habitats), noise, impacts on roads and highways and neighboring lands, vibration, odors, glare or excessive lighting, fire protection, access, visual impacts, and the past performance of the Operator's past compliance (or lack thereof) with federal, state and local laws pertaining to oil and gas exploration and production activities.

4.2.10.1. The County has performed studies of all of these factors from multiple documents, maps, reports, and professional analyses and has developed a composite Land and Environment Suitability Assessment Map (“LESA Map”), incorporate below, for the Natural Resource Zoning Districts, which describes areas that contain environmentally sensitive areas.



4.2.10.2. List of Oil and Gas Environmentally Sensitive Factors

Factor 1	Farms/Ranches To Be Protected
1.1	Farm/Ranch size fewer than 40 acres
1.2	Farm/Ranch size 40 acres to 100 acres
1.3	Farm/Ranch size greater than 100 acres
Factor 2	Lands suitable for protecting native plant and animal species
2.1	Lands with high amphibian species richness
2.2	Lands with high reptilian species richness
2.3	Lands with high bird species richness

2.4	Lands with high mammal species richness
2.5	Lands with undisturbed natural grasslands
2.6	Lands with undisturbed Pinon-Juniper Woodlands
2.7	Lands with undisturbed forested areas
Factor 3	Lands suitable for Protecting Surface and groundwater quality
3.1	Lands proximal to natural springs
3.2	Lands proximal permanent water bodies
3.3	Lands proximal to drainage buffers
3.4	Lands within a wetlands inventory
3.5	Lands proximal to quaternary alluvium geology
3.6	Lands soils classified as excessively or somewhat excessively drained
3.7	Lands with reservoir alluvium geology
Factor 4	Lands with Important Physical Characteristics
4.1	Lands within the 100-year floodplain
4.2	Steep slopes (greater than 11%)
Factor 5	Areas of cultural, historical and archaeological importance
5.1	Lands proximal to recorded archaeological, historical, and paleontological sites of demonstrated or potential significance
5.2	Lands proximal to major Pre-Columbian pueblo sites and zones of high archaeological or paleontological potential
5.3	Lands proximal to areas of importance to Native American groups (traditional cultural properties)
Factor 6	Lands with scenic value
6.1	Scenic Highways
6.2	Scenic dirt roads
6.3	Lands within Delphi-based scenic landmarks, outcrops, peaks, gaps and

	geologic features
Factor 7	Lands unsuitable for oil/gas
7.1	Lands proximal to community/public water system
7.2	Lands proximal to paved highway
7.3	Lands proximal to paved roadway
7.4	Lands proximal to police and fire stations
7.5	Lands proximal to emergency healthcare facilities
Factor 8	Land use compatibility
8.1	Identify lands proximal to designated conservation areas

4.2.10.3. The LESA Map shall be amended and updated biennially from the effective date of this Ordinance. Amendments to the LESA Map may be considered more often when needed to account for the development of new or more accurate information.

4.2.10.4. The LESA Map classifies lands within the Natural Resource Zoning Districts for oil and gas activities as High Sensitivity Areas and Low Sensitivity Areas.

4.2.10.4.1. High Sensitivity Areas. In the High Sensitivity Areas oil and gas activity will create adverse public nuisance and land use effects and impacts upon the critical assets of the Natural Resource Zoning Districts. It is necessary to constrain oil and gas activity so that the County **does not authorize a greater number of oil and gas wells than five percent (5%) of the number of wells allowed by the applicable OCD spacing rules**, where each square mile (640 acres) of oil and gas project land, without environmental constraint, would contain a maximum of 16 oil and gas wells, taking into account that the applicable OCD spacing rule 19.15.3.104 NMAC provides for one (1) well for each forty (40) acres. If located within a **High Sensitivity Area on the LESA Map it would be permitted 0.8 drill sites per square mile.** The final number of oil or gas drill sites project-wide will be rounded off to the next highest integer. To the extent possible, the maximum number of wells shall be co-located on a minimum number of pad sites.

4.2.10.4.1.2. The number of wells permitted under the LESA Map is a maximum number. Each specific assessment, study, report, or plan may require that fewer or no oil and gas wells be authorized based upon the unique requirements of the project area's mitigation requirements to avoid further specific adverse public nuisance and/or land use effects and impacts from oil and gas drill site locations. The drill site should be the least amount of land necessary to operate the drill site.

4.2.10.4.1.3. For each well, the surface area shall not exceed ½ acre and total surface acreage for all pads in High Sensitivity Areas shall not exceed two (2) acres per square mile. The Board may, upon application, increase such acreage on a case by case basis to accommodate a transfer of development rights not to exceed one (1) acre in total size. The pad shall be the least amount of land necessary to operate the number of wells permitted.

4.2.10.4.1.4. Proposed oil or gas facilities within High Sensitivity Areas will be permitted to purchase development rights from other proposed oil or gas facilities that, by reason of a beneficial use and value determination, such other facilities would not be allowed any oil or gas drill sites. For each forty (40) acre sending area transferring a development right (“TDR”), the High Sensitivity Area receiving the TDR will be permitted to add an additional 0.3 wells.

4.2.10.4.2. Low Sensitivity Areas. In the Low Sensitivity Areas oil and gas activity will create adverse public nuisance and land use effects and impacts upon the critical assets of the Natural Resource Zoning Districts. It is necessary to constrain oil and gas activity so that the County does not authorize a greater number of oil and gas wells than ten percent (10%) of the number of wells allowed by the applicable OCD spacing rules, where each square mile (640 acres) of oil and gas project land, without environmental constraint, would contain a maximum of 16 oil and gas wells, taking into account that the applicable OCD spacing rule 19.15.3.104 NMAC provides for one (1) well for each forty (40) acres. If located within a Low Sensitivity Area on the LESA Map it would be permitted 1.6 drill sites per square mile. The final number of oil or gas drill sites project-wide will be rounded off to the next highest integer. To the extent possible, the maximum number of wells shall be co-located on a minimum number of pad sites.

4.2.10.4.2.1. The number of wells permitted under the LESA Map is a maximum number. Each specific assessment, study, report, or plan may require that fewer or no oil and gas wells be authorized based upon the unique requirements of the project area’s mitigation requirements to avoid further specific adverse public nuisance and/or land use effects and impacts from oil and gas drill site locations. The drill site should be the least amount of land necessary to operate the drill site.

4.2.10.4.2.2. For each well, the surface area shall not exceed ½ acre and total surface acreage for all drill sites in Low Sensitivity Areas shall not exceed four (4) acres per square mile. The Board may upon application increase such acreage on case by case basis if there is an affirmative recommendation from a petroleum Engineer employed by the County certifying reasonable need, or to accommodate a transfer of development rights not to exceed two (2) acres in total size. The drill site pad shall be the least amount of land necessary to operate the drill site.

4.2.10.4.2.3. Proposed oil or gas facilities within Low Sensitivity Areas will be permitted to purchase development rights from other proposed oil or gas facilities that, by reason of a beneficial use and value determination, such other facilities would not be allowed any oil or gas drill sites. For each forty (40) acre sending area transferring a development right (“TDR”), the Low Sensitivity Area receiving the TDR will be permitted to add an additional 0.6 oil and gas drill sites.

4.2.11. **Construction Commitment:** The commitment for construction or advancement of public facilities and services shall be included in the application and shall contain, at a minimum, the following:

4.2.11.1. An estimate of the **total financial resources needed** to construct or expand the proposed public facilities and services, and a description of the incremental cost involved;

4.2.11.2. A schedule for commencement and completion of construction or expansion of the planned capital improvement and service with specific target dates for multiphase or large-scale capital improvements projects;

4.2.11.3. A statement that the proposed capital improvement and service is consistent with the Comprehensive Plan, any Regional, Area, Utility or Public Improvement District Facilities Plans;

4.2.11.4. A statement that the planned capital improvement and service is consistent with any ordinances relating to the construction and design of the public facility and service; and

4.2.11.5. **The construction or funding of a portion of a public facility or service needed to meet the adopted LOS shall** be approved only where: the public facility will be able to provide the capacity needed to meet the adopted LOS, and will be fully usable and operational, due to the characteristics of the facility; or the construction or funding of the balance of the public facility that is needed to meet the adopted LOS will be generated from other secure revenue sources.

