

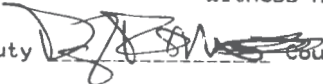
**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SAN MIGUEL COUNTY, NEW MEXICO**

IN THE MATTER OF ADOPTING AND  
ENACTING AN ORDINANCE REGULATING  
OIL AND GAS EXPLORATION AND  
DRILLING IN SAN MIGUEL COUNTY,  
NEW MEXICO

COUNTY OF SAN MIGUEL       )  
STATE OF NEW MEXICO       ) ss

SAN MIGUEL COUNTY  
PAGES: 182

I Hereby Certify That This Instrument Was Filed for  
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Of The Records Of San Miguel

Witness My Hand And Seal Of Office  
Melanie Y. Rivera  
Deputy  County Clerk, San Miguel, NM

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**RESOLUTION NO. 11-12-14-O&G,  
ENACTING, ADOPTING AND ORDAINING  
SAN MIGUEL COUNTY ORDINANCE NO. 11-12-14-O&G**

**IT APPEARING** to the Board of County Commissioners of San Miguel County, New Mexico, that by Resolution No.10-14-14-OG&CP, adopted by the Board of Commissioners on October 14, 2014, and filed for record in the office of the San Miguel County Clerk on October 15, 2014, as Instrument No. 201403180, the Board of Commissioners proposed enactment of a county ordinance regulating oil and gas exploration and drilling in San Miguel County, said proposed ordinance being Exhibit "A" to said Resolution No. 10-14-14-OG&CP; and

**IT APPEARING** further to the Board of Commissioners, that the title and a general summary of the subject matter of said proposed oil and gas ordinance was published in the Las Vegas Optic on October 15 2014, together with Notice of a public hearing on said proposed ordinance to be held November 03, 2014, and Notice that said proposed ordinance would be considered for final passage at today's regular

monthly meeting, all pursuant to Resolution No. 10-14-14-OG&CP, which Resolution is adopted by reference and incorporated herein as if set forth in full; and


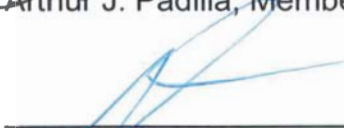
**IT APPEARING** further to the Board of Commissioners, that on Monday, November 03, 2014, a public hearing was held and conducted by the Board on said proposed oil and gas ordinance, in addition to many meetings and public hearings held previously in relation thereto, as set forth in Resolution No. 10-14-14-OG&CP, and in Resolution No. 05-13-14-P&Z, adopted by the Board of Commissioners on May 13, 2014, and filed for record in the office of the San Miguel County Clerk on May 14, 2014, as Instrument No. 201401510, which Resolution is adopted by reference and incorporated herein as if set forth in full; and

**IT APPEARING** further to the Board of Commissioners that in public session at today's regular monthly meeting, the Board considered and deliberated upon the public comments and data presented at its public hearing held November 03, 2014, and took formal action thereon prior to adoption of this Resolution, as shall appear in the record and minutes of this meeting, which formal action, if any, shall be incorporated into and made a part of the Oil and Gas Ordinance attached hereto and made a part hereof as San Miguel County Ordinance No. 11-12-14-O&G; it is now, therefore,


**RESOLVED, DETERMINED, ADOPTED, ENACTED AND ORDAINED** by the Board of County Commissioners of San Miguel County, New Mexico, pursuant to and in accordance with a roll call vote of each Commissioner, that San Miguel County Ordinance No. 11-12-14-O&G, which follows and is attached to this adopting Resolution, is hereby enacted, ordained and adopted by said Board of County Commissioners, who concurrently herewith have affixed their signatures to said

Ordinance, thereby executing, enacting and ordaining San Miguel County Ordinance No. 11-12-14-O&G.

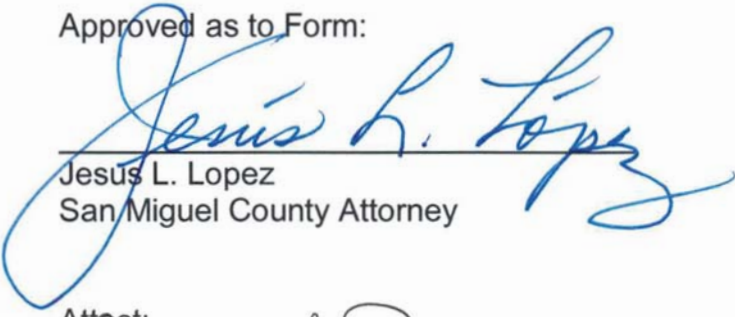
**MOVED, SECONDED, ADOPTED, ENACTED AND ORDAINED** in public session by the Board of County Commissioners of San Miguel County, New Mexico, at its regular monthly meeting held this 12<sup>th</sup> day of November, 2014, at Las Vegas, New Mexico.

  
\_\_\_\_\_  
Nicolas T. Leger, Chairman  
\_\_\_\_\_  
Ron R. Ortega, Vice Chairman  
\_\_\_\_\_  
Marcellino A. Ortiz, Member  
\_\_\_\_\_  
Arthur J. Padilla, Member  
\_\_\_\_\_  
Gilbert J. B. Sena, Member

Submitted:

  
\_\_\_\_\_  
Les Montoya  
San Miguel County Manager

Approved as to Form:

  
\_\_\_\_\_  
Jesus L. Lopez  
San Miguel County Attorney

Attest:

  
\_\_\_\_\_  
Melanie Y. Rivera  
San Miguel County Clerk

(SEAL)



**The Board of County Commissioners of San Miguel County**

**San Miguel County Ordinance No. 11-12-14-O&G**

**WHEREAS**, The Board of County Commissioners of San Miguel County, (hereinafter "Board") hereby ordains and adopts this Ordinance No. 11-12-14-O&G ("this Ordinance") amending Ordinance 86-2.

**WHEREAS**, these Ordinance amendments to Ordinance 86-2 included herein are in conformance and consistent with the Comprehensive Plan of 2004, and the 2014 amendment to the Comprehensive Plan establishing a new Comprehensive Plan Oil and Gas element, adopted by resolution concurrently with the adoption of this Ordinance,

**WHEREAS**, this Ordinance:

Amends Ordinance 86-2 by repealing Article II, relating to Definitions and Rules of Interpretation, and adopts new Rules of Interpretation and Definitions which are now included in Appendices "A" and "B."

Amends Article VIII of Ordinance 86-2 by adopting a new Section 8050, contained in this Ordinance.

Establishes a new Article II, sections 2000 et seq. of Ordinance 86-2, regulating oil and gas projects within specific R-H Rural-Holding and A-2 Agricultural zoning districts located in the eastern portion of the County. The Map included in Appendix C, attached hereto, is hereby adopted as the official zoning map of the County for oil and gas project development approvals.

To the extent that San Miguel County Ordinance SMC-07-13-99-ORD-3, entitled "Sand and Gravel Mining Ordinance," which, effective September 12, 1999, replaced and superseded section 5190 of Article V of Ordinance 86-2, relating to mining, gas, oil and soils extraction, may conflict with the new Article II, sections 2000, et seq. of Ordinance 86-2, regulating oil and gas projects within specific R-H Rural-Holding and A-2 Agricultural zoning districts located in the eastern portion of the County, the new Article II shall control.

**WHEREAS**, new Article II, sections 2000, et seq., of Ordinance 86-2, regulating oil and gas projects is adopted pursuant to the County's statutorily authorized zoning power, and supplemental police, environmental and public nuisance powers for the health, safety, and general welfare of the County and its citizens.

SAN MIGUEL COUNTY  
PAGES: 182

COUNTY OF SAN MIGUEL )  
STATE OF NEW MEXICO ) ss

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## Article II. Regulating Oil and Gas projects Located within Designated R-H Rural Holding and A-2 Agricultural Zoning Districts

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### **Section 2000. Article II Title**

This Article II of Ordinance 86-2 shall be officially cited as “The San Miguel County Oil and Gas Regulations.”

### **Section 2101. Authority**

Article II 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. Article II constitutes an exercise of the County’s zoning power establishing certain designated natural resource zoning districts, R-H Rural Holding and A-2 Agricultural zoning districts for the regulation of on and off-site impacts of oil and gas exploration, drilling, fracking, production, and transportation, and further incorporates into such zoning powers the police power, planning, zoning, environmental, health, safety, general welfare, and public nuisance powers. No oil and gas exploration, drilling, fracking, production shall be permitted within the Residential (R-1) and Traditional Community (TC) zoned areas. Article II applies to all areas within the exterior boundaries of the County that lie outside of the incorporated boundaries of a municipality without exception, and shall apply to: all surface and sub-surface ownership interests; all leases of surface and subsurface interests from private property owners; and all oil or gas leases on federal and state lands within the unincorporated area of the County.

### **Section 2102. Scope**

Article II is intended to regulate all aspects of oil and gas projects involving any of the following: exploration, drilling, fracking, production, transportation, abandonment and remediation.

### **Section 2103. State and Federal Statutes**

Article II, supplements the lack of comprehensive state and federal inspection requirements for oil and gas projects. Article II does not replace, but is complementary, supplementary and consistent with the following federal and state statutes, executive orders and regulations:

- 2103.1. 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.;
- 2103.2. Water Quality Act, NMSA 1978, §§ 74-6-1 et seq.;
- 2103.3. Rangeland Protection Act, NMSA 1978, §§ 76-7B-1 et seq.;

- 2103.4. Governor's Executive Order 2008-004;
- 2103.5. Governor's Executive Order 2008-038;
- 2103.6. Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§ 11001 et seq.;
- 2103.7. New Mexico Public Health Act, NMSA 1978 §§ 24-1-1 et seq.;
- 2103.8. New Mexico Senate Joint Memorial 71;
- 2103.9. Wildlife Conservation Act, NMSA 1978, §§ 17-2-37 et seq.;
- 2103.10. Cultural Properties Act, NMSA 1978, §§ 18-6-1 et. Seq.;
- 2103.11. Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq.;
- 2103.12. National Historic Preservation Act, 16 U.S.C.A §§ 470 et seq.;
- 2103.13. Uniform Trade Secret Act NMSA 1978, §§ 57-3A-1 et seq.;
- 2103.14. Prehistoric and Historic Sites Act, NMSA 1978, §§18-8-1 et seq.;
- 2103.15. Cultural Properties Protection Act, NMSA 1978, §§ 18-6A-1 et seq.;
- 2103.16. Archaeological Resources Protection Act, 16 U.S.C. § 470 aa et seq.;
- 2103.17. Surface Owners Protection Act, 70-2-1 et seq., NMSA 1978;
- 2103.18. Solid Waste Act, 74-9-1 et seq., NMSA 1978;
- 2103.19. Rangeland Protection Act, 76-7B-1 et seq., NMSA 1978;
- 2103.20. National Environmental Policy Act, 42 U.S.C. 4321 et seq.;
- 2103.21. Energy Policy Act, 42 U.S.C. 6301, et seq.;
- 2103.22. Oil Pollution Act, 33 U.S.C. §§ 2701 et seq.;
- 2103.23. Safe Drinking Water Act, 42 U.S.C. §§ 300F et seq.;
- 2103.24. Clean Air Act, 42 U.S.C. §§ 7401 to 7671q. and Regulations, 40 C.F.R. § 52.21(b);
- 2103.25. Clean Water Act, 33 U.S.C. §§ 1251 to 1387 and Regulations, 40 C.F.R. Part 130;
- 2103.26. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k and Regulations §§ 261.1 et seq.;

- 2103.27. Endangered Species Act, 16 U.S.C. §§ 1531 to 1544 and Regulations, 50 C.F.R. §§ 17.1 et seq.;
- 2103.28. Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- 2103.29. 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;
- 2103.30. OCD Rule 19.15.4.202 NMAC; and OCD Rule 19.15.17.1 et seq. (June 6, 2013);
- 2103.31. Arts. X and XIII of the New Mexico Constitution (1912);
- 2103.32. 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; and
- 2103.33. Night Sky Protection Act, NMSA 1978, Sections 74-12-1 et seq.