4.2.11.6. A commitment to provide for **annual funding of all fire, police and emergency response services and county road maintenance and repair, the** need for which is generated by the oil and gas project, to the extent that the property tax revenues from the project are inadequate to cover such annual funding. Where development agreements for additional Oil or Gas Facilities are approved, the annual funding contribution may be apportioned among all projects so approved.

4.2.12. **Financial Assurance and Insurance:** An Applicant seeking a conditional use permit for an Oil or Gas Facility shall furnish financial assurances acceptable to the County. Such financial assurances shall **indemnify and hold harmless San Miguel County, its elected and appointed officers, agents and employees,** from and against any and all claims, demands or causes of action, of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorney's fees, liabilities, damages, orders, judgments or decrees sustained by San Miguel County or any third party, arising out of or by negligent acts, errors or omissions of any and all project owners, officers, employees or agents. Acceptable financial assurances may include:

4.2.12.1. A bond in the principal sum of such amount as may be determined by the Board, but not less than **Fifty Thousand Dollars (\$50,000)**, in an amount representing the actual cost to remediate the site of the Oil or Gas Facility after abandonment less the amount of any

agreement entered into by and between the Operator and a surface owner pursuant to the Surface Owners' Protection Act. A bond shall be executed by a reliable insurance company authorized to do business in the State of New Mexico, as surety, and the Applicant as principal, running to the County for the benefit of the County and all persons concerned, under the condition that the Operator shall comply with the terms and conditions of the development approval in the drilling and operation of the well; or

4.2.12.2. An irrevocable letter of credit issued by a federally-insured financial institution located within the State of New Mexico, backed by cash on deposit at the institution representing the full value of the amount of the letter of credit. The amount shall be set as may be determined by the Board, but in no event shall be for a sum less than Fifty Thousand Dollars (\$50,000). A letter of credit shall be for a term of not less than five (5) years, and shall be automatically renewed on like terms unless the issuer notifies the County in writing of non-renewal at least thirty (30) days prior to the end of the five (5) year period.

4.2.12.3. All financial assurances pursuant to this Section shall become effective on or before the date that documentation of such financial assurance is filed with the County.

4.2.12.4. The County shall release the financial assurances deposited pursuant to this Section upon written request of the Operator if the well has been plugged and abandoned and the location restored and/or remediated pursuant to this Ordinance, if the relevant Oil or Gas Facility has ceased operation and has been similarly restored and/or remediated pursuant to this Ordinance, or if a Change of Operator has been approved pursuant to this Article and a new CUP development order has been granted.

4.2.12.5. **Comprehensive General Liability Insurance:** In addition to the required financial assurance, the Operator shall submit with the Application a policy or policies of commercial general liability insurance, including contractual liability, covering bodily injuries and property damage that names the Operator as the insured and the County as an additional insured, issued by an insurance company licensed to do business in the State of New Mexico. The insurance policy shall be in a form acceptable to the County and shall further provide a limit of liability of not less than **Ten Million Dollars (\$10,000,000) per occurrence**. Said policy or policies shall provide that they may not be cancelled without written notice to the County of at least thirty (30) days prior to the effective date of such cancellation.

4.2.12.6. **Pollution Liability Insurance:** Policy or policies that provide standard pollution liability insurance with coverage of not less than **\$10,000,000 per occurrence**, issued by an insurance company authorized to do business in the State, and that names the Operator as insured. Such insurance policy shall be maintained in full force and effect from the date an Application is submitted and continuing in force until the well is plugged and abandoned in accordance with the applicable State statutes, OCD regulations and this Ordinance. A separate policy is not required if pollution coverage is included as a part of the comprehensive general liability insurance policy. 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.

4.2.12.7. Self-Insurance: An Operator offering a plan of self-insurance for general and pollution liability may provide a certificate of insurance as required by this section issued pursuant to such plan provided that such plan has been approved by the Public Regulation Commission of the State of New Mexico and the County's Risk Manager.

4.2.12.8. Cancellation of Insurance: Should any of the above identified policies of insurance be cancelled or terminated, without substitution of equivalent insurance coverage prior to the date of cancellation or termination, the conditional use permit shall be suspended as of the date of cancellation or termination, and the Administrator shall issue a cease and desist order to the Operator, requiring the closing of all oil and gas operations pending a public hearing before the Board.

ARTICLE V. SETBACKS FOR PROJECT SITES

The following setbacks are minimum setbacks and are not subject to variance. At the discretion of the Board, these setbacks may be increased on a site-by-site basis. The Board shall pay particular attention to protecting sensitive neighboring uses such as residences when locating drill sites.

5.1. **Inhabited Dwelling or** Building Used as a Place of Assembly, Church, School or Public Institution with an IRS 501(c) (3) clearance - **1 mile.**

5.2. Non-residential Use or Building – 1000 feet.

5.3. Public Road or Highway - 500 feet;

5.4. Lot line for a lot designated for residential use on an approved plat – 1 mile;

5.5. **Groundwater recharge area,** alluvial aquifer, acequia, perennial, seasonal or ephemeral water course, creek, arroyo, playa lake or wetland as defined by the United States Corps of Engineers – 1 mile;

5.6. One hundred year floodplain line as designated by FEMA - 1000 feet;

5.7. Existing water well permitted by the state engineer - 1000 feet;

5.8. Cultural, historic or archeological resource - 1000 feet;

5.9. Parks, trails, recreation areas and designated open space protected by a restrictive covenant or owned by a conservation entity - 750 feet.

ARTICLE VI. REVIEW OF APPLICATION. In consultation with County staff as may be required, the Administrator shall review the application for conditional use permit to ensure that all application requirements provided under Article IV of this ordinance are met. In addition, the Administrator shall:

6.1. Review the adequate public facilities assessment and recommend whether the assessment indicates that adequate capacity exists, taking into consideration: (1) on the supply side, all

existing facilities and service capabilities and any facilities and service capabilities that are scheduled to come on line in the next three years, or in a County or public improvement district or utility facilities plan; and (2) on the demand side, the projected demand from the project being reviewed, shall be debited against reserved available capacity for future prior pipeline approvals that have not started nor completed construction.

6.2. The Administrator shall recommend: (1) approval of the adequate public facilities assessment if said assessment meets standards for public facilities and services available at the adopted **LOS**; (2) denial of said assessment where adequate public facilities and services are not available at the adopted LOS; or (3) conditional approval of a phase of the project, if all public facilities and services for that phase are available at the adopted LOS as follows:

Facilities & Services	Level of Service (LOS) per 50 square miles
Fire Department and Emergency Services	
Vehicles (Number)	3
Building (GSF)	4,000
Personnel (Number, Career & Volunteer)	6
Response Time	10 minutes
Fire Station Service Area Radius	4 miles
ISO Rating	7/9
Sheriff's Department	
Vehicles (Number)	2.0
Building (GSF)	91 sq. ft.
Personnel (Number, Career)	2.0
Average Response Time	
Priority 1	13 minutes
Priority 2	17 minutes
Priority 3	20 minutes
Priority 4	23 minutes

Priority 5	26 minutes
Priority 7	30 minutes
Roads	
Road Capacity for Oil and Gas Tankers and Drilling Equipment	LOS "C"
Road Design (2 lane concrete or macadam surface)	See Subdivision Regulations
Affordable Housing	
Provision for single family, multiple family or manufactured dwellings for all employees who do not have a permanent residence within 15 miles of the work site.	20% of all required single family or multiple family dwellings shall be sold or rented at prices or rents considered affordable for qualified low- or moderate-income buyers or renters, pursuant to U.S. Department of Housing and Urban Development guidelines for low- or moderate-income buyers or renters

6.3. If the assessment indicates that current facilities and services are inadequate, the Applicant may voluntarily propose, in the application, to construct or to secure funding for the public facilities and services necessary to provide for the capacity generated by the proposed development at the adopted LOS. No advancement of capacity for public facilities and services shall be accepted by the County unless: (1) the proposed public facility consists of current construction of public facilities by any governmental agency other than the County; or (2) the facilities advanced by the Applicant will meet the adopted LOS for the entire project or any phase thereof. Reimbursement shall be offered to the Applicant for the pro rata cost of such capacity from any funds paid by subsequent oil and gas development projects that utilize a portion of the capacity advanced.