**Section 2104. Purpose**

- 2104.1. The purpose for enactment of Article II is to protect and promote the health, safety, environmental and general welfare of present and future citizens, residents, property owners, lessees, businesses and the general public within unincorporated San Miguel County. This Article implements the San Miguel County Comprehensive Plan Oil and Gas Element, concurrently adopted with this Ordinance. Upon the effective date of adoption of this Ordinance, the Oil and Gas Moratorium enacted on June 13, 2014 is hereby terminated. Article II incorporates all statutory zoning powers and further incorporates into such zoning powers the police power, planning, zoning, environmental, health, safety, general welfare, and public nuisance powers, all of which combined powers are utilized to:
  - 2104.1.1. Establish separate land uses, zoning districts and zoning district regulations for oil and gas facilities, exploration, drilling, fracking, production and transportation;
  - 2104.1.2. Preserve and protect environmentally sensitive lands (habitats, wetlands, hillsides, arroyos, acequias, flood plains, cultural, historical, archeological and natural resources);
  - 2104.1.3. Prevent water and air pollution;
  - 2104.1.4. Assure water availability and quality;

- 2104.1.5. Achieve county fiscal balance;
  - 2104.1.6. Provide for adequate public facilities and services;
  - 2104.1.7. Provide affordable housing for oil and gas employees;
  - 2104.1.8. Reduce traffic congestion and resulting greenhouse gas emissions;
  - 2104.1.9. Eliminate health and safety risks; adopt adequate fire, police, fire and emergency service and preparedness, health and safety, and toxic chemical pollution standards and requirements to protect the County from adverse public nuisance, fiscal, environmental and/or land use effects and impacts resulting from oil and gas exploration, drilling, fracking, extraction, production or transportation within designated zoning districts in the unincorporated County.
  - 2104.1.10. Establish a two-step process for required discretionary (Conditional Use Permit) and ministerial (building and grading permits, and certificates of completion) development approvals prior to commencement of any oil and gas activity or operations including but not limited to exploration, drilling, fracking, production, or transportation.
- 2104.2. Applications for quasi-judicial discretionary development approval of Conditional Use Permits (“CUP”) shall be required to demonstrate mitigation of all adverse public nuisance, transportation, fiscal impact, geological, environmental, adequate public facility and service deficiencies and needs generated by the oil and gas project and/or land use effects and impacts, prior to obtaining a development order granting development approval of the CUP. Applications for a CUP shall be divided into a preliminary and final approval. The first part shall consist of submission of all required studies, reports and assessments except for the geohydrologic report. Upon preliminary approval of the application by the Board, the applicant shall submit a geohydrologic report in order to obtain final approval.
- 2104.3. The County establishes in this Article II, its complementary authority, supplementing the authority of the State and federal governments, to regulate adverse public nuisance, environmental and land use impacts and effects of oil and gas projects, facilities, exploration, drilling, fracking, production and transportation not inconsistent with state and federal legislation and regulation, stemming from oil and gas projects in the County and finds that neither the State or federal government has expressly or impliedly preempted, nor operationally occupied the field of oil and gas regulation.

- 2104.4. The County adopts, in accordance with the 2004 Senate Joint Memorial 71, the precautionary principle in public and environmental health assessment in New Mexico relating to oil and gas facilities and projects. Such principle is essential for all residents and businesses of the County to have an equal right to live and operate in a safe and healthy environment. This principle requires that when oil and gas projects, facilities and operations raise threats of harm to human health or the environment, even if some cause and effect relationships are not fully 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 and other on and off-site environmentally harmful products and processes.
- 2104.5. This section provides additional purposes for the requirement of obtaining a preliminary and final CUP and subsequent ministerial development approvals for building and grading permits and certificates of completion. This section applies to all new oil and gas facilities and projects within the County. The regulations and approval processes established by this section are adopted to ensure that oil and gas activity is compatible with the on- and off-site environment and proximate and adjacent properties and neighborhoods. The specific purpose and intent of these additional provisions are to:
- 2104.5.1. Provide for the timely application for, and consideration of a discretionary quasi-judicial oil and gas CUP for specific oil or gas facilities and projects;
  - 2104.5.2. Provide for required ministerial grading and building permits and a certificate of completion;
  - 2104.5.3. Authorize subsequent adoption of County capital improvement and services budgets, plans and programs (“CIP”) and public improvement or assessment district financing of infrastructure and services, the need for which is generated by oil and gas projects in the County, in order to facilitate the adequate public facilities provisions of Article II;
  - 2104.5.4. Authorize an amendment to the Comprehensive Plan creating an Oil and Gas Element;
  - 2104.5.5. Protect the health, safety, and general welfare of the citizens of San Miguel County;

- 2104.5.6. Preserve the quality of life, economy, infrastructure, environment, historic, cultural, archaeological and eco-tourist resources, scenic vistas, natural resources, and natural landscapes of the County;
- 2104.5.7. Protect the environment of the Canadian and Mora River Basins and eastern San Miguel County and protect its residents and businesses from the harmful or hazardous adverse effects or impacts of specific public nuisances resulting from oil and gas exploration, drilling, extraction, and transportation, including, but not limited to, degradation of air quality, global warming, inadequate storm-water and liquid materials run-off, deterioration of ground and subsurface water quality, erosion of soils, excessive noise and vibration, explosive hazards, detrimental traffic and road conditions, and any adverse effects and impacts of toxic chemical materials, and degradation of wildlife and vegetation habitats and corridors;
- 2104.5.8. Protect the scenic quality of San Miguel County and its historic, cultural and archeological artifacts and sites;
- 2104.5.9. Ensure the compatibility of the proposed oil and gas project or facility with existing and future development pursuant to the County's adopted Comprehensive Plan, including the Oil and Gas Element, any subsequent regional, area, community and neighborhood Plans, including but not limited to Canadian and Mora River Basin Plans;
- 2104.5.10. Assure that the required reclamation of oil and gas drilling areas that have been disturbed by excavation activities is sufficient to provide for subsequent short- and long-term development meeting all environmental, infrastructure, health, safety, and aesthetic needs of the County and of surrounding properties and neighborhoods;
- 2104.5.11. Assure the provision of adequate public facilities and services for roads, storm-water and liquid materials detention, police, fire and emergency response and off-site operation and maintenance for public roads and other facilities, including but not limited to, incarceration, hospital, school and County administrative services, required to mitigate adverse effects and impacts of oil and gas facilities, are fully funded and available at the designated level of service ("LOS") at the time of development approval of a CUP;
- 2104.5.12. Provide for a fair and efficient system for the engineering, planning, environmental regulation, and monitoring of oil and gas activities, both

on and off site, consistent with, and supplemental to, OCD and rules and regulations of the New Mexico Oil Conservation Commission;

- 2104.5.13. Protect the long-term usefulness of adjacent properties for their permitted purposes as identified in the County's adopted Comprehensive and future regional, area, community and neighborhood Plans;
- 2104.5.14. Protect and enhance the tax and fiscal base of the County;
- 2104.5.15. Establish performance standards for the exploration, drilling, fracking, extraction, processing, storage and transport of oil, gas and other earth materials, and unconsolidated sediments in such a manner as to ensure maximum protection to the site and surrounding properties and to the physical environment through proper siting, clustering and co-location of activities, wells and structures, and through the use of time of operation, buffering, lateral and subsurface support, setbacks, visual screening, landscaping, height limitations, proper access routing, and appropriate noise, light, odor, flaring of gas, vibration, air quality, and water quantity and quality controls;
- 2104.5.16. Ensure that all permitted oil and gas projects are compatible with the County, regional, state, and federal water quality plans and storm-water management plans and policies;
- 2104.5.17. Ensure that all permitted exploration, drilling, extraction and transportation activities are compatible with all current and future neighborhood or community plans, area or regional plans, public utility and public improvement and assessment district facility plans, County policies, and any future County capital budget, plan and improvements program;
- 2104.5.18. Subordinate oil and gas development approvals with the underlying base zoning district regulations and standards; and
- 2104.5.19. Comply with the findings and purposes of Article II, including but not limited to, Section 2106.

## **Section 2105. Preliminary and Final CUP Approval**

### **2105.1 Preliminary CUP Approval**

- 2105.1.1. No oil or gas project is permitted as of right in the County. Oil and Gas projects are permitted only in designated R-H and A-2 Agricultural zoning districts in the eastern portion of the County, pursuant to the zoning district map attached to this Ordinance at Appendix C, and incorporated within Article III, section 3100, of Ordinance 86-2, as amended by this Article II. Prior to authorizing any oil or gas project in a designated R-H or A-2 Agricultural zoning district, the County shall require the owner of a fee simple estate, the owners of a fee simple split estate between the surface and mineral estates, or the lessee of an oil and gas lease, to apply for and obtain: a discretionary quasi-judicial preliminary CUP to be issued by the Board; a final CUP to be issued by the Board; and ministerial Grading, Drilling and Building Permits; and a ministerial Certificate of Completion to be issued by the San Miguel Planning and Zoning Supervisor, who shall hereinafter be referred to as the "Zoning Administrator," or a duly appointed designee to act for the Zoning Administrator. In connection with the approval process for obtaining a CUP, the County shall require the following land and suitability environmental analysis, site plan, studies, plans, reports and assessments to be attached to the Application for the CUP:
- 2105.1.2. A Land and Environmental Suitability Analysis ("LESA"): LESA levels of environmental suitability for an oil and gas project and facility shall be applied, together with the site plan, and accompanying studies, reports and assessments, to specifically establish the location and permitted number of oil and gas wells or pads per square mile.
- 2105.1.3. Site Plan: A scaled development plan that illustrates the proposed on-site and off-site development (within one mile of the project) project including, but not limited to: photographs of the site and surrounding properties, on-site property lines and boundaries, buildings and structures, wells, pads, closed loop systems, existing pipelines and electric transmission lines, 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, ground water recharge areas, streams, arroyos, ponds, lakes, parks, trails 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 Article II for oil and gas projects.

- 2105.1.4. A Plan Consistency Report: demonstrating consistency with the Comprehensive Plan and the concurrently adopted Oil and Gas Element of the Comprehensive Plan, any subsequent area or neighborhood plans, and with all applicable state and federal statutes, regulations, development and license determinations.
- 2105.1.5. An Environmental Impact Report analyzing oil and gas on and off site adverse effects and impacts to: wildlife and vegetation natural habitats and corridors; flood plains, floodways, stream corridors and wetlands; steep slopes and hillsides; water availability; air and water pollution; global warming and greenhouse gas emissions; traffic safety and congestion; excessive energy consumption from vehicle miles traveled; excessive noise, vibration, odors, artificial light and aesthetic incompatibility with surrounding land uses; archeological, historical and cultural artifacts, lands and resources reflecting Hispanic, Anglo and Indian community values, past and present; toxic chemical pollution and related diseases and conditions affecting the health and safety of current and future residents; open space and scenic vistas.
- 2105.1.6. A Fiscal Impact Assessment describing any and all effects and impacts upon County revenue and costs necessitated by additional mitigation conditions for the approved CUP development approval for public facility and service costs the need for which is generated by the proposed oil and gas projects and the feasibility for financing such facility and service costs.
- 2105.1.7. An Adequate Public Facilities and Services Assessment indicating whether current and future county public facilities and services related to roads, affordable housing for employees, school facilities, stormwater detention, fire, police, and emergency response services are adequate to service proposed oil and gas project needs;
- 2105.1.8. A Water Availability Assessment to determine the availability of and impacts to fresh water, surface and subsurface water resources for the

oil and gas project or facility, including on and off-site needs for a period of fifty (50) years;

- 2105.1.9. An Emergency Service and Preparedness Report, identifying the name, location and description of all potentially dangerous facilities and products used in drilling, fracking, production and transportation required to be shown on Material Safety Data Sheets, attached to the Report, describing all additives, chemicals and organics, as well as the quantity of such products, used on and off the site, including but not limited to existing and proposed pipelines, wells 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;
- 2105.1.10. A Traffic Impact Assessment, providing information necessary to assess adverse transportation effects and impacts of traffic generated by the proposed oil and gas project, including isolated and cumulative adverse effects and impacts to the traffic shed 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 the project site and the traffic impact assessment shall project the total number of one-way (loaded) trips, by light- and heavy-duty trucks, to the proposed oil and gas well, pad or facility, during construction and development, and during the production phase – including reworking operations.
- 2105.1.11. The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the CUP application, engaging expert consultants to review and make recommendations on all of the LESA, Site Plan and other studies, plans, reports and assessment (Documents), and for the costs of conducting public hearings on the application and on the Documents, including the costs of having the expert consultants attending such public hearings in the discretion of the Zoning Administrator. The Zoning Administrator shall provide an estimate of all of these costs which shall provide the basis for the initial deposit at the time of filing of the application for the CUP. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for these costs, and the County shall refund any unexpended funds on

deposit after the final development order of the Board approving, approving with conditions and mitigation or denying the application.