ARTICLE VII. PROCEDURE FOR NOTICE AND HEARING BEFORE HEARING OFFICER. When the Administrator deems an application complete, a public hearing shall be held and conducted by a County appointed Hearing Officer within forty-five (45) days who shall then prepare a written recommendation to the Planning and Zoning Commission with respect to the approval, conditional approval or denial of the application, such written recommendation to indicate the findings of the Hearing Officer in accordance with the following procedure and requirements.

7.1. Notice of the time, place and purpose of the hearing shall be given as follows:

7.1.1. By publication not less than twenty (20) calendar days before the public hearing in a newspaper published and of general circulation in San Miguel County.

7.1.2. By posting not less than twenty (20) calendar days before the public hearing, upon the premises where the project is proposed to be located, and upon any perimeter fence of said premises and adjacent to any public road or right-of-way nearest said premises.

7.1.3. By certified mail, return receipt requested to all adjoining landowners identified in the San Miguel County Assessor's tax map, which certified mail shall be postmarked not less than twenty (20) calendar days before the date of the public hearing.

7.1.4. By certified mail to all agencies identified for agency review in this Ordinance.

7.1.5. By ordinary first class mail to all interested persons who have requested notice of the public hearing.

7.1.6. By posting on the website of San Miguel County.

7.2.2. After providing notice as specified in subsection 7.1 above, the Hearing Officer shall:

7.2.2.1. Hold and conduct a public hearing on the application for conditional use permit for the project and entertain any evidence and testimony under oath, and upon the conclusion of the public hearing, take action on the application for conditional use permit by making a recommendation to be forwarded to the Planning and Zoning Commission for public meeting and recommendation.

7.2.2.2. Any continuances of the public hearing shall be in accordance with the requirements of the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978, as amended.

7.2.2.3. The Application for approval of a conditional use permit shall be reviewed by the Hearing Officer to make findings as to whether the:

7.2.2.3.1. Application is consistent with the Comprehensive Plan, any applicable Area, Regional Plan, or any Utility, Public Improvement District or Functional Facility Plan;

7.2.2.3.2. Proposed Oil or Gas Facility or Facilities meet or exceed the bond, insurance and performance standards as set forth in Sections _____;

7.2.2.3.3. Proposed location is compatible with adjoining uses given the size, design and operational characteristics of the proposed Oil or Gas Facility or Facilities, and whether the Facility or Facilities can be made compatible with the surrounding area by using reasonable efforts to mitigate the possible adverse consequences of operation of the Oil or Gas Facility or Facilities. Factors to be considered include impacts on property values, public safety, impacts on cultural, historical and archaeological resources, emergency service response, wildlife and vegetation resources, noise, impacts on roads

and highways, vibration, odor, glare, fire protection, access, visual impacts, and impacts upon air and water quality and quantity, the past performance of the Operator's past compliance (or lack thereof) with federal, state and local laws pertaining to oil and gas exploration and production activities;

7.2.2.3.4. The proposed Facility or Facilities will be detrimental to the safety, health, prosperity, order, comfort and convenience of the County pursuant to NMSA 1978, § 4-37-1;

7.2.2.3.5. The proposed location is in a geologic hazard area or an area with slopes equal to or exceeding eleven (11 %) percent;

7.2.2.3.6. The requirements for directional drilling have been met, and to determine whether the surface area occupied by the project is less than or equal to acreages permitted under this Ordinance;

7.2.2.3.7. The Operator has violated any federal, state, and local laws regulating or pertaining to previous oil and gas exploration and production. **Relevant considerations include whether the Operator has experienced spills or leaks, water contamination (whether surface or subsurface), other environmental problems; the Operator or Owner's prior reclamation activities;**

7.2.2.3.8. The Operator has damaged fauna, flora, historical, cultural or archaeological resources, streams, wetlands, floodway, and floodplains, hillsides, and adjacent properties in previous operations, as well as any measures taken by the Operator to alleviate any such problems; and

7.2.2.3.9. The proposed Oil or Gas Facility will have an adverse effect or impact on any fiscal, economic or environmental factors, including County services including budgets, housing, water supplies, transportation systems, utilities, health care, law enforcement and fire protection, emergency response, and whether the proposed facility will be detrimental to the public health, and safety.

7.2.4. Within thirty (30) days of the conclusion of the public hearing, the Hearing Officer shall forward written **recommendation by resolution to the Planning and Zoning Commission**, such recommendation to be filed in the office of the San Miguel County Clerk, which resolution shall include findings of facts supporting the recommendation, and if the recommendation is to grant the conditional use permit, such conditions as should be imposed, if any.

ARTICLE VIII. PROCEDURE FOR NOTICE BEFORE PLANNING AND ZONING COMMISSION: The **Planning Commission shall schedule a public meeting** to be held within 45 days from the filing of the recommendation of the Hearing Officer in accordance with the following procedure and requirements.

8.1. Notice of the time, place and purpose of the meeting shall be given pursuant to and in accordance with the notice requirements set forth in Article VII hereinabove.

8.2. Upon the conclusion of the public meeting, the **Planning and Zoning Commission shall take action upon the application for conditional use permit, by making its written recommendation to the Board of County Commissioners,** for approval or denial of the application.

8.3. The recommendation to the Board of County Commissioners shall include findings of fact supporting the recommendation, and if the recommendation is to grant the conditional use permit, such conditions as should be imposed, if any.

8.4. The recommendation to the Board of County Commissioners shall be rendered by written resolution to be filed in the office of the San Miguel County Clerk, which may be reviewed *de novo* by the Board of County Commissioners as hereafter provided, which resolution shall be delivered to the applicant and to any person requesting notice thereof.

ARTICLE IX. PROCEDURE FOR NOTICE BEFORE THE BOARD OF COUNTY COMMISSION. Not later than sixty (60) days after the resolution of recommendation rendered by the Planning and Zoning Commission is filed in the office of the San Miguel County Clerk, said resolution of recommendation on the project application shall come on for a public meeting before the Board of County Commissioners pursuant to and in accordance with the notice requirements set forth in Article VI hereinabove.

9.1. Upon the conclusion of said public meeting, the Board of County Commissioners shall:

9.2. Make and render its decision granting or denying the project application for conditional use permit, which decision shall include the findings of fact supporting the decision, and if the decision is to grant the conditional use permit, the conditions imposed for granting of the same, if any, and the effective date of said conditional use permit.

9.3. Not later than thirty (30) days from the conclusion of the public meeting, render its aforesaid decision by written resolution which shall be filed forthwith in the office of the San Miguel County Clerk, and deliver copy of said resolution to the applicant and to any person who has requested notice.

ARTICLE X. APPEAL. **Any person aggrieved by the decision of the Board of County Commissioners may appeal the same to the District Court of the Fourth Judicial District in and for San Miguel County, New Mexico.**

ARTICLE XI. CONDITIONAL USE PERMIT - PREREQUISITES. A conditional use permit shall not be issued until the applicant applies for all required grading permits, zoning and development permits and state building permits. Any conditions imposed by the Board must be addressed fully prior to the issuance of a conditional use permit by the County, with written certification provided by the applicant to the County indicating such conditions imposed have been fully addressed.

11.1. Upon receipt of such written certification, the County shall verify that all conditions imposed have been fully addressed by applicant. The County will then issue a conditional use permit within ten (10) working days upon such verification.