- 2105.2. To achieve these purposes, Article II establishes two distinct processes for development approval of oil and gas projects, following receipt of the required OCD state permit: (1) an application for discretionary quasi-judicial approval of an Oil and Gas CUP to be issued by the Board; and (2) obtaining ministerial Grading, Drilling and Building Permits and Certificates of Completion from the Zoning Administrator.
- 2105.3. It is recognized that under New Mexico state law, surface and mineral estates are separate and distinct interests in land. Owners or lessees of subsurface mineral estates have certain rights and privileges to use that part of the surface estate reasonably required to extract and develop the subsurface mineral or oil and gas resources. Similarly, owners of the surface estate have protection both under the common law and 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 subsurface estate or leasehold. Article II 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 and common law. If the project is on a split estate, a Surface Use and Compensation Agreement (SUCA) should be required as part of a CUP permit application, and if no Surface Use and Compensation Agreement has been obtained, a statement to that effect in the application, citing the reasons why no agreement has been obtained and documenting in detail the attempts that were made to obtain such agreement.
- 2105.4. Taking into account all property rights, investment backed expectations and privileges and in order to evaluate whether, and if so, the extent to which implementation of Article II creates an as applied regulatory taking, without just compensation, of subsurface fee simple or leasehold interests, each applicant for an oil or gas project, if denied at the CUP stage, shall be required to exhaust all administrative remedies and obtain a final decision from the County as to the use of the Property, prior to litigation, through an application for a quasi-judicial beneficial use and value determination to the Board, which application shall describe:

- 2105.4.1. The extent of diminution of use and value with respect to the entirety of the applicant's, owner's, or lessee's real property interests in the same ownership within the County;
- 2105.4.2. The distinct investment backed expectations of the owner, lessee, or applicant and predecessors in interest, in the same ownership within the County;
- 2105.4.3. All written leases and other documents pertaining to construction and operation of an oil and gas facility pursuant to an oil and gas lease;
- 2105.4.4. The availability of transfers of oil and gas development rights or clustering and co-location of drill sites to the remainder of the owner's, applicant's, or lessee's entirety of property in the same ownership; and
- 2105.4.5. Any requested variance, mitigation or other relief from any unnecessary hardship, that is not self-imposed, that would be created by an as applied regulatory taking for which the Board has authority to grant full or partial relief.

#### **2105.5. Final CUP Approval**

- 2105.5.1. Subsequent to receiving preliminary CUP approval, an applicant shall prepare a Geohydrologic Report, describing the adverse impacts and effects of oil and gas drilling, fracking, production and transportation with respect to groundwater resources located within geological formations in proximity to an oil and gas project; identifying fractured, faulted and any other formations that would permit extraneous oil, gas, dirty or gray water, mud or other chemicals, toxic or radioactive minerals and pollutants to degrade surface or subsurface water resources, or allow surface or subsurface water resources to be reduced, polluted or otherwise unavailable for public or private water supplies; or reasonably likely to produce geological faults and/or earthquakes on and off the site. To monitor earthquake risk, all operating wells shall report to the Zoning Administrator the daily pressure per square inch (PSI) of each well. All PSI reports shall be examined to determine if there may be a link between oil and gas activity at the well and a possible earthquake.
- 2105.5.2. Final approval of an Oil and Gas CUP requires the drilling of exploratory well(s). The geohydrologic report requirement, pursuant to section 2120, authorizes the drilling of exploratory well(s) only for exploration with no production of the well. During the drilling of

exploratory well(s), the applicant shall provide all other facilities and technical services and costs required by this Ordinance, including but not limited to, access services and all other necessary construction, operation and maintenance of infrastructure. Exploratory wells shall adhere to all CUP performance standards. No exploratory well may subsequently produce oil and gas for sale or transfer without the final approval of the CUP application.

- 2105.5.3. Upon determining that drilling for oil and/or gas resources upon the project site has mitigated all of the impacts identified in section 2120, and has met all of the conditions and requirements of preliminary approval, the Board shall issue a development order with such further mitigation as is required, granting final approval of the CUP.

#### **Section 2106. Findings**

- 2106.1. The Board finds that it is absolutely necessary and essential, through the adoption of Article II, to protect, preserve and promote the health, safety, environmental and general welfare of present and future residents, businesses, communities, environmental and natural resources of the unincorporated County. The provisions of Article II are accordingly designed to establish separate land use regulations, standards and requirements for oil and gas projects engaged in exploration, drilling, fracking, production and transportation, for the preservation and protection of environmentally sensitive lands (habitats, wetlands, hillsides, arroyos, acequias, flood plains, cultural, historical, archeological and natural resources), avoidance of water and air pollution; avoidance of the impacts of fracking placing people and property at risk from man-made earthquakes resulting from the expanded use of hydraulic fracturing and horizontal drilling, techniques that generate large quantities of wastewater, which is often disposed of through underground injection, constituting a potential contributing factor to the over-tenfold increase in earthquake frequency in Southwestern states since 2009; assurance of water availability; avoidance of the release of methane into the air during the drilling, fracking and production process; air and water quality; achievement of county fiscal balance; provision of adequate public facilities and services and affordable employee housing; reduction of traffic congestion; elimination of health and safety risks; assurance of adequate fire, police, fire and emergency service and preparedness; health and safety, and adoption of toxic chemical pollution standards to protect health and safety from adverse public nuisance; to mitigate 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 R-H and A-2 Agricultural zoning districts in the eastern portion of the County.

- 2106.2. The County shall take measures to increase supply, reduce demand, and better manage water resources so that the water supply of the County continues to be viable. The following policies shall be implemented: (1) County-wide conservation, including limitations on water use, tiered rate structures to raise rates for high usage and gray water use and reuse; (2) rainwater capture shall be explored since average rainfall is 16"/year, which is sufficient for a major increase in water supply with capture techniques, including the establishment of a County rainwater public improvement district, to significantly lower water rates and diminish the need for external supply; (3) agricultural conservation, including drip irrigation and ditch lining; (4) watershed management to reduce evapotranspiration and increase water yields; (5) development of additional storage where permitted by the Canadian River Compact; (6) acequia water rights protection by requiring transfers of water and water rights only with the approval of the affected acequia; (7) water banking and short term leasing of water rights; (8) requiring proof of water availability to ensure that oil and gas drilling occurs only when reliable supplies have been secured prior to development; (9) a water availability assessment shall be conducted and include an evaluation of a sufficient water supply for the permanent duration of oil and gas exploration, drilling, hydrologic fracturing, production and remediation; (10) complying with the Daniel B. Stephens and Associates 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 (11) 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; and (12) all wells or pads shall have shut-off systems that permit remote shut-off in the event of flood or other emergency.

- 2106.2.1. Surface water supplies more than 95% of the County's water demand and is used 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 is authorized to 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 prior drought years, in 2002 and 2003, only 16% of average demands were filled in 2002, and no diversions occurred at all in 2003. These findings continue to apply to current drought conditions.

- 2106.2.2. 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 necessary for existing and future water users, due to the importance of the hydrology of the Canadian River Basin, not only to the citizens and businesses of San Miguel County but to the interstate stream system through its contributions to the Arkansas River.
- 2106.2.3. The groundwater in the Canadian River 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 CUP shall 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.
- 2106.2.4. The Board finds that a Water Availability Assessment and Geo-hydrologic Report is required to be conducted for all discretionary development approvals for oil and gas projects. Water availability assessments shall include an evaluation of water supply for the estimated life of the oil and gas project or facility, an assessment of available water supplies to determine if they can meet the associated demand, 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 existing or future 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. projected water demand shall include additional withdrawals and consumption from population increases and support services including but not limited to offices, businesses, restaurants, hotels, schools, entertainment, retail purchases, custodial, landscaping, plumbing, electrical, home improvement and leisure activities, without impact on other existing or reasonably anticipated future uses.

- 2106.2.5. In Arkansas, Colorado, New Mexico, Oklahoma, Texas, Utah and Wyoming, the vast majority of the counties where fracking is occurring are also suffering from drought, according to industry-compiled fracking data and the U.S. Department of Agriculture's official drought designations. Water supply availability is a key factor in determining specific environmental impacts from fracking. The amount of water needed to hydraulically fracture a well varies greatly, depending on how hard it is to extract oil and gas from each geological formation. The Environmental Protection Agency (EPA) estimates that to successfully frack a shale formation, 1-8 million gallons of water are needed. According to the U.S. Department of Energy, fracking wells use an average of 2-4 million gallons. A single well can be fracked over a dozen times. In Texas, the average well requires up to 6 million gallons of water, while in California each well requires 80,000 to 300,000 gallons, according to estimates by government and trade associations. Depending on state and local water laws, oil and gas wells using hydrologic fracturing may draw their water for free from underground aquifers or rivers, or may buy and lease supplies belonging to water districts, cities and farmers. A number of major oil and gas firms are also investing in high-tech water recycling systems to frack with gray or brackish water. The County must protect its brackish water sources because ongoing shortage of freshwater across the County (from increased demand, from aquifer drainage, from climate-induced dwindling river flows) along with the cost reducing advances in desalination technology will together soon make brackish water treatment both practical and necessary within the County.

- 2106.3. Setbacks.** The Board finds that much of the most intensive oil and gas development in the nation is occurring in regions where water is already at a premium. A recent study looked at 25,000 shale oil and shale gas wells in operation. The study found that 47 percent of these wells were in areas “with high or extremely high water stress” because of large withdrawals for use by industry, agriculture, and municipalities. The study concluded that: “Given projected sharp increases in production in the coming years and the potentially intense nature of local water demands, competition and conflicts over water should be a growing concern for companies, policymakers and investors.” Prolonged drought conditions in many parts of the southwest including Arizona, California, Colorado, New Mexico and Texas, have created increased competition and conflict between farmers, communities and oil and gas energy providers, 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 0.5 miles for oil and gas facilities. 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 and Mora River Basins and a 2 mile setback from any portion of Conchas Lake.
- 2106.4. Public Nuisances.** The Board further finds that oil and gas projects have, in many instances, created 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 storm water 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 have 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.

## **2106.5. Health, Safety and Environmental and General Welfare**

2106.5.1. The Board further finds that absent the adoption of Article II, the 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 from 2% to 10% of wells are leaking upon completion or will leak over time, potentially releasing injected or naturally occurring pollutants and highly radioactive elements and waste products into water sources and into the air. All oil & gas facilities shall provide for ongoing monitoring for radioactivity at every well or pad and shall report any changes from the baseline radioactivity level to the Zoning Administrator.

2106.5.2. The Board further finds that absent the adoption of Article II, adequate public facilities and services will not be available to address the on and off-site impacts and effects of oil and gas projects, and conditions of mitigation shall be attached to the development order approving a Conditional Use Permit, including but not limited to, provision of affordable employee housing, roads, fire, police, emergency response, storm water drainage, water treatment, reuse and retention necessary for the duration of oil and gas projects without impacting the fiscal 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 with any application for a CUP.

**2106.6. Fiscal Impact.** The Board further finds that absent the adoption of Article II, taking into account on and off-site needs generated by oil and gas projects and facilities, will negatively impact upon County revenue, by reason of (a) the State's limited distribution of oil and gas severance tax revenue to affected oil and gas producing counties; (b) the limited property tax revenue generated by oil and gas facilities; (c) the costs that will be incurred by the County, necessitated by expenditures for additional public facility and services, the need for which is generated by proposed oil and gas projects; and (d) impacts upon a surface owner's livelihood. The Board finds that a Fiscal Impact Assessment shall be prepared and submitted to the County, with the application for a CUP for the mitigation of negative fiscal impacts.

**2106.7. Land and Environmental Suitability.** The Board further finds that given the size, design and operational characteristics of oil and gas facilities and projects, it is necessary that an application for a CUP demonstrate that exploration,

drilling, fracking, extraction, production and transportation of oil and gas for the project or facility is compatible with adjoining land uses and environmentally sensitive lands. Factors that shall be considered include impacts to property values, air and water quality, public safety, public nuisances (noise, vibration, excessive light, flaring of gas, odors, injury to lateral or subsurface support, air and water pollution) obstruction of scenic vistas and destruction of endangered habitats, cultural, historical and archaeological resources.