11.2. Baseline Water Quality Testing: The Operator shall complete a baseline water quality testing program prior to constructing and Oil or Gas Facility. At least three (3) monitoring wells shall be constructed according to guidelines prepared by the County. The location of the monitoring wells shall be specified by the County. However, at least one of the wells shall be at the Oil or Gas Facility or, if directional drilling or horizontal drilling is utilized, at least one monitoring well shall be located at the surface location corresponding to the bottom-hole location. A down gradient well or wells shall be provided. If permission to utilize property for purposes of locating a monitoring well is not provided, the Operator may use County rights-of-way or property as sites for monitoring wells. Water samples from all water wells and surface water sources within a three mile radius of the proposed Well site shall be taken and the parameters tested to establish the baseline water quality in the area. All samples shall be split with the County to enable the County to conduct independent testing. The parameters to be tested shall be specified by the Administrator.

11.3. In the event a property owner refuses access to a well for purposes of locating a monitoring well, an affidavit from the Operator, with signature of the property owner if possible, shall be provided that summarizes efforts to obtain water samples from the location and the obstacles encountered. If access is refused as described, the Operator shall be required to drill monitoring wells in alternative locations.

11.4. At least annually thereafter, the Operator shall repeat its testing of surface and subsurface water resources to determine whether fresh waters have been degraded or polluted as a result of the operation of the Oil or Gas Facility, as compared to the baseline established during initial testing. Such results shall be provided to the Administrator.

ARTICLE XII. STANDARDS FOR OPERATION OF OIL AND GAS FACILITIES. All drilling, fracking, production, transportation and other operations conducted at an Oil or Gas Facility, together with construction of buildings or other structures, shall strictly comply the requirements of this Ordinance and the Code and shall be conducted at all times in accordance with best industry operating practices. All oil or gas development or operations shall be conducted only between 8:00 AM and 5:00 PM, or between sunrise and sunset, whichever is greater, except in cases of fires, blowouts, explosions and any other emergency or where the delivery of equipment is necessary to prevent the cessation of drilling or production. Upon Applicant's request, drilling (but no other activity) may be permitted up to twenty four (24) hours per day if approved by the Planning and Zoning Commission on a case-by-case basis. The Planning Commission shall take into account whether the specific land use or environmental conditions warrant such an allowance. An extended hour application shall not be granted if there are residences within (one) 1 mile of the drill site. If approved for extended drilling or fracturing hours, Applicants shall at all times abide by all performance standards established in this Ordinance. Each operator of an Oil or Gas Facility is required to provide updated documents, plans, national standards, statutory code, ordinance and other requirements as necessary to comply with the conditions attached to development approval of the conditional use permit.

12.1. Emergency Response and Preparedness Plan: complying with the development orders including all conditions and terms of the development orders. The updated Emergency Response and Preparedness Plan shall be incorporated into the development order approving the conditional use permit. The plan shall be filed with the Fire Chief and the Administrator and

shall be updated annually or more frequently if conditions change. The updated Emergency Response and Preparedness Plan shall consist of the following:

12.1.1. Name, address and phone number, including a 24-hour emergency number of at least two persons responsible for emergency field operations;

12.1.2. Facilities map showing the name, location and description of all Oil or Gas Facilities, including the size and type of all pipelines. Once as built drawings are available, they shall be provided if they deviate from the plans previously submitted. "The map shall be prepared either manually on U.S.G.A. 7.5 Minute Series maps (one inch = 2,000 feet), or digitally on the county geographic information system parcel maps. The as-built facilities map shall be held confidentially by the County's Fire Chief, and shall only be disclosed in the event of an emergency;

12.1.3. Copies of the Material Safety Data Sheet (MSDS) for each chemical or substance present at the Oil and Gas Facility;

12.1.4. A written response plan for the potential emergencies that may be associated with the operation of the facilities. This may include any or all of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills; and project specific emergency preparedness plans are required for any project that involves drilling or penetrating through known zones of hydrogen sulfite gas; as determined by the County. This plan shall be coordinated with and approved by the County prior to beginning field operations.

12.2. Fire Prevention and Hazardous Material Control: Each Oil or Gas Facility shall comply with all fire prevention requirements set forth in the Code and all other applicable County ordinances relating to fire prevention, including the County Fire Code and the Urban-Wildland Interface Code. Firefighting apparatus and supplies, as approved by the Fire Chief, and required by any applicable federal, state, or County law shall be provided by the Operator at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations which shall be in addition to all fire facilities operated by full time professional fire fighters as required in the Adequate Public Facilities and Services Assessment. The Operator shall be responsible for the maintenance of such equipment. The Operator shall place a sign in a conspicuous site at each well location or site to identify the Well with its name or number and the telephone numbers of the persons named in the Emergency Response and Preparedness Plan as being responsible for the site.

12.3. Appearance and Maintenance of the Site:

12.3.1. The premises upon which an Oil or Gas Facility is located shall be kept in a clean and orderly condition at all times.

12.3.2. After a well has been completed or plugged and abandoned, the Operator shall clean the premises, complete restoration activities, remove equipment no longer being used and repair all damages to the premises.

12.3.3. No mud, wastewater, oil, slush or other waste shall be permitted to flow off of the drill site.

12.3.4. Suitable and adequate toilet facilities shall be made available and kept in a clean and sanitary condition during drilling operations.

12.3.5. The premises on which the drill site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material.

12.3.6. An Oil or Gas Facility shall not be used for the storage of pipe or other equipment or materials except during the drilling or servicing of wells.

12.3.7. All above-ground production equipment shall be painted a uniform flat tan color.

12.3.8. All topsoil removed from the surface and retained on the site shall be carefully removed and stockpiled in a manner to prevent erosion and to facilitate its application to the disturbed areas during site reclamation.

12.3.9. An Oil or Gas Facility shall not cause significant erosion or sedimentation. When possible, vegetative buffers, swales, berms or water bars should be used to divert stormwater away from the drill site. Sediment fences or temporary retention ponds shall also be used when possible to trap drill site runoff and sediments.

12.3.10. Except as otherwise 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 or Gas Facility shall conform to the American Petroleum Institute (A.P.I.) standards for such tanks. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material in order to protect against leaks and spills. Each storage tank shall be equipped with a level-control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.

12.3.11. Closed Loop Systems. Each site where there is a producing oil or gas well shall have a fluid-containment system using a series of enclosed above ground tanks. Only Closed Loop Systems that meet or exceed the requirements of NMAC 15.1.21, shall be used during the drilling or Completion of any Well. Open pits and reserve pits are prohibited under all circumstances.

12.4. Water Quality Protection: The Administrator shall have the authority to require the construction of supplemental monitoring water wells in the event degradation or pollution is suspected to physically document any degradation or pollution of an aquifer or any other fresh water bearing formation. Such construction and monitoring shall be at the expense of the Operator.

12.4.1. The oil or gas facility shall not pose any significant risk, nor cause any significant degradation to subsurface water resources. In the event degradation or pollution of

surface or subsurface waters, the Operator shall immediately abate the degradation or pollution, at its own expense, and cooperate and follow the directives of County, State and federal officials having jurisdiction over the incident.

12.4.2. The Oil or Gas Facility or Facilities shall not cause significant degradation in the quality and quantity of surface waters from the addition of non-point source pollution; as determined by the Board.

12.4.3. The oil or gas facility shall not cause degradation in the water quality of any public or private well so that any regulated groundwater standard is exceeded nor cause a reduction in water pressure of any public or private water wells.

12.4.4. There shall be no disposal of saltwater, produced water or water containing salts or other minerals in quantities that exceed applicable ground water standards established by the Water Quality Control Commission, at the site of the oil or gas facility. Each Operator shall make sufficient provisions for the safe disposal of water containing salts or other minerals in quantities that exceed applicable ground water standards established by the Water Quality Control Commission, hydrocarbons, or other deleterious substances which may be brought to the surface. Any such disposal shall be at an OCD or County approved wastewater treatment facility. No disposal of such substances shall be permitted at the site of the oil or gas facility.