- 2106.8. Air and Water Quality Protection.** Oil and gas projects will cause irreparable harm to the County's air and water; and air, soil, and water contamination may occur during different stages of oil and gas drilling, fracking, extraction and production operations, and such contamination would affect human health and may cause cancer, lung disease, and respiratory diseases; clean water and clean air are essential to human habitation, industries, offices, commerce, resources and activities in the County which will be degraded by oil and gas activity; the oil and gas industry shall document all community health effects, and these effects shall be scrutinized, and totally mitigated before drilling, hydrological fracturing and extraction occur; the County and the state, pursuant to joint powers under the New Mexico Public Health Act, NMSA 24-1-1 (1978), have the authority to "investigate, control, and abate the causes of disease... sources of mortality and other conditions of public health." surface spills of fluids 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 the air, surface water, ground water and fresh water aquifers; approximately 80% of the chemicals used in oil and gas development may possess inherent adverse health effects.
- 2106.9. Noise.** The Board further finds that all exploration, drilling, fracking, extraction, production, transportation, construction, maintenance and operation of an Oil or Gas Facility and project shall be required to be conducted in a manner to minimize the noise created to the greatest extent possible pursuant to the standards and requirements established in Article II and the Oil and Gas Element of the Comprehensive Plan.
- 2106.10. Lighting, Visual Impacts and Flaring of Gas.** The Board further finds that the lighting and flaring of gas and the visual presence of drilling equipment and towers are likely to have a negative 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 supplemented by the provisions of Article II. 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.

- 2106.11. Fracking and Acidizing.** The Board further finds that fracking and acidizing of wells shall be performed in strict compliance with applicable OCD rules as supplemented by best industry and management standards, protocols and practices. Fracturing pressures shall be controlled to limit the extent to which fractures escape the zone being fractured. Fracking shall be monitored by the County's engagement of an independent expert consultant, to review the application for a CUP, in order to ensure compliance with these regulations, standards, protocols and practices. Experimental techniques utilizing waterless fracking, including but not limited to use of propane, may be proposed but shall not be approved by the County's expert consultants until proven safe by the applicant.
- 2106.12. Abandonment, Plugging and Site Remediation.** The Board finds it necessary to assure that required reclamation, of oil and gas drilling sites, pads and well areas that are disturbed by exploration, ground, drilling, fracking, excavation, production and transportation activities, shall be subject to mitigation conditions in the Conditional Use Permit development order so as to be 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 project, the Operator shall comply with County, OCD, Water Quality Control Commission, or state or federal agency regulations and all requirements of Article IV in connection with abandonment, plugging and remediation of all oil and gas facilities. The Operator shall provide the County with funding to ensure monitoring of water and air quality on at least an annual basis, and financial assurances for remediation of the abandoned facility for a 10 year period following abandonment.
- 2106.13. Financial Assurances.** The Board finds that applicants seeking approval of a Conditional Use Permit for an oil or gas project in San Miguel County shall provide bonding or other financial assurances and security, acceptable to the County, to meet all of the requirements and conditions of permit approval as provided in Article II.
- 2106.14. Impact Fees and Public Improvement District Assessments.** The Board finds that new oil and gas development facilities and projects require the construction of new infrastructure and services necessary to address the needs of public facilities, roads, affordable housing, emergency response, and fire

and police protection resulting from the on and off-site impact of oil and gas development. The Board finds that impact fees and public improvement district assessments shall be established as needed, requiring oil and gas projects to pay for such infrastructure and service needs generated by new oil and gas development.

**2106.15. Locational Setting for Oil and Gas projects in the Eastern Part of the County.** The Board finds that oil and gas drilling in the urbanized Western part of the County and the Gallinas Watershed, shall be prohibited by reason of multitudinous documentary and testimonial evidence, studies and reports submitted at the public hearings on this Ordinance, and the March 10, 2014 recommendations of the Planning Commission, which analyze the dense urban habitation; the extensive federally protected conservation lands in the western part of the County, as well as the Santa Fe National Forest, the Pecos Wilderness and the Pecos National Monument; Interstate 25; the major railroad line which parallels the historic Santa Fe Trail; the traditional villages and communities; archaeological, historical, cultural, scenic corridors and environmentally sensitive lands of the western part of the County as identified in the San Miguel County Comprehensive Plan Conservation and Oil and Gas Elements. The Board further finds that Oil and gas drilling will also unreasonably threaten the Gallinas Watershed in the western part of the County, 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 region. The Board has determined that the most reasonable and practical delineation of the boundary between the eastern part of the County and the western part of the County shall follow the escarpment just west of state highway 419 and a north-south straight line from the south end of the escarpment, which has been incorporated in the map in Appendix C.

**2106.16. State Statutes, Regulations, Legislative Resolutions, Executive Orders, Departmental Reports and Federal Statutes Support Supplemental County Regulation of Oil and Gas Facilities and projects.**

2106.16.1. The Board finds that the July 2008 recommendations of the Governor's Executive Task Force Departmental Reports recognize the need to ensure the health, safety, and general welfare of all New Mexicans and protect the natural and ecological riches of Santa Fe County and the Galisteo Basin from adverse public nuisance and/or land use effects and impacts of oil and gas drilling and fracking in the Galisteo Basin and

further recognized that the State of New Mexico had not preempted county supplemental oil and gas regulation to address the impacts and effects of oil and gas fracking operations.

- 2106.16.2. The Board finds that under the Wildlife Conservation Act (NMSA 17-2-37 through 17-2-46), species of wildlife indigenous to the state that may be found to be threatened or endangered by oil and gas drilling require state and local government police power regulation over oil and gas development so as maintain and, to the extent possible, enhance wildlife numbers within the carrying capacity of the habitat.
- 2106.16.3. The Board adopts the New Mexico Department of Game and Fish recommendation that local governments enact setbacks for oil and gas wells of 0.5 miles from important environmentally sensitive lands, including but not limited to, aquatic and riparian habitats such as springs, wetlands, and drainages, but the Board further modifies the recommendation of the Planning and Zoning Commission that a ten mile setback be established from the boundaries of the Conchas Reservoir, by requiring a two (2) mile setback from the boundaries of Conchas Lake.
- 2106.16.4. The Board finds that the 2004 Senate Joint Memorial 71 encourages state and local government implementation of the precautionary principle in public and environmental health assessment in New Mexico. The principle holds that when an 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 should nonetheless be employed.
- 2106.16.5. The Board finds that the federal and state governments have recognized the Canadian River Basin as nationally significant resource that requires state and local government regulatory protection.

**2106.16.6. State Judicial Decisions.**

- 2106.16.6.1. The Board finds that New Mexico and federal appellate decisions have primarily dealt with New Mexico preemption issues involving state and local land use controls: (a) under the New Mexico Mining Act, N.M. STAT. ANN. Sections 69-36-1 to-20 (statute did not contain express preemption language and did not occupy the field), *San Pedro Mining Corp. v. Santa Fe County*, 121 N.M. 194, 199 (1996) (“A local government is presumed to

retain the power to exercise its normal authority over an activity, so the intention of the [L.]legislature to preempt local control must be clearly stated if express preemption is to result...and...the state's regulations were not comprehensive in scope , but govern only certain aspects of mining... ” ); (b) state engineer authority to issue permits for drilling of domestic water wells or to issue drilling permits did not impliedly or expressly deny the power of a city to adopt consistent supplementary regulations, *Smith v. City of Santa Fe*, 139 N.M. 410 (N.M. App. 2006; and (c) under the New Mexico Conservation Act *Rancho Lobo, Ltd. V. Devargas*, 303 F. 3d 1195 (10<sup>th</sup> Cir. 2002) (applying San Pedro Mining, held that a property owner bringing an action against county and county board of commissioners, alleging that the County's timber harvest ordinance conflicted with the New Mexico Forest Conservation Act. The federal Court of Appeals held that: (1) the Act did not contain clear statement of intent to preempt local governments from regulating timber harvests; (2) the Act did not occupy entire field of forestry regulation and thus did not impliedly preempt the ordinance; (3) ordinance did not conflict with the Act; and (4) ordinance contained valid general standard for local planning and zoning authority to exercise discretion in ordering environmental assessments (EA).

- 2106.16.6.2. The Board finds (1) no express or implied language in the New Mexico Oil and Gas Act, N.M. Stat. Ann. § 70-2-1 et seq. prohibiting a County from adopting supplementary oil and gas planning and zoning regulations; (2) no occupation of the entire field of oil and gas regulation by the Oil and Gas Act and implementing state regulations and state activity; and (3) that the Ordinance contains valid planning and zoning standards and requirements as well as supplemental environmental and nuisance powers to regulate for the health, safety and general welfare not in conflict with applicable statutory language.

## **2106.16.7. Ecosystem**

- 2106.16.7.1. The County has a priceless, unique, and fragile ecosystem, the preservation of which is of significant value to the citizens of the County and State which will be adversely affected by oil and gas drilling, fracking, production and transportation, including the unique and irreplaceable historic, cultural, archaeological, eco-tourist sites, scenic vistas, villages, agricultural and ranch operations, air, water and other natural resources of the County.
  - 2106.16.7.2. Native plant and animal species in arid habitats will be impacted negatively by oil and gas facilities and projects. Terrestrial wildlife, aquatic and riparian species and habitats such as those found around the springs, wetlands, and drainages in the Canadian River Basin shall be protected.
  - 2106.16.7.3. Under the Wildlife Conservation Act (NMSA 17-2-37 through 17-2-46), species of wildlife indigenous to the state that are threatened or endangered by oil and gas projects require police power, zoning, environmental and public nuisance regulation of oil and gas development so as maintain and, to the extent possible, enhance wildlife numbers within the carrying capacity of the habitat.
  - 2106.16.7.4. Environmentally sensitive lands and systems (hillsides, steep slopes exceeding 11%, scenic vistas, habitat areas, working agricultural and ranch operations, village habitation, cultural, archaeological and historic sites) in the County require setback protection from oil and gas project impacts.
- 2106.16.8. The Board finds that a thorough, independent, ongoing inspection and monitoring mechanism for oil and gas operations is needed to assure compliance with the requirements of this ordinance. The Board recognizes that the state employs approximately 10 inspectors to view about 100,000 oil and gas wells and 5 inspectors for some 23,000 miles of reported pipelines. As a result, the Board finds that the state inspection, monitoring and oversight of ongoing oil and gas operations may be inadequate to assure compliance with the state rules and regulations. Federal enforcement is also lacking. Accordingly, the

Board finds that the County inspection personnel, besides enforcing the requirements of this ordinance, shall be tasked to look for violations of state and federal regulations and to report any such detections to appropriate state and federal authorities.

2106.16.9. Through the course of multiple drafts of this ordinance prepared by the national planning and law firm of Freilich & Popowitz, LLP, and two years of extensive work by a task force comprising San Miguel citizenry and industry representation, the County has conducted an extensive number of public meetings and public hearings and considered over 40 hours of oral and documentary testimonial submissions. In addition the County has considered the data contained in the bibliography appended to the Comprehensive Plan Oil and Gas Element, as Appendix E of this Ordinance, consisting of analyses, reports, academic studies, and media articles regarding oil and gas development statewide, nationally and internationally. Records of the hearings and copies of the documents are in the County archives. As a result of all these considerations, the Board has made the findings in this section precedent to establishing the requirements of this ordinance.

2106.17. All of the findings above are mandatory and shall be binding in the determination of development approval of any oil and gas project.

**Section 2107. Powers and Duties of the Zoning Administrator; and a Two-Step Process Required for Filing an Application for an Oil and Gas project**

2107.1. It shall be the duty of the Zoning Administrator to monitor compliance with and enforce the provisions of Article II; to monitor compliance with any development order granting a CUP; and to advise the Board with the technical review of the CUP application and other ministerial applications for a grading and building permit and certificate of completion. Article II establishes a two-step County process (quasi-judicial and ministerial) for approval of an oil and gas project within the County and a new role for the Zoning Administrator. No oil and gas project is permitted until a CUP development approval is granted by the Board taking into consideration all of the owner's or applicant's land in the same ownership within the County; and all subsequent ministerial applications for building, grading permits and a certificate of completion are granted by the Zoning Administrator. An application for a CUP shall not be accepted, nor deemed complete, until the Applicant receives a Permit to Drill "APD" on Form C-101 from the OCD or successor State entity, and all other needed permits as appropriate for the proposed project from the U.S. Forest

Service, Bureau of Land Management, CID, Federal Emergency Management Agency floodplain development permit, New Mexico Department of Health, New Mexico Environment, Stormwater Management and Quality Control Department, the New Mexico State Engineer, and the U.S. Fish and Wildlife Service.