12.4.5. Drilling mud shall be disposed of by transporting the mud to an OCD-licensed disposal site. The mud may not be buried in an earthen pit on site, pumped down the well bore or down the annulus of a well, or spread on the surface of the ground at the site.

12.4.6. . In the event of any spill or leak of produced water or any deleterious substance, whatever the cause thereof, the Operator shall immediately notify the County's Oil and Gas Inspector. If, in the judgment of the Inspector, such leak or spill represents a potential hazard to surface or ground water resources or the environment, the Inspector shall immediately notify OCD. The Inspector may require that the Operator strictly follow all orders issued by OCD with respect to the spill or leak, and may additionally require that the Operator conduct testing of the surface and subsurface for pollutant incursion and conduct remediation of the spill or leak as directed by OCD, the cost of which is to be paid by the Operator.

12.4.7 No person shall deposit, drain or divert into or upon any public highway, street, alley, drainage ditch, arroyo, storm drain, sewer, gutter, creek, stream, river, lake or lagoon, any oil or liquid containing any hydrocarbons, or any drilling mud, sand, water or saltwater, or in any manner permit, by any means, any of such substances to escape from any property owned, leased or controlled by such person. All such material shall be properly disposed of at an OCD or County wastewater treatment facility.

12.5. Noise:

12.5.1. Production equipment shall be powered by electric motors if located within 1,320 feet of distribution voltage capable of powering production equipment. Production

equipment may be powered by engines prior to the time that the Facility has access to electric power but subject to the restrictions contained in this subsection.

12.5.2. **Drilling and production operations shall not create a sound level greater than 75 dB(a)** when measured at a distance of three hundred (300) feet from the source of the sound. When an inhabited building is within 500 feet of the Facility, drilling and production operations shall not create a sound level greater than 70 dB(a) when measured at a distance of three hundred (300) feet from the source of the sound. A lower sound level shall be required where the EIR determines that the sound levels for a specific site require further mitigation.

12.5.3. **Fracking operations shall not create a sound level of greater than 80 dB(a)** when measured at a distance of three hundred (300) feet from the source of the sound.

12.6. Lighting, Visual Impact and Flaring of Gas:

12.6.1. The Operator shall log all lighting levels and shall provide night ambient light levels prior to commencing work on the Oil or Gas Facility. Levels shall be provided during the development and operation of the Oil or Gas Facility on a daily basis.

12.6.2. Lights shall be shut off on a drilling rig when not drilling or performing other operational, maintenance or repair functions related to the drilling rig. Lights required by the Federal Aviation Administration that are needed to alert aircraft of the rig shall not be subject to this requirement.

12.6.3. An oil or gas facility shall use structures and equipment of the minimum size necessary to satisfy the functional requirement of the facility. **The Operator shall use low profile pumps and equipment to mitigate** the adverse visual impacts caused by the facility.

12.6.4. Drill site dimensions for an oil or gas facility shall be the minimum size necessary to provide a safe work area and minimize surface disturbance. The site should be oriented in a manner to reduce adverse visual impact on view corridors.

12.6.5. Gas shall not be flared except as permitted by OCD and federal regulations, particularly but not limited to, prevention of the escape of methane into the environment.

12.7. Fracking and Acidizing:

12.7.1. Fracking operations shall only use treated recycled or groundwater as the fluid component of the fracturing material. **Water and sand used in fracturing operations shall not contain dissolved hydrocarbons or other toxic contaminants. The use of synthetic fracking fluids is prohibited. Fracking with brine is prohibited.** Water that meets or exceeds secondary treatment drinking water standards shall be used and such **water shall be obtained from the County or a municipal system that supplies drinking water, or a private source, and shall comply with the Water Availability Assessment.** If the County agrees, subject to clear and convincing evidence, that use of water during fracturing

operations would damage the rock formation so that the oil and gas cannot be recovered, use of other fluids may be authorized so long as the exact constituents of the fluids are on the prescribed list of chemicals, minerals, or materials and approved by the Board, a ground water monitoring program is established, and the need for the use of the specific constituents are verified by the County and approved by a medical professional selected by the County. Fracturing pressures shall be strictly controlled to the satisfaction of the oil and gas inspector. Fracking shall not be permitted where studies show that earthquake activity is occurring within two (2) miles of the drill site.

12.7.2. After fracking operations are completed, all fluids used in the operations shall, to the extent technologically possible, be removed from the well and sent to a wastewater treatment facility.

12.7.3. Pollution of the surface or any surface or groundwater before, during and after the fracking process is prohibited.

12.8. Abandonment, Plugging and Site Remediation:

12.8.1. The Operator shall furnish to the Administrator, copies of the submitted OCD plugging and abandonment forms within ten (10) days of the date of submission to the OCD.

12.8.2. No building shall subsequently be erected on or over or restricting access to any abandoned well.

12.8.3. Within four months following abandonment, the area formerly occupied by the well or oil or gas facility shall be fully restored to a safe and clean condition. Compliance with the reclamation plan submitted by the Applicant shall be required.

ARTICLE XIII. BENEFICIAL USE AND VALUE DETERMINATION: The purpose of this Section is to ensure that denial, or conditional approval of an application does not result in an unconstitutional deprivation of private property. The intent of the Board is to provide through this Section a quasi-judicial variance or mitigation process to provide relief from any finding that the application of this Ordinance has had a facial or as applied unconstitutional effect on property. This Section is not intended to provide relief related to regulations or actions promulgated or undertaken by agencies other than the County. The provisions of this Section are not intended to create an independent judicial cause of action.

13.1. Application: An application for a beneficial use and or value determination shall be made to the County by filing an application with the Administrator accompanied by an application fee as established by the Board, which fees are non-refundable. The application shall be filed no later than one year subsequent to the Board's final development order with respect to denying or conditionally approving an application for development approval or not later than one year from the denial or conditional approval of an application. The application shall designate whether the public hearing upon the application shall be conducted by the Board of by the Hearing Officer.

13.1.1. The application shall be submitted in a form established by the Administrator and shall include the name, address and telephone number of the Applicant, any agent, and the name, address and telephone number of the owner or lessee of the subsurface mineral estate or lease. The application shall include a legal description of the subsurface and surface property in the same ownership for the previous 10 years. All annual tax assessments and tax payments, for the past 10 years, together with all tax assessment parcel numbers. If the property has been rendered into split estates, subdivided or has been subject to parcel division or family transfer, all such transactions within the past 10 years shall be fully described. A preliminary title report of the properties in the same ownership issued as of the date of the application shall accompany the application.

13.1.2. If a person, other than the Applicant, is requesting relief pursuant to this Section, a notarized letter of agency from the surface owner, or owner or lessee of the subsurface mineral estate, shall be submitted authorizing the person to represent them with respect to the application. Except as specifically provided by this Section, the owner(s) or lessee shall be bound by the representations, obligations, and agreements made by the owners' or lessee's agent in the course of the beneficial use determination process. The term "Applicant" as used in this division refers to the owners or lessee, or the owners' and lessee's agent, as applicable.

13.1.3. Documentation of the date and description of all land acquired in the same ownership, the **price incurred to acquire the property**, the date and amount of any offers by any person, corporation, governmental entity, or association to acquire the property, and any attempts by the owner or lessee to sell or assign the subsurface mineral estate or oil and gas lease, or to purchase or sell transferable development rights.

13.1.4. A statement identifying and describing the land development code section or sections, regulation, comprehensive, regional or area plan, utility or public improvement district facility plan, or other final developmental order or action of the County, which the Applicant asserts has resulted in a **facial or as applied uncompensated taking** or other constitutional violation under this section, including the effective date thereof, including the date of the final action by the County related to the property.

13.1.5. A description of the property's physical and environmental features, total acreage, and use at the time of acquisition, and upon the effective date of the County action or development order for as applied claims.