## **2107.2. Authority of the Zoning Administrator**

- 2107.2.1. The Zoning 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.
- 2107.2.2. The Zoning Administrator 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 the Zoning Administrator 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 Board or Planning Commission development orders pursuant to a duly noticed public hearing before the Board or Planning Commission respectively.
- 2107.2.3. The Zoning 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.
- 2107.2.4. The Zoning Administrator shall have the authority to order immediate remedial action if the Zoning Administrator finds that the Operator or any employees, contractors, subcontractors, or other persons legally responsible to the Operator has not complied with the requirements of this Section, if the Zoning 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 Zoning 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 CUP, 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 twenty (20) days after the Zoning Administrator's Order.

2107.2.5. 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.

2107.2.6. The Zoning 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 Commission and the Board respectively. The Zoning Administrator, or his lawfully constituted deputy, shall supervise and manage each application for a CUP, building permit, grading permit or certificate of completion. The Zoning 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.

#### **Section 2108. Exemptions for Water Rights.**

These regulations do not apply to the determination or adjustment of water rights or for the regulation of extraction of potable water, the drilling of water wells or any other activity authorized by statute to be carried out by the State Engineer.

#### **Section 2109. Incorporating Goals.**

The Board hereby incorporates the goals, objectives, policies, and strategies in the Comprehensive Plan, including but not limited to, the Oil and Gas Element. All approvals of CUPs, Building and Grading Permits and Certificates of Completion shall be consistent with the following plans:

- 2109.1. Comprehensive Plan; including, but not limited to the Oil and Gas Element of the General Plan;
- 2109.2. Any future neighborhood, community or area plan, including but not limited to, a Mora or Canadian River Basin Area Plan;
- 2109.3. The Regional Water Plan adopted by the County;

- 2109.4 Any future capital improvement plan, the capital and operating budgets of the County and any future capital improvement plan for a public improvement or assessment district, or any condition of approval of a Conditional Use Permit;
- 2109.5. A public improvement, utility or assessment district plan, capital budget or capital improvement plan;
- 2109.6. State of New Mexico plans, regulations, and statutes, including but not limited to, plans from the OCD and OCG, Energy, Minerals and Natural Resources Department, Office of the State Engineer, New Mexico Environment Department, Department of Game & Fish, Department of Cultural Affairs, Department of Indian Affairs, Department of Tourism, Department of Health, Department of Agriculture, and Gubernatorial Executive Orders.

**Section 2110. Application for CUP Process and Consistency.**

- 2110.1. The application for a CUP shall provide all information required for the service of notice to all interested persons as set forth below and shall pay to the County all administrative costs required for service of notice to interested parties. In addition to any notice requirements set forth in Ordinance 86-2 (as amended), a written notice of the pendency of an application for a CUP shall be provided by the County to: each residential or non-residential surface owner or surface lessee; or royalty owner, overriding interest owner, unit operator, working interest owner, oil and gas lessee, or severed mineral owner whose property interest abuts, or is within one (1) mile of, a single well site or pad, in the proposed Oil and Gas project. The County shall provide proof of such notice by maintaining a copy of the letter providing such notice, a list of the individuals notified, and certified mail receipts. The notice shall be mailed no later than five (5) working days following submission of the application. For purposes of notice for a proposed well or drill site on which multiple wells or pads will be sited, each residential or non-residential surface owner or surface lessee, royalty owner, overriding interest owner, unit operator, working interest owner, lessee or severed mineral owner shall receive notice if the property boundary of the surface owner is within three (3) miles of any proposed drill site or well. The application shall also provide a detailed description of the oil and gas project operator. The application shall describe the 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. The new operator shall furnish: a notarized letter of indemnity from all parent or subsidiary corporations or entities, with the County identified as a third-party beneficiary in such letter; 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 this section; 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; and a list of Oil and Gas facilities owned or operated by the applicant or new operator that are not in compliance with regulatory approvals in the relevant jurisdiction. For each such facility listed, provide details concerning the compliance issues experienced.

2110.2. In addition to any notice requirement in Ordinance 86-2, the notice of the pending application shall also contain the following:

- 2110.2.1 A description of the boundaries of the proposed Oil and Gas project, including a legal description, and for all owners or lessees of the property, and all other property in the County in the same ownership, the application shall provide appropriate street addresses and telephone numbers. The notice shall also identify the proposed operator and any designated agent for the application, and include the current business address and telephone number for the operator and its designated agent, if one has been designated; and a brief description of the facilities and equipment proposed to be located at the site when operational; and a statement that additional information concerning the application may be obtained from the Zoning Administrator.
- 2110.2.2 The notice shall also be posted in four (4) places by the County in a conspicuous and visible location along the perimeter boundaries or road of the proposed Oil and Gas site, which shall contain the information required above.
- 2110.2.3 After a public hearing is set for either the Planning Commission or the Board, a notice of the time, place and street address of the public hearing, together with a description of the location of the proposed Oil and Gas project and a detailed summary of the application, shall be published by the County in a newspaper of general circulation in the County at least twenty-one (21) days prior to the date of the public hearing. An affidavit of publication shall be obtained from the newspaper and provided to the Zoning Administrator.
- 2110.2.4 The County shall also provide notice to any other person, agency or organization that has registered with the Zoning Administrator a request to receive notices of all applications for an Oil and Gas CUP, or subsequent building and grading permits and a certificate of

completion. The Zoning Administrator shall charge a one-time twenty-five dollar (\$25.00) fee to cover the expenses of mailing.

- 2110.2.5 The County shall provide notice in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish.
- 2110.3. Once a CUP has been issued for an Oil or Gas project, the applicant shall apply for all required grading and building permits and obtain a Certificate of Completion before any exploratory excavation, drilling, fracking, production, workover, transportation of equipment, oil and gas, maintenance, repair and testing and all other usual and customary activities associated with the exploration, drilling, fracking and the development, operation and production of oil and/or gas shall commence within the scope of the terms of the CUP development order.
- 2110.4. A CUP, issued pursuant to this Ordinance, shall expire or be revoked after a duly noticed public hearing held by the Board, if construction of the Oil and Gas Facility is not completed within two (2) years of the date of development approval of the CUP (and the completion of administrative and judicial appeals), with the following exceptions: (i) a multiyear phased project authorized by the development order approving the CUP; or (ii) an Oil and Gas Facility that is substantially completed and the operator has requested an extension of up to one (1) additional year, based upon reasonable cause, at a public hearing before the Board.
- 2110.5. Every approval, approval with conditions and mitigation measures, or denial of an application for an Oil and Gas CUP shall be consistent with the goals, objectives, policies and strategies and the findings and purposes of Article II, in addition to consistency with the Plans specified in section 2109. Every development order approving, approving with conditions and mitigation measures, or denying an application for a Conditional Use Permit, Grading or Building Permits and Certificates of Completion shall be required to be consistent with the provisions of Article II.

**Section 2111. Oil and gas projects may require other local, state, and federal development approvals.** It is the sole responsibility of the applicant to secure all development approvals required by other governmental entities for the proposed use. The County shall require that the State OCD approve an application for a permit to drill be issued prior to an applicant applying for the

required CUP, and to require the applicant to submit evidence of such other development approvals as part of the CUP application.

**Section 2112. Subdivision Approval.** Applicants are not required to apply for subdivision approval for oil and gas projects located in the subsurface of a single parcel or lot of land unless the activity constitutes a subdivision or platting of two or more such subsurface lots or parcels, with the intent to sell or lease such subsurface subdivided lots or parcels in the future.

**Section 2113. Application for an Oil and Gas Conditional Use Permit**

2113.1. An applicant who submits an application for discretionary quasi-judicial approval of an Oil and Gas CUP, shall submit concurrently with the application the following Land Use and Environmental Suitability Analysis, Site Plan and additional assessments, reports, plans or studies (Documents), and any additional information required by the Zoning Administrator or by Article II. These Documents shall be prepared by the applicant, or by a professional consultant or consulting firms engaged by the applicant. The applicant shall pay for the fees and expenses of consultants engaged by the County. The fees and expenses shall be determined by the Zoning Administrator after selecting appropriate consultants or consulting firms and shall be paid at the time of the certification of completion of the application. These fees and expenses shall be independent of the fees identified in Appendix D. The consultants engaged by the County, together with County staff, shall review the application, together with the preliminary Documents required by this section and recommend to the applicant necessary changes to be made in the submission of the final application and Documents. Upon receipt of the final Documents, and upon further review and recommendation by the County Consultants, the Zoning Administrator shall forward the application and final Documents to the Planning Commission for one or more quasi-judicial public hearings on the application and Documents. The Planning Commission, at the close of the final public hearing, shall forward to the Board, within forty five (45) days, a detailed written recommendation concerning all issues, standards and requirements of Article II with respect to the application and each of the Documents to be considered by the Board in determining whether a CUP shall be granted, granted with conditions and mitigation, or denied.

2113.2. One if the consultants engaged by the County shall be designated Oil and Gas Inspector and shall be the principal contact with the Board, the Planning Commission, the Zoning Administrator and County Staff. The Oil and Gas Inspector shall be a person or firm which, by virtue of education, training and/or experience is qualified to monitor compliance with and advise the

Zoning Administrator with regard to enforcement of the provisions of any CUP issued pursuant to this Ordinance. The minimum qualifications for Oil and Gas Inspector are: (a) understanding oil and gas operations, (b) understanding health, safety, and environmental protections, (c) understanding the requirements of this ordinance, (d) understanding government contracting processes, and (e) being able to manage a team to effectively handle the complex requirements of this ordinance. The Oil and Gas Inspector shall be annually funded by the Applicant and the Operator of the oil and gas project until such project shall be terminated or abandoned. It shall be the duty of the Oil and Gas Inspector to monitor compliance with this Ordinance and to advise the Zoning Administrator with regard to enforcement of the provisions of this Ordinance. It shall be the duty of the Oil and Gas Inspector to monitor compliance by the Operator with the development order granting the CUP. Funded by the annually collected fee from the Applicant and Operator, the Oil and Gas Inspector's enforcement duties shall include but not be limited to frequent, unannounced facility inspections and regular monitoring of recorded and reported data. The Oil and Gas Inspector shall assist the Zoning Administrator with the technical review of oil and gas CUP applications.

**Section 2114. Land and Environmental Suitability Analysis.**

- 2114.1 The zoning districts selected for Oil and Gas projects are located within highly unique and environmentally sensitive areas of the County. Within the Canadian River Basin are unique historical, cultural, and archaeological artifacts and sites; protected wildlife and vegetation habitats; corridors; streams, floodways, floodplains, groundwater aquifers and basins; mountainous slopes and hillsides; highly unusual, fragmented, and fractured sub-surface geological soils, rock, liquids and minerals susceptible to pollution of underground water reservoirs and aquifers; and traditional and historical Indian and community settlements, farms, and ranches, all combined with interspersed residential population growth, a poor transportation road network and limited or nonexistent fire, police, and emergency response services.
- 2114.2. The Applicant shall prepare a Land and Environmental Suitability Analysis, based upon the factors set forth in Table I below, which shall describe areas within the same ownership of the applicant, owner or lessee, that are unsuitable for oil and gas activities.
- 2114.3 Article II is consistent and in compliance with the OCD and OGC proposed and existing regulations relating to well spacing. Article II does not regulate well spacing. The LESA shall be used to determine the number of drill or pad sites permitted based on the sensitivity classification of surface lands, supplements and complements the OCD regulations.

Oil/Gas Unsuitability Factors: Table I	
Factor 1	Farms/Ranches To Be Protected
1.1	Farm/Ranch size less than 40 acres
1.2	farm/Ranch size less than 40 acres to 100 acres
1.3	farm/ranch size less 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, including short grass prairie
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 Earth Works Riparian (and 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 30%)
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 fire station
7.5	Lands proximal to health care facilities
Factor 8	Land use compatibility
8.1	Identify lands proximal to designated conservation areas

**2114.4. Limited Oil and Gas Activity Areas:** Based upon the LESA analysis of the Table I factors as applied to the oil and gas zoned areas, the Zoning Administrator shall classify the different areas of the applicant's lands in the same ownership in granting a CUP as:

- 2114.4.1. High Sensitivity Areas (any application that contains 6-8 of the factors 1 through 8);
- 2114.4.2. Moderate Sensitivity Areas; (any application that contains 4 through 5 of the factors 1 through 8);
- 2114.4.3. Low Sensitivity Areas. (any application that contains 1 through 3 of the factors 1 through 8);

**2114.5. High Sensitivity Areas:**

- 2114.5.1. In High Sensitivity Areas oil and gas activity will create severe public nuisance and land use effects and impacts upon the lands of the oil and gas zoned districts. Oil and gas activity will be regulated so that the area of land utilized for the project located in High Sensitive Areas does not authorize a greater number of oil and gas drill and pad sites than ten percent (10%) of the number of wells allowed by the applicable OCD spacing rules. Each square mile (640 acres) of oil and gas project land without constraint would contain a maximum of sixteen (16) oil and gas wells taking into account the applicable OCD spacing rule 19.15.3.104 NMAC which provides for one (1) well for each forty (40) acres. If located within a High Sensitivity Area, the CUP shall permit 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.
- 2114.5.2. The number of drill sites permitted under the LESA analysis is a maximum number. Analysis of the site plan, assessments, studies and reports, may require that fewer or no oil and gas drill or pad sites be authorized based upon the unique requirements of the project area's mitigation requirements to avoid specific adverse public nuisance and/or land use effects and impacts from oil and gas drill site locations. The drill site pad should be the least amount of land necessary to operate the drill site.
- 2114.5.3. For each well, the surface area shall not exceed one half ( $\frac{1}{2}$ ) of an acre and total surface acreage for all drill sites—in High Sensitivity Areas shall not in any event exceed five (5) acres per square mile. The Board may increase such acreage on a case by case basis if there is an

affirmative recommendation from a County Consultant, or from the Planning Commission, certifying reasonable certifying reasonable accommodation of greater density of six acres per square mile in the light of the LESA, site plan, assessments, studies and reports need, or to accommodate a transfer of development rights not to exceed one (1) acre per square mile. The maximum total of acreage per square mile shall not exceed seven (7) acres per square mile. The drill site pad shall be the least amount of land necessary to operate the drill site.

- 2114.5.4. Proposed oil or gas projects within High Sensitivity Areas will be permitted to purchase development rights from other proposed oil or gas projects that, after a beneficial use and value determination, 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 oil and gas drill sites.

**2114.6. Moderate Sensitivity Areas:**

- 2114.6.1. In the Moderate Sensitivity Areas oil and gas activity will create moderate public nuisance and land use effects and impacts upon the lands of the oil and gas zoned areas. Oil and gas activity will be regulated so that the area of land does not authorize a number of oil and gas drill sites greater than thirty percent (30%) of the number of wells allowed by the applicable OCD spacing rules. Each square mile (640 acres) of project land would contain a maximum of sixteen (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 Moderate Sensitivity Area on the LESA Map it would be permitted 4.8 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.
- 2114.6.2. The number of drill sites permitted under the LESA analysis is a maximum number. Analysis of the site plan, assessments, studies and reports, may require that fewer or no oil and gas drill sites be authorized based upon the unique requirements of the project area's mitigation requirements to avoid specific adverse public nuisance and/or land use effects and impacts from oil and gas drill site locations. The drill site pad should be the least amount of land necessary to operate the drill site.

- 2114.6.3. For each well, the surface area shall not exceed one half ( $\frac{1}{2}$ ) of an acre and total surface acreage for all drill sites in Moderate Sensitivity Areas shall not in any event exceed seven (7) per square mile. The Board may increase such acreage on case by case basis if there is an affirmative recommendation from a County Consultant, or from the Planning Commission, certifying reasonable accommodation of greater density in the light of the LESA, site plan, assessments, studies and reports, or to accommodate a transfer of development rights not to exceed two (2) acres in total size. The maximum total of acreage per square mile shall not exceed nine (9) acres per square mile. The drill site pad shall be the least amount of land necessary to operate the drill site.
- 2114.6.4. Proposed oil or gas facilities within Moderate Sensitivity Areas will be permitted to purchase development rights from other proposed oil or gas facilities that after a beneficial use and value determination would not be allowed any oil or gas drill sites. For each forty (40) acre sending area transferring a development right ("TDR"), the Moderate Sensitivity Area receiving the TDR will be permitted to add an additional 0.8 oil and gas drill sites.

**2114.7. Low Sensitivity Areas:**

- 2114.7.1. In the Low Sensitivity Areas oil and gas activity will create lower intensity public nuisance and land use effects and impacts upon the lands of the oil and gas zoned areas. Oil and gas activity will be constrained so that the area of land does not authorize a greater number of oil and gas drill sites than forty percent (40%) of the number of wells allowed by the applicable OCD spacing rules. By example: each square mile (640 acres) of project land could contain a maximum of sixteen (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 only 6.4 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.
- 2114.7.2. The number of drill sites permitted under the LESA analysis is a maximum number. Analysis of the additional site plan, assessments, studies and reports, may require that fewer or no oil and gas wells be authorized based upon the unique project mitigation requirements to avoid adverse public nuisance effects and impacts from oil and gas

specific well locations. The drill site pad should be the least amount of land necessary to operate the drill site.

2114.7.3. 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 in any event exceed nine (9) acres per square mile. The Board may increase such acreage on case by case basis if there is an affirmative recommendation from a County Consultant, or from the Planning Commission, certifying reasonable accommodation of up to two (2) acres per square mile greater density in the light of the LESA, site plan, assessments, studies and reports, or to accommodate a transfer of development rights not to exceed (2) acres in total size. The maximum total of acreage per square mile shall not exceed thirteen (13) acres per square mile. The drill site pad shall be the least amount of land necessary to operate the drill site.

2114.7.4. Proposed oil or gas projects within Low Sensitivity Areas will be permitted to purchase development rights from proposed oil or gas facilities that after a beneficial use and value determination 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 2.0 oil and gas wells.

**Section 2115. The 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. The Site Plan shall include:

- 2115.1. An accurate map of the project area including its relationship to surrounding areas, existing topography and key features;
- 2115.2. A detailed description of the proposed oil and gas project, on the entirety of the owner or applicant’s property in the same ownership;
- 2115.3. The planning objectives and the character of the development to be achieved, and the approximate timing and phasing in which the exploration, drilling,

fracking, production, storage and transportation of oil and gas on and from the property will occur.

- 2115.4. The approximate location of all neighboring development areas, subdivisions, residential dwellings, neighborhoods, traditional communities and community centers, rivers, environmentally sensitive lands and other non-residential facilities and structures within two (2) miles of the concept plan site perimeter.
- 2115.5. The number and type of all well pads and 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 or exploratory activities.
- 2115.6. A 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, I-40, S-104 or S129.
- 2115.7. 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 archeological sites and artifacts, steep slopes greater than 11%, wildlife and vegetation habitats and habitat corridors within two (2) miles of the concept plan site perimeter.
- 2115.8. A statement explaining how the proposed oil and gas project complies with the vision, goals, objectives, policies and strategies of the County's Comprehensive Plan Oil and Gas Element and any Area Plan covering the property, including but not limited to, the Canadian River Basin and Conchas Lake.
- 2115.9. A statement or visual presentation of how the approved CUP will relate to and be compatible with adjacent and neighboring areas, within the two (2) mile radius of the project site perimeter.
- 2115.10. Certified evidence of public record registration of mineral estate and oil or gas leases within the same ownership.
- 2115.11. Existing water wells shall be documented by any official document such as deeds and surveys, or from registration with the Office of State Engineer.
- 2115.12. A description of a program requiring mandatory training and hiring of qualified personnel to assure that employees and subcontractors are qualified to properly

use on-site fire protection equipment in order to fight fires or explosions on and off-site.

2115.13. All other additional application information required by the Zoning Administrator or set out in Article II.

2115.14. The site plan shall be accompanied by the following assessments, reports, plans or studies, and additional information deemed necessary by the Zoning Administrator, or by the provisions of Article II, in order to evaluate all adverse effects and impacts of the proposed oil and gas project.

2115.14.1. Environmental Impact Report

2115.14.2. Adequate Public Facilities and Services Assessment

2115.14.3. Water Availability Report

2115.14.4. Traffic Impact Assessment

2115.14.5. Geohydrologic Report (subsequent to preliminary approval of the CUP)

2115.14.6. Emergency Response and Preparedness Plan

2115.14.7. Fiscal Impact Assessment

2115.14.8. Additional information as the Zoning Administrator shall require, including any additional information required to be set out by the provisions of Article II, deemed necessary to determine compliance with the standards and requirements for the approval of the Oil and Gas CUP and for County and consultant review of the above application, site plan, studies, reports, plans and assessments.

2115.15. In the event that the information required to be submitted by the application form and the site plan and required studies, reports, plans and assessments, accompanying the application form, is incomplete, the Zoning Administrator shall within fifteen (15) working days of receipt of the application, notify the applicant in writing, by certified mail return receipt request, requesting specific further information to be furnished. The applicant shall have sixty (60) days from the date of receipt of the notice, to file an amended application. If the amended application form is deemed incomplete, the application shall be denied by the Zoning Administrator and shall not be resubmitted for a period of one (1) year. The development order of the Zoning Administrator that the amended application form is incomplete, shall also be sent to the applicant by certified mail return receipt requested. The development order shall be appealable by the applicant to the Planning Commission within thirty (30) days

after the applicant's receipt of the final notice. The Planning Commission shall conduct a public hearing on the appeal within thirty (30) days after the appeal is lodged with the Zoning Administrator. The final development order of the Planning and Zoning Commission approving, modifying or reversing the determination of the Zoning Administrator shall be appealable to the Board. The Board shall conduct a public hearing on the appeal within thirty (30) days after the appeal is lodged with the Zoning Administrator.

**2115.16. Pre-Application Meeting.** Prior to the submission of any application for an Oil and Gas CUP, 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 property line within which the project is located, and with all County groups, foundations and associations that have previously registered with and been accepted by the Zoning Administrator for notifications of applications for a CUP. The applicant shall furnish an address list for the one-mile area to the Zoning Administrator who shall send out notices to all affected parties at least five business days prior to the meeting. Such meeting shall be conducted at the Board hearing room. The Applicant shall also 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. The proceedings shall be informal and designed to resolve, to the extent possible, issues and problems between the parties. Such meeting shall not last longer than three (3) hours without the consent of the applicant, and the Zoning Administrator shall have the authority to request invitees to consolidate presentations and otherwise cooperate so that effective and cordial discussion of issues and problems takes place.

## **Section 2116. Environmental Impact Reports**

### **2116.1. Preliminary Environmental Impact Report Required**

2116.1.1. The Applicant shall prepare a preliminary Environmental Impact Report ("PEIR"), which shall contain the information required in this section. The PEIR shall be used in conjunction with the LESA analysis. Each element shall be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

- 2116.1.2. The PEIR shall be prepared as a separate document by the Applicant or by environmental engineer or specialist, wildlife specialist, botanist, hydrologist, civil engineer, air quality specialist, and petroleum engineer consultants engaged by the Applicant. The PEIR is an informational document which will inform the County and the public of the significant adverse environmental effects and impacts of the oil and gas project, identify possible ways to minimize or mitigate the significant adverse effects or impacts, and describe reasonable alternatives to the project. The Board shall consider the information in the PEIR along with other information which may be presented to the County by the applicant or other interested parties in determining whether the CUP applied for shall be granted a development order approving, approving with conditions or mitigation, or denying the project CUP.
- 2116.1.3. While the information in the PEIR does not control the County's ultimate quasi-judicial discretion, the County shall respond to each significant effect and impacts identified in the PEIR by making findings.
- 2116.1.4. The information in PEIR 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.
- 2116.1.5. Any document prepared pursuant to this Article II that is available for public examination shall not require the disclosure of a trade secret, except where the use of any product or operation involves a substantial threat to health and safety. Notwithstanding the above, only specifically identified chemicals shall be used for any project, including, but not limited to excavation, exploration, drilling, fracking or production. The Zoning Administrator shall supply a list to the applicant of all chemicals and products that are authorized to be used at the site, as determined and certified by a licensed petroleum engineering consultant engaged by the County. The Applicant shall certify in the application that only chemicals, substances or products on the County list will be used in the project. The applicant need not disclose any chemical, substance or product for which it has a trade secret. The specific location of archaeological, historical or cultural sites and/or sacred lands shall not be released to the public, but the PEIR must thoroughly discuss all environmental issues relating to the proposed project and affecting any such sites. The applicant's properly qualified archeologist shall consult with the appropriate State Office or officer

(SHAPO) to ensure that the proposed development plans do not degrade any protected site.