13.1.6. A statement of all investments made to improve the property, the dates of such investments, and a description of the nature and costs of the improvements made.

13.1.7. A description of the type and extent of land uses presently allowed or permitted under the zoning ordinance, on the surface and subsurface of the property, from the time the Applicant acquired the property until the date of application under this section, including allowable density, permitted and conditional uses, number and location of proposed oil and gas wells, clustering and transfer of development rights permitted, open space ratios, and other factors affecting the property's development potential.

13.1.8. A statement regarding the form of relief requested by the owner or lessee.

13.1.9. Maps which show the property presently, at the time of acquisition, and upon the effective date of the development order or action of the County that the Applicant asserts triggers relief under this section. The maps shall indicate the land use designation, future land use designation, aerial photography, and environmentally sensitive, cultural, historical or archaeological lands or sites on the property.

13.1.10. A description of all efforts to seek approval to develop the property for oil and gas exploration or other mineral excavation, including date of application; name of this County or any state or federal agency to which application has been made; the nature of approval, conditional approval or denial; dates of disposition, together with copies of the applications, documentary evidence submitted, public and private reports and studies prepared and the development orders issued.

13.1.11. The signature upon the application by the owner or lessee and the owner's or lessee's representative shall constitute a certification that the owner's or lessee's representative have undertaken due diligence in the filing of the application, that to the best of their joint and individual knowledge the application is supported by good grounds under applicable laws, and that the application has been filed in good faith, consistent with the purpose and intent of this section. The signature of the landowner(s), lessee(s) and agent(s), as applicable, attesting to the accuracy of the statements and representations made in the application under penalty of perjury or false statement to a public agency.

13.1.12. Appraisals, studies or evidence supporting the Applicant's contention that relief under this section is appropriate, including appraisals related to alleged diminution of all or substantially all use and value of the property.

13.2. Review of Application: In consultation with County staff as needed, the Administrator shall review the application for beneficial use determination to ensure that all application requirements are met.

13.2.1. Within thirty (30) business days of receipt of the application, the Administrator shall determine if the application is complete. If the Administrator determines the application is not complete, a written notice shall be mailed to the Applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the Applicant fails to correct the deficiencies within thirty (30) calendar days of a notice of deficiencies, the application shall be deemed withdrawn.

13.2.2. When the Administrator determines the application to be complete, a quasi-judicial public hearing upon the application shall be held and conducted before the Board within forty-five (45) days before the Board or at the Applicant's option, before a County appointed Hearing Officer. The Applicant shall pay for the estimated costs of the Hearing Officer's fees and expenses as determined by the Administrator, as well as all notification and notice of hearing publication fees. Applicant shall be required to deposit an estimated cost for such Hearing

Officer fees and expenses and for notification and notice of hearing publication fees. If such fees and expenses are greater than the estimated deposited sum, the Applicant shall deposit the additional amount prior to release of the Hearing Officer's final recommendation. If the fees and expenses are less than the original sum deposited, the Administrator shall return the excess funds to the Applicant.

13.2.3. Notice of the time, place and purpose shall be given pursuant to and in accordance with the notice and hearing requirements set forth in Article VII hereinabove.

13.2.4. At the public hearing the Board or Hearing Officer may accept lay or expert testimony, briefs, evidence, reports, or proposed recommendations from the parties. A complete quasi-judicial hearing shall be held with the right of cross examination, a site visit if required and no restrictions on the presentation of relevant testimony, the submission of evidence and expert reports, pursuant to New Mexico statutory evidentiary and procedural requirements. Interested parties with standing shall be permitted to intervene in the proceedings.

13.2.5. If the public hearing is held before a Hearing Officer, the following shall apply: Within thirty (30) calendar days of the close of a public hearing held by the Hearing Officer, the Hearing Officer shall prepare a written summary of all the submitted evidence, testimonial or documentary, rulings on objections, and a recommendation regarding the relief to be granted, conditionally granted or denied, based on the evidence submitted. A copy of the recommendation shall be submitted to the Administrator, County Attorney, owner, lessee, and owner's and lessee's representatives, and all other intervening parties. Upon the Board receiving the recommendation of the Hearing Officer, the Board shall then hold a quasi-judicial public hearing within thirty (30) calendar days from receipt of the Hearing Officer's recommendations, with notice of the time, place and purpose of such public hearing given pursuant to and in accordance with the notice and hearing requirements set forth in Article VII hereinabove. The Board shall limit testimonial or documentary evidence, to matters not duplicative of the evidence submitted to the Hearing Officer, and shall prepare a written summary of all the submitted evidence, testimonial or documentary, rulings on objections, the factual and legal basis for the recommendation, and a proposed development order regarding the relief to be granted, conditionally granted or denied. A copy of the order shall be submitted to the Administrator, County Attorney, owner, lessee, and owner's and lessee's representatives, and all other intervening parties.

13.2.6. If the public hearing is held before the Board, in the first instance, the Board shall prepare a written summary of all the submitted evidence, testimonial or documentary, rulings on objections, the factual and legal basis for the recommendation, and a development order regarding the relief to be granted, conditionally granted or denied, based on the evidence submitted. A copy of the order shall be submitted to the Administrator, County Attorney, owner, lessee, and owner's and lessee's representatives, and all other intervening parties.

13.2.7. If a claim for relief pursuant to this section is based upon facts the owner or lessee or the owner's or lessee's agent knew or should have known were not correct or upon assertions of law that were frivolous, the application shall be dismissed.

13.2.8. Appeal of such decision by the Board is provided in accordance with the provisions of Article X hereinabove.

13.3. Transfer of Development Rights: Owner(s) of oil and gas mineral estates or oil and gas leasehold estates that require relief pursuant to a beneficial use and value determination development order, shall have authority to transfer one or more **Transfer of Development Rights** to develop oil or gas drill sites from a sending parcel to a receiving parcel for the following purposes to:

13.3.1. Ensure that the owners of land seeking a CUP for oil and gas development, shall have the opportunity to realize reasonable use or value of their property, through the transfer of development rights to other mineral estate owners, or oil and gas lessees who can utilize the TDRs to increase the density or number of oil and gas wells on the receiving parcel(s);

13.3.2. Require that development rights are transferred only to the owner(s) of mineral estates or oil and gas leases that have received development approvals for a conditional use permit;

13.3.3. Authorize donations of development rights to the County;

13.3.4. Describe in detail both the sending and receiving properties;

13.3.5. Describe the development rights to be transferred in specific detail, quantifying the number of oil and gas well sites permitted to be transferred by the sending party, and the number of oil and gas well sites permitted to be received by the receiving party, with the location of such oil and gas well sites on the receiving property described in detail;

13.3.6. Require that the mineral owner and/or the lessee of a sending parcel execute, and record with the County Clerk, a deed or instrument relinquishing the released development rights; and

13.3.7. Require that, once a transfer of development rights is approved, the County shall issue to the owner and/or lessee of the receiving parcel, and record with the County Clerk, a certificate assigning to the receiving parcel, and all present and future heirs, successors and assigns, the development rights that the receiving parcel is entitled to through the transfer of development rights. Such certificate shall describe the development rights, refer to the deed transferring the development rights, and the certificate shall have a copy of the deed attached.

13.3.8. The County shall notify the County Assessor of the transfer of development rights within thirty (30) days of: adoption of an ordinance in such manner as provided by law approving such transfer of development rights; issuance of a certificate for the TDRs; receipt by the County of a donation of development rights; the sale or conveyance of development rights donated or otherwise acquired by the County; and the Assessor shall adjust the valuations for purposes of the real property tax of the sending parcel and of the

receiving parcel or parcels, if any, appropriately for the development rights extinguished or received.