2116.1.6 The PEIR may include programmatic PEIR elements in which portions of the PEIR can be borrowed from prior final 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.

**2116.2. Summary.**

2116.2.1. The PEIR shall contain a table of contents and index to assist readers in finding the analysis of different subjects and issues, and a brief summary, not to exceed fifteen (15) pages 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:

2116.2.2. Each significant adverse effect and impact with proposed mitigation measures and alternatives that would reduce or avoid that effect or impact;

2116.2.3. Controversial issues raised by the applicant, the County staff and consultants, other agencies, neighbors, interested parties and the public; and

2116.2.4. Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

**2116.3. Project Description.** The description of the Project shall contain the following information but shall not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

2116.3.1. The precise location and boundaries of the proposed oil or gas project 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.

2116.3.2. A statement of the objectives sought by the proposed oil or gas project or facility. A clearly written statement of objectives will develop a reasonable range of alternatives to evaluate in the PEIR and will aid the

Board in preparing findings. The statement of objectives should include the underlying purpose of the project.

- 2116.3.3. 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.
- 2116.3.4. A statement briefly describing the intended uses of the preliminary and final EIR (FEIR). This statement shall include, to the extent that the information is known to the applicant, a list of the state, regional and federal agencies that may be expected to use the FEIR 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 state, federal and County development approvals required for the oil and gas project, which shall be listed in the order in which they will occur.

#### **2116.4 Environmental Setting.**

- 2116.4.1. A PEIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist 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, including baseline radioactivity. 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 and gas project and its alternatives.
- 2116.4.2. 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 PEIR must demonstrate that the significant environmental effects and impacts of the proposed project were adequately investigated and discussed and it must permit the significant adverse effects or impacts of the project to be considered in the full environmental context.
- 2116.4.3. The PEIR shall discuss any inconsistencies between the proposed oil or gas facility and the General Plan, including the General Plan Oil and

Gas Element, and any applicable Regional Plans or Area Plan, including, but not limited to, a Canadian River Basin Area Plan. 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.

- 2116.4.4. Where a proposed oil or gas project 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.

**2116.5. Consideration and Discussion of Environmental Impacts.** All phases of an oil and gas project or facility shall be considered when evaluating its effect and impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 2114.6, 2114.7 and 2114.8, preferably in separate sections or paragraphs of the PEIR. If they are not discussed separately, the PEIR shall include a table showing where each of the subjects is discussed.

- 2116.5.1. Significant environmental effects of the proposed project.
- 2116.5.2. Significant environmental effects which cannot be avoided if the proposed project is implemented.
- 2116.5.3. Significant irreversible environmental changes which shall be involved in the proposed project should it be implemented.
- 2116.5.4. Growth-inducing adverse effects or impacts of the proposed project.
- 2116.5.5. Mitigation measures proposed to minimize or eliminate the significant effects or impacts.
- 2116.5.6. Alternatives to the proposed project, including no oil or gas drilling.

**2116.6. Consideration and Discussion of Significant Environmental Impacts.**

- 2116.6.1. The PEIR shall identify and focus on the significant environmental effects of the proposed oil and gas project. In assessing the impact of a proposed oil and gas project on the environment, the PEIR 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 PEIR 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, an interim 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 geohydrological hazard.

- 2116.6.2. Describe any significant environmental effects which cannot be avoided if the proposed oil and gas project is implemented. Describe significant adverse effects and impacts, including those which can be mitigated but not reduced to a level of insignificance, if the project is implemented. Where there are effects and impacts that cannot be alleviated or avoided without imposing an alternative design, their implications and the reasons why the oil and gas project is being proposed shall be described.
- 2116.6.3. The PEIR shall describe and analyze significant irreversible environmental changes which would be caused by the proposed oil and gas project should it be implemented. 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 infeasible. 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. Irretrievable 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 project must be thoroughly

analyzed, including necessary mitigation to minimize such effects and impacts. Applicant must comply with all New Mexico state, and federal, statutes and regulations regarding air pollution and global warming. The applicant must use the best available technology to analyze, report and mitigate any global warming effect associated with the Oil or Gas project and evaluate the contribution to airborne pollution concentrations of inhalable (PM10) and fine particles (PM2.5), nitrogen oxides (NOX) and dioxide (NO2), carbon monoxide (CO), ozone (O3), and volatile organic compounds (VOCs), along with the resulting air pollution gradient, from traffic resulting from the proposed oil and gas project.

- 2116.6.4. Discuss 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.
- 2116.6.5. Discuss the potential for materials brought to the surface, including but not limited to water, brine, mud, sand oil and gas as a result of fracking, containing naturally occurring radioactive materials (NORM), and propose total mitigation of all NORM impacts, including periodic testing for NORM after each injection of fracking materials in the drilling or production process.

**2116.7. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.**

- 2116.7.1. The PEIR shall describe all 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.
- 2116.7.2. 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 Board 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 PEIR.

- 2116.7.3. 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 until the ministerial permit stage. Mitigation measures shall specify the performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.
- 2116.7.4. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.
- 2116.7.5. 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.
- 2116.7.6. Mitigation measures must be fully enforceable through the development order conditions, a development agreement, or other legally-binding instruments.
- 2116.7.7. Mitigation measures are not required for effects or impacts which are not found to be significant.
- 2116.7.8. Mitigation measures shall be consistent with all applicable constitutional, federal, state and county requirements.

**2116.8. Mitigation Measures Related to Effects and Impacts on Historical, Cultural and Archaeological Resources.**

- 2116.8.1. 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.
- 2116.8.2. The Board shall, whenever feasible, seek to avoid adverse effects and impacts on any historical resource of a cultural or archaeological nature. The following factors shall be considered and discussed in the PEIR for an oil and gas

facility involving such a cultural, historic or archaeological site:

- 2116.8.2.1. 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.
- 2116.8.2.2. Preservation in place may be accomplished by, but is not limited to, the following:
- 2116.8.2.3. Planning construction to avoid all historical, cultural or archaeological sites;
- 2116.8.2.4. Incorporation of sites within parks, green space, or other open space;
- 2116.8.2.5. 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 must be removed during project excavation or testing, curation may be an appropriate mitigation.
- 2116.8.2.6. Data recovery shall not be required for an historical, cultural or archaeological resource if the Board 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 PEIR.

## **2116.9. Consideration and Discussion of Alternatives to the Proposed Project.**

- 2116.9.1. Alternatives to the proposed project. The PEIR 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. A PEIR is not required to consider alternatives which are infeasible. The County Consultants in consultation with the Zoning Administrator shall select the range of project alternatives for examination and shall publicly disclose its reasoning for selecting those alternatives.
- 2116.9.2. Purpose. Because the PEIR must identify ways to mitigate or avoid the significant and adverse impacts and effects that an oil and gas project may have on the environment, 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.
- 2116.9.3. Selection of a range of reasonable alternatives. 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 PEIR should briefly describe the rationale for selecting the alternatives to be discussed. The PEIR shall also identify any alternatives that were considered by the County Consultants in consultation with the Zoning Administrator but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the County's determination.
- 2116.9.4. Evaluation of alternatives. The PEIR 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.

2116.9.4.1. “No project” alternative.

2116.9.4.1.1. 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 Board 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.

2116.9.4.1.2. 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 PEIR shall identify the environmentally best alternative among the other alternatives.

2116.9.4.1.3. A discussion of the “no project” alternative shall proceed as follows:

2116.9.4.1.3.1. 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.

2116.9.4.1.3.2. 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.

**2116.10. Rule of reason.** The range of alternatives required in the PEIR is governed by a “rule of reason” that requires the PEIR 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.

**2116.11. Feasibility.** 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.

**2116.12. Alternative locations.**

2116.12.1. The key question and first step in analysis is 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 PEIR.

2116.12.2. If the County concludes that no feasible alternative locations within the same ownership exist, it must disclose the reasons for this conclusion, and should include the reasons in the PEIR.

2116.12.3. The PEIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

**2116.13. Discussion of Cumulative Impacts.**

2116.13.1. The PEIR shall discuss cumulative effects and impacts of a project when the project's incremental effect and impact is cumulatively considerable.

2116.13.1.1. The cumulative effect and impact is created as a result of the combination of the project evaluated in the draft PEIR together with other built oil and gas projects, and approved but unbuilt oil and gas projects causing related effects and impacts.

2116.13.1.2. 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.

2116.13.1.3. The following elements are necessary to an adequate discussion of significant cumulative impacts:

- 2116.13.1.3.1. A list of past, present, and probable future oil and gas projects producing related or cumulative impacts, or
- 2116.13.1.3.2. A summary of projections of other residential, commercial, industrial, agricultural or mining development contained in the comprehensive plan.
- 2116.13.1.4. When utilizing a list of other oil and gas projects, 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.
- 2116.13.1.5. The PEIR 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.
- 2116.13.1.6. A reasonable analysis of the cumulative impacts of the relevant projects. The PEIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects or impacts.
- 2116.13.1.7. Approved land use documents including the Comprehensive Plan, the Comprehensive Plan Oil and Gas Element, Area Plans, including but not limited to Canadian or Mora River Basin 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.

**2116.14. Procedures for Adopting the PEIR.** A public hearing shall be held by the Planning Commission on the PEIR so that the public has the opportunity to input into the PEIR process. Upon receiving the PEIR from the applicant, together with the County consultant's recommendations for amending the PEIR, public comments, testimony and evidentiary exhibits introduced at the public hearing, the Planning Commission shall forward its recommendations to

the Zoning Administrator and the Applicant for preparation of an amended PEIR that will be considered by the Board. Upon receipt of an amended PEIR, the Zoning Administrator shall confirm that the amended PEIR is consistent with the requirements set forth in the Planning Commission's recommendations.

**2116.15. Adoption of Final Environmental Impact Report.** The FEIR shall be adopted, modified or denied by the Board at the public hearing held concurrently for final CUP development approval of the application for an Oil and Gas CUP. In adopting the final EIR, the Board shall consider the Planning Commission's recommendations, the applicant's amended PEIR, the analysis of the amended PEIR together with recommendations for the final EIR prepared by the County's consultants and staff, together with public comments, testimony and evidentiary exhibits introduced at the final public hearing.

## **Section 2117. Adequate Public Facilities and Service Assessment**

### **2117.1. Purpose and Findings.**

2117.1.1. Oil and Gas projects may create a range of potential adverse effects and impacts on and off-site the project and shall be reviewed as if the greatest adverse effect and impact results. The review of adequacy of public facilities and services for the application for a CUP shall compare the capacity of public facilities and services to the maximum projected demand that may result from the proposed project based upon the maximum density of oil and gas wells in the project and relevant affected areas. The adequacy of roads and highways shall be considered in relation to the full weight load of trucks and tankers travelling to and from the project sites. Nothing in this section authorizes a development approval that would otherwise be inconsistent with the Comprehensive Plan Oil and Gas Element Plan or any Regional or Area Plan.

2117.1.2. An adequate public facilities and services assessment ("APFA") ties development approval of an application for a CUP to the availability of infrastructure and public service capacity measured by adopted levels of service (LOS) as shown in Table 2 below, or in the Comprehensive Plan Oil and Gas Element or in any subsequently adopted CIP, whichever has greater capacity requirements. The APFA shall be used to approve, approve with conditions and mitigation, or deny CUP applications. Approval with conditions may include timing, phasing and sequencing the oil and gas project based on availability of public facilities and public services as shown in Table 2 below, the

Comprehensive Plan Oil and Gas Element or in any subsequently adopted CIP.