13.4. Granting Relief: If the Board determines that relief is appropriate, such relief shall be granted consistent with the Comprehensive Plan, any applicable Area, County or Regional Plan, Utility and Public Improvement District facility plans, and all applicable state and federal statutes, regulations, permits and licenses. **In order to avoid a taking or other unconstitutional violation and to provide an owner with economically viable use and value of property pursuant to this Section, the Board shall allow for the minimum additional use(s), density, or relief necessary to alleviate any unconstitutional taking or deprivation,** as follows:

13.4.1. Eligibility for real property tax relief, reduction of property assessment or relief from adequate public facility requirements;

13.4.2. Authorization of additional oil or gas well sites or pads, or further collocation of oil and gas drill sites on a pad;

13.4.3. Granting of a conditional use permit for a future time or phase, where adequacy of public facilities and services require are not fully available for the entire project at the time of approval;

13.4.4. Variance, transfers of development rights or clustering of the oil and gas wells and pads, and granting vested rights or estoppel;

13.4.5. Granting use of the property for other uses of the subsurface estate or lease for mining, excavation and extraction of rock, minerals, soil, or any other economically beneficial use or value of the property, or relief the Board deems appropriate;

13.4.6. Donation of the property to an authorized IRS 501(c) organization;

13.4.7. Waiver or amendment of specific land development code regulations or Comprehensive Plan, any applicable Area, County or Regional Plan, Utility and Public Improvement District facility plans, as applied to the subject property; or

13.4.8. Any combination of the above.

ARTICLE XIV. ADMINISTRATIVE ITEMS: In order to address oil and gas facilities and approval and such items as completeness of oil and gas facility, development compliance and construction of infrastructure needs, the County may develop such administrative items, functions and positions as may be needed from time to time. The County may:

14.1. Appoint a hearing officer.

14.2. Appoint an oil and gas inspector and assistant(s).

14.3. Contract with technical experts, engineers or consultants to provide professional services to the County.

14.4. Amend relevant budgets, relevant plans, ordinances, maps and administrative regulations as it deems necessary.

14.5. Formulate and prepare development agreements and orders, grading and building permits, and certificate of completion.

14.6. Enact water policies to encourage County-wide conservation; promote rainwater capture including the establishment of a County rainwater public improvement district; encourage agricultural conservation, including drip irrigation and ditch lining; watershed management to reduce evapotranspiration and increase water yields; water banking and short term leasing of water rights; requiring proof of water availability to ensure that oil and gas drilling occurs only when reliable supplies have been secured prior to development; continue to seek funding for a water availability assessment to conduct and include an evaluation of a sufficient water supply for the permanent duration of oil and gas exploration, drilling, hydrologic fracturing, production and remediation; compliance with the Daniel B. Stephens and Associates regional water plan report, and any such regional water plan report suggesting appropriate additional regulation for protecting the County's water resources to ensure the County's ability to meet future water demand; and insert into all development agreements and into development approvals, a condition that should severe drought and water unavailability continue, and during any future periods when drought and water unavailability may persist or worsen, the County reserves the right to suspend existing/permitted oil and gas development until adequate water resources become available.

14.7. Develop a special fund for revenue from fees collected pursuant to this Ordinance, which revenue shall be used to retain and pay the Oil and Gas Inspector, other County staff, or professional consultants and to administer and enforce this Ordinance; to inspect oil and gas facilities; to provide for County capital improvements and services necessary to offset the impact of oil and gas projects. Where there are remaining excess funds in the special fund that are not needed to meet such services that excess shall be transferred to the general fund to provide funding for public and private renewable energy incentives designed to offset the need for non-renewable oil and gas.

14.7. Authority of the Administrator:

14.7.1. The Administrator shall have authority to issue any orders or directives required to carry out the intent and purpose of this Ordinance. Any person's failure to comply with such an order or directive shall constitute a violation of this Ordinance.

14.7.2. The Administrator or his/her designee shall have the authority to enter and inspect any oil or gas facility or facilities to determine its compliance with the provisions of this Ordinance. If an Operator denies entry, the County shall have the right to obtain an order or a judicial warrant from a court of competent jurisdiction to obtain entry, or may institute proceedings to revoke the conditional use permit pursuant to a duly noticed public hearing before the Board or Planning and Zoning Commission respectively.

14.7.3. The Administrator shall have the authority to request and receive any records, logs, reports, studies or other documents relating to the status or condition of an oil or gas facility. Items that are marked "confidential" or "proprietary" shall be kept confidential to the extent permissible as provided in the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1 *et seq.* Any person's failure to timely provide any such requested materials shall constitute a violation of this Ordinance.

14.7.4. The Administrator shall have the authority to order immediate remedial action if he or she finds that the Operator or any person for whom the Operator is legally responsible has not complied with the requirements of this Section, if the Administrator also finds that such noncompliance constitutes a hazard to the public health, safety or general welfare. If the persons responsible for noncompliance fail to take immediate steps to eliminate the hazard, or if the situation is so perilous as to constitute an imminent threat to the public health, safety or general welfare, the Administrator may order the prompt cessation of all activity at the well site or pad within the oil or gas facility, including evacuation of the premises and/or the temporary suspension of the conditional use permit, building permit, grading permit or certificate of completion, subject to a public hearing to be held by the Board or the Planning Commission, respectively, within thirty (30) days after the Administrator's Order.

14.7.5. Any person or organization, affected by any violation of this Ordinance, may sue to enjoin violations of, or compel compliance with, any provision of this Ordinance.

14.7.6. The Administrator is hereby authorized to prepare and promulgate staff instructions for the implementation of this Ordinance and administrative rules and regulations which shall be approved by the Planning and Zoning Commission and the Board respectively. The Administrator, or his lawfully constituted deputy, shall supervise and manage each application for a conditional use permit, building permit, grading permit or certificate of completion. The Administrator, or his lawfully constituted deputy, shall be the contact point for all relevant owners, lessees and interested persons regarding the status of the application throughout the administrative process.

ARTICLE XV. ANNUAL REQUIREMENTS:

Each Oil and Gas Facility shall provide on an annual basis the following information and fees to the County:

15.1. A current list of personnel who may be contacted in case of an emergency at the Oil and Gas Facility. This list shall contain all information required to be set forth in this Ordinance, information requested by the Administrator, and information including, but not limited, to the following: the name(s) of such person or persons; the job description(s) of such person or persons; and the residence, office and mobile telephone numbers of such person or persons.

15.2. A list of all Oil and Gas Facilities owned or operated within the County by that Operator in the same ownership. This list shall include all wells except those that have been plugged and abandoned in compliance with law. The list shall contain all information requested by the Administrator, including but not limited to the following: the lease name and well number of

each well; the legal description of each well; the current status and use of each well; and the current status and use of each Oil and Gas Facility.

15.3. A non-refundable annual fee is hereby levied upon each Oil and Gas Facility operated or maintained within the County. The amount of such fee is set forth in Appendix A. The fee shall be paid by cashier's check, wire transfer or certified funds. The fee shall be payable to the County thirty (30) days before the anniversary date of the issuance of the conditional use permit. Failure to pay the fee within thirty (30) days after it is due shall lead to a public hearing with due notice to revoke the conditional use permit. A late fee of an additional five hundred (\$500.00) dollars per facility per month shall be imposed.

ARTICLE XVI. AMENDMENTS, SUPPLEMENTAL PERMITS, CHANGE OF OPERATOR.

16.1. Amendments and Supplemental Permits: Shall be approved by the Planning and Zoning Commission or the Board of County Commissioners as provided herein at a public hearing subject to the notice and hearing requirements set forth in Article VII hereinabove.

16.1.1. An amendment to a conditional use permit shall be required prior to undertaking any substantial modification to the Oil and Gas Facility development orders: (1) the preparation of an amended geohydrological report for each well drilled after the issuance of the CUP; (2) recompletion of a well or substantially altering equipment at the facility; (3) a change in well configuration or type of product being produced (e.g. oil or gas); (4) substantially altering the site layout; (5) any material change from conditions attached to the development orders; (5) an increase in traffic greater than that authorized or predicted in the development order for the CUP; (6) water use or consumption greater than that authorized or predicted in the development order for the conditional use permit; (7) use of materials or processes other than those disclosed during permitting; (8) substantial change in the nature or type of operations; (9) any change in the location of wells shall require a reapplication for amendments to the conditional use permit development orders; or (10) any other substantial or material change deviating from the terms of the conditional use permit.