**2117.2. An APFA is required prior to consideration by the Board of an application for a Conditional Use Permit.**

- 2117.2.1. Adequate public facilities and services (“APF”) include water, stormwater and liquid material management and detention, police, emergency response services, fire protection, solid waste, schools, hospitals and roads.
- 2117.2.2. Levels of service shall be utilized as shown in Table 2 below, or in the Oil and Gas Element of the Comprehensive Plan, or any adopted CIP, whichever has greater requirements.
- 2117.2.3. When determining whether adequate capacity exists, both existing and fully funded and prioritized future facilities and service capacities are counted. Where a CIP has been adopted, the priorities for future facilities and services as shown in the CIP shall be utilized.
- 2117.2.4. When an oil and gas project is reviewed, the amount of capacity it utilizes must be debited against available capacity for all other approved but unbuilt future projects.
- 2117.2.5. If the LOS is not met, development approval shall either be denied or approved with the condition that the development shall be timed and sequenced so that future stages of the project are approved only when adequate public facilities and services are available. Oil and gas projects are given the option to voluntarily advance capacity through a development agreement in order to obtain meet the APFA requirements in this section.

**2117.3. Determination of Adequacy of Public Facilities and Services.**

- 2117.3.1 The application meets APF standards and requirements where public facilities and services are available at the adopted LOS as shown in Table 2 below, or in the Oil and Gas Element of the Comprehensive Plan, or any adopted CIP, whichever has greater requirements.
- 2117.3.2 The application shall be denied where adequate public facilities and services are not available at the adopted LOS; or
- 2117.3.3 The application may be approved conditioned to timing, sequencing and phasing of development of oil and gas wells until all public

facilities and services are available for the year the CIP shows that facilities and services will be built and available if public facilities and services in the impact area are not presently adequate to meet the adopted LOS for the entire oil and gas project, in the same ownership, consistent with the requirements of Table 2 below.

**2117.4. Scope of Adequate Public Facilities and Services Requirement.** A determination of adequacy of public facilities and services for an oil and gas project shall find that:

- 2117.4.1. Public facilities and services are available at the time of issuance of a development order approving the application for a CUP; and
- 2117.4.2. Public facilities and services are deemed to be available at all stages of the development approval process through approval of the CUP, Grading and Building Permits and the Certificate of Completion. Availability of facilities and services, present and future, shall be assured for all future permitting processes through a development agreement entered into between the applicant and the County.

**2117.5. Duration.** A development order determining that public facilities and services are adequate is valid until the earlier of one of the following:

- 2117.5.1. The expiration of the development order granting CUP approval, or of any concomitant development agreement; or
- 2117.5.2. If no expiration period is provided in the development order or development agreement, the determination expires unless construction commences on at least one oil and gas well or pad site within two years after final approval of the last ministerial development approval; and on at least 25 percent of all of the oil and gas wells or pad sites within three years after approval.

**2117.6. Advancement of Public Facilities and Services Capacity.** In order to avoid denial or phasing of the oil or gas facility under the APF standards and requirements, the applicant may voluntarily propose, through entering into a development agreement with the County, to construct or to secure funding for the public facilities and services necessary to provide capacity to accommodate the proposed development for the life of the project at the adopted LOS and at the time that the impact of the development will occur as an alternative to the denial or deferral of development consistent with the requirements of this section. Such development agreement may require an applicant

to pay more than its roughly proportional share of infrastructure needs generated by the proposed oil or gas facility subject to subsequent reimbursement by subsequent oil and gas projects sharing the infrastructure provided by the applicant.

**2117.7. Standards and Requirements for Advancement.** No advancement of capacity for public facilities and services needed to avoid a deterioration in the adopted LOSs shall be accepted by the County unless:

2117.7.1 The proposed public facility meets the level of service established in Table 2, or identified in the Comprehensive Plan Oil and Gas Element or as shown in prioritized and funded capital improvement shown in any future adopted CIP; or

2117.7.2 Appropriate conditions shall be attached to the CUP development approval included to ensure that the applicant will obtain any necessary approvals for construction of the public facilities from any agency or public improvement or assessment district, other than the County.

2117.8. Construction Commitment. The commitment for construction or advancement of public facilities and services prior to the CUP approval shall be included as a condition of the development approval. The commitment shall contain, at a minimum, the following:

2117.8.1 For planned capital improvements or services, either a finding that the planned capital improvement or service is included within the CIP for the year in which construction of the project is scheduled or the applicant commits to advancing the facilities and services;

2117.8.2 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

2117.8.3 A schedule for commencement and completion of construction or expansion of the planned capital improvement and service with specific target dates for completion;

2117.8.4 A statement that the planned capital improvement and service is consistent with the General Plan, any Area Plan and the County's CIP;

- 2117.8.5 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;
- 2117.8.6 If the planned capital improvement and public service proffered by the applicant will provide capacity exceeding the demand generated by the proposed oil and gas project, but is needed to meet past deficiencies reflected in the overall capacity needed for the project, reimbursement shall be offered to the applicant for the pro rata cost of the excess capacity for the year in which the capital facility or service would have been built as shown in the prioritized CIP or from any funds paid by subsequent oil and gas development projects; and
- 2117.8.7 The construction or funding of only a portion of a public facility or service by the applicant needed to meet the adopted LOS shall be approved only where the oil and gas project will be able to provide the capacity needed to meet the adopted LOS for a portion of the project; and the construction or funding of the balance of the public facility that is needed to meet the adopted LOS will be generated from other sources, including but not limited to: public improvement or assessment district assessment, rates, taxes or charges; and/or provision in a development agreement. Availability of these alternative sources shall constitute a condition of approval for the financing of the on and off-site infrastructure and public services.

**2117.9. Annual Financing of Adequate Public Facilities and Services.** The applicant for an Oil and Gas CUP shall provide a surety mechanism guaranteeing annual funding of all required adequate public facilities and services, including maintenance and repair, the need for which is generated by the oil and gas project. Such annual funding shall be provided for in the development agreement to be entered into between the County and the applicant as a condition of development approval of the Oil and Gas CUP. If additional Oil or Gas projects are approved, annual funding contribution shall be apportioned among all projects so approved based on the pro-rata need generated by each project.

**2117.10. Methodology.** No determination as to compliance with this section shall be approved by the Board unless adequate public facilities and services are

available at the adopted level of service set forth in Table 2 below, or as shown in the Comprehensive Plan Oil and Gas Element; or any future adopted CIP. Adequate public fire, police or emergency response times are calculated for the distance for the distance between the oil and gas facility and the fire, police or emergency response facility.

Table 2:	Level of Service (LOS) per 1,000 Residents Including Oil and Gas Facilities
Facilities & Services	
Fire Department	
Vehicles (Number)	1.55
Building (GSF)	1,977
Personnel (Number, Career & Volunteer)	4.27
Average Response Time	10 min.
Fire Station Service Area	4 miles
Emergency Response Time	10 min.
ISO Rating	7/9
Sheriff's Department	
Vehicles (Number)	1.82
Building (GSF)	91
Personnel (Number, Career)	1.44
Average Response Time:	10 min.
Roads	
Road Capacity	LOS "C"
Road Design	See Subdivision Regulations
Affordable Housing	
Jobs/Housing Balance	
Provide Housing for all Employees with less than 100% of County median family income	

**2117.10.1. Level of Service Standards.** Compliance with LOS standards and requirements shall be measured for each public facility and service set forth in Column (A) of Table 2 in accordance with the corresponding standards and requirements set forth in Column (B) of Table 2.

**2117.10.2. Adequacy of Public Facilities.** Public facilities and services shall be adequate if it is demonstrated that they have available capacity at the adopted LOS, taking into account the LOS established in Table 2, identified in the Comprehensive Plan Oil and Gas Element; or as shown in prioritized and funded capital

improvement shown in any future adopted CIP; whichever LOS is greater in order to accommodate the demand generated by the proposed Oil or Gas project as well as approved pipeline Oil or Gas projects and other residential and non-residential development approvals in accordance with the following calculation methodology:

2117.10.2.1. Calculate total capacity by adding together the total capacity of each public facility and service.

2117.10.2.2. Calculate available capacity by subtracting from the total capacity the sum of: the demand for each public facility and service created by existing oil and gas projects; the demand for each public facility created by the anticipated completion of approved oil and gas project pipeline projects; and the demand for each public facility created by the anticipated completion of the proposed oil and gas project under consideration for determination.

**2117.11. Mitigation.** The APFA shall consider mitigation measures for alleviating public facility and service inadequacy which shall include:

2117.11.1. Phasing, timing and sequencing the CUP project so that no CUP or subsequent ministerial development orders are issued before roads, fire, police, water availability, sewer and water delivery systems, emergency service or stormwater drainage facilities needed to achieve the LOS standard are constructed and operable; and

2117.11.2. 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: surfacing, re-surfacing and/or widening the pavement; providing turn lanes, median islands, access controls, or traffic signalization, road width and turnaround access for fire, police and EMS vehicles. All private roads must meet the same standards and requirements as provided for public roads in the San Miguel Comprehensive Plan Oil and Gas and Transportation elements. Private roads will only be permitted if the applicant enters into a development agreement for which construction, operation, maintenance standards, requirements and financial terms will be set out in the development agreement.

**2117.12. Fire, Police, and Emergency Services.** Needed fire flow shall be determined in accordance with the Insurance Services Office, "Fire Suppression Rating Schedule" (2010 edition). In determining the effect and impact of the proposed development on achieving fire, police, and emergency service LOS, the Board shall take into consideration response times, and the number and location of available apparatus and fire, police, and emergency service stations that are manned by full time professional service personnel. Calculation of response times shall include the time it takes volunteer emergency personnel to get to the station. Adequacy of fire protection shall also take into account the need for special equipment to handle chemical, oil and gas fires and explosions. All Oil and Gas vehicles shall be clearly marked with a standard flag describing the vehicle as accessory to an oil and gas project.

**2117.13. Availability of Usable Water Supplies.**

2117.13.1 Oil and Gas CUP applications shall be analyzed with respect to the availability of adequate usable water supplies, and shall be determined pursuant to the following information obtained from the required Water Availability Assessment to determine:

2117.13.1.1. System capacity;

2117.13.1.2. Capacity of well field, or other source of raw water supply;

2117.13.1.3. Historical and last three (3) year average flow of surface water;

2117.13.1.4. Number of hook-ups and the estimated usable water demand per hook up; and

2117.13.1.5. Number of hook-ups for which contractual commitments have been made.

2117.13.2. The CUP development order shall provide findings based on substantial evidence that the project is within a water service area and that there is available usable water capacity to serve the oil and gas project as proposed. If the ability of a provider to serve a proposed development is contingent upon planned facility expansion in accordance with an adopted future CIP, details regarding such planned improvements shall be submitted and the developer shall advance the construction of the improvement in accordance with the provisions of section 2115.6.

2117.13.3. The determinations in this section shall be made a part of the Water Availability Assessment.

**Section 2118. Water Availability Assessment.**

2118.1. A Water Availability Assessment required for an application for an Oil and Gas for a CUP shall include:

2118.1.1. An evaluation of the availability of a 50-year water supply for the oil and gas project;

2118.1.2. 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, taking into account other existing and planned future uses.

2118.1.3. The applicant shall identify any public water system or water company that has the capacity to supply water for the project and request a binding commitment from each. The governing body of the water system or company shall approve the commitment at a regular or special meeting. The public water system or water company are to provide the commitment not later than 90 days after receiving the request from the applicant.

2118.1.4. 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.

2118.1.5. The assessment shall identify relevant, 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:

2118.1.5.1. Written contracts or other proof of entitlement to an identified water supply.

2118.1.5.2. Copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system.

2118.1.5.3. Federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply.

- 2115.1.5.4. Any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.
- 2118.1.5.5. If no water has been received in prior years under an existing entitlement, right, or contract, the assessment must identify other public water systems, water companies, or water service contract holders that receive a water supply or have existing entitlements, rights, or contracts, to the same source of water.
- 2118.1.5.6. Supplies to Remedy Insufficiency: If the public water system's total projected water supplies available during a 50-year projection are insufficient, then the applicant must 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.
- 2118.1.6. 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
- 2118.1.7. The estimated timeframes within which the public water system or water company expects to be able to acquire additional water supplies.
- 2118.1.8. If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:
  - 2118.1.8.1. A review of any information contained in a water management plan relevant to the identified water supply for the proposed project,
  - 2118.1.8.2. A description of any groundwater basin or basins from which the proposed project will be supplied,
  - 2118.1.8.3. 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.

- 2118.1.9. A detailed description and analysis of the amount and location of groundwater 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, but not limited to, historic use records.
- 2118.1.10. A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the public water system, from any basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.
- 2118.1.11. An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project.
- 2118.1.12. County's Ability to Override Public Water Agency's Determination: The County shall include an evaluation of the assessment in the EIR