16.1.2. Any operation that deviates from the conditional use permit development order or conditions attached to the conditional use permit or included within the application that the Operator determines in good faith is necessary to preserve the public health, safety or welfare or to prevent property damage or pollution may be done on an immediate basis upon written notice to the County. The Operator shall provide the Administrator with notification of such emergency modifications within two (2) hours, and thereafter by filing a request for a written amendment to the conditional use permit development order, specifying the modifications made, within two (2) working days of completion of the emergency modifications. Once a well has either been completed as a producer or abandoned as a dry hole, an amendment to the CUP is required to recomplete the well. The application for the conditional use permit amendment shall specify: the condition of the well and the casing therein; the depth to which it is proposed such well be deepened or the new intervals to be perforated; the proposed casing program to be used in connection with proposed deepening operations; and evidence of adequate current tests showing that the casing strings in the well passed such tests.

16.1.3. In the event the Planning and Zoning Commission is satisfied that the well may be reworked with the same degree of safety as existed in the original well, an amendment to the CUP may be issued authorizing the operation. In any reworking operation, the Operator shall comply with all other provisions contained in this Ordinance.

16.1.4..An amendment to the conditional use permit shall be required to **update the geo-hydrological report for each pad site once wells have been drilled.** The following information shall be required:

16.1.4.1. A Borehole Geophysics segment shall be included in the Report and shall incorporate the following data: electric logs; long and short resistivity; and spontaneous potential involving neutron porosity, gamma-gamma, caliper, temperature and fluid movement (spinner).

16.1.4.2. Pump tests recording drawdown at the well for a sufficient time to determine transmissivity of the aquifer for each well site. The duration of each test shall be a minimum of 24 hours. All tests shall monitor the recovery of the water levels in all wells for the amount of time necessary for the water levels to return to the original level. Standard values for storage or specific yield shall be utilized unless sufficient data is presented to justify an alternate storage or specific yield.

16.1.4.3. **All wells shall be constructed according to technical specifications provided by the Office of the State Engineer.** A 20 foot water table or potentiometric surface contour map shall be prepared covering a 2 mile radius from the project site showing depth to water and direction of groundwater flow, and geologic maps shall be prepared detailing cross-sections and descriptions of the aquifer and surface water systems including information of recharge areas, springs, boundaries and estimated thickness of saturated units.

16.1.4.4. The amended geo-hydrologic report shall provide: an analysis of all single or multiple units or aquifers within a 1.5 mile radius of the project site; an analysis of all contaminant pathways leading from the project site to the aquifers, including saturated sandy units within aquifers and unsaturated or vadose zone map; an unsaturated or vadose zone map; and an analysis of baseline water quality relating to: up gradient monitoring wells; down gradient monitoring wells; and existing wells, together with recommendations for the location and type of groundwater monitoring stations.

16.1.4.5. Upon completion of the amended geohydrologic report, the Administrator shall forward the report to the Planning and Zoning Commission for the public hearing on the amendment of the conditional use permit.

16.1.4.6. The Planning and Zoning Commission shall take into account the amended geo-hydrologic report in determining whether additional environmental impacts or effects require further mitigation steps prior to the approval of the application for the amended conditional use permit.

16.2. Change of Operator: If a new Operator is proposed to be designated for an Oil and Gas Facility an amendment to the Operator designated in the application for conditional use permit shall require Board approval, such amendment to include:

16.2.1. Copies of the approved Change of Operator, Form C-145, from the OCD in addition to all submittals required for an application for a conditional use permit specified herein;

16.2.2. Description of the new Operator's organizational structure, including a description of any wholly owned subsidiaries or parent companies and the relationship of the Operator to those subsidiary or parent companies in the same ownership;

16.2.3. A complete list of Oil and Gas Facilities owned or operated in the State of New Mexico, including facilities owned or operated by a parent or subsidiary identified in the previous paragraph; and a list of all oil and gas facilities in which the Applicant has had a permit suspended or revoked or paid an administrative fine for violations of law;

16.2.4. Letter of indemnity from a parent or subsidiary corporation with the County identified as a third-party beneficiary shall be provided;

16.2.5. A list of Oil and Gas Facilities owned or operated by the Applicant that are not in compliance with regulatory approvals in the relevant jurisdiction. For each such facility listed, provide details concerning the compliance issues experienced; and

16.2.6. All obligations of the previous Operator, required by this Ordinance or by the existing approved conditional use permit, shall not be released (including required financial security and insurance) prior to Board approval of the new Operator.

ARTICLE XVII. VIOLATIONS, ENFORCEMENT AND PENALTIES. Any person, firm or corporation, whether as principal, agent or employee, who violates or causes a violation of this Ordinance, or any part hereof, shall upon conviction, be punished for each violation, by a fine not exceeding three hundred dollars (\$300.00) or by imprisonment not exceeding ninety (90) days in the county jail, or by both such fine and imprisonment, which penalty is the maximum allowed by Section 3-21-13, NMSA 1978. Each day the violation occurs shall constitute a separate offense and shall be punishable as provided herein.

17.1. It shall be unlawful to construct, install, or cause to be constructed or installed, any oil or gas facility without conditional use permit approval.

17.2. Any Operator, person, firm, corporation or legal entity that violates any provision an approved conditional use permit, requisite grading and building permits and a certificate of completion, or a valid directive or order of the Administrator, shall be subject to the penalties set forth under this Section.

17.3. Notwithstanding any other penalty or remedy provided for in this Section, the County may, on finding a violation of provisions of this Section, revoke or suspend any conditional use permit, building permit, grading permit or certificate of completion. The County shall also revoke any development order if it is determined that the Operator provided false, misleading; deceptive or inaccurate information and/or documentation to secure approval of a conditional use

permit, building permit, grading permit or certificate of completion and in addition to the other remedies provided by law, ordinance or resolution, may seek an injunction, mandamus, or abatement of activity or pursue other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

17.4. An Applicant’s default also constitutes a default on any existing development agreement held by the Applicant for that oil or gas facility and shall be subject to all legal and equitable remedies available by law.

ARTICLE XVIII. REPEAL. This ordinance expressly repeals San Miguel County Ordinance No. 86-2, Section 3620 as related to oil and gas and Section 5190 as related to oil and gas.

ARTICLE XIX. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after it is filed in the office of the San Miguel County Clerk, as by law provided.

MOVED, SECONDED AND ADOPTED this _____ day of 20____, by the BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO.

Nicolas T. Leger, Chairman

Ron R. Ortega, Vice-Chair

Marcellino A. Ortiz, Member

Arthur J. Padilla, Member

Gilbert J. B. Sena, Member

Les W. J. Montoya, County Manager

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Melanie Y. Rivera
San Miguel County Clerk

Jesus L. Lopez
San Miguel County Attorney

**APPENDIX “A”
FEES**

1. Application for an Oil and Gas Overlay Zoning District Classification: \$15,000 per Well.
2. Application for a Conditional Use Permit: \$10,000 per Well.
3. Subsequent to the approval of the applications in Items 1 and 2, above, a further Grading and Building Permit Fee shall be paid per well or per Acre (for Grading), as follows:
 - (a) Initial Inspection: \$1,500.
 - (b) Pre-final Inspection: \$1,250.
 - (c) Final Inspection: \$1,500.
4. Subsequent to the approval of the applications in Items 1, 2 and 3, above, a further Certificate of Completion Fee shall be paid per well, as follows:
 - (a) Initial Inspection: \$1,000.
 - (b) Pre-final Inspection: \$1,250.
 - (c) Final Inspection: \$1,500.
5. Annual Fees: \$15,000 per Well.
6. Application for a Beneficial Use Determination: \$15,000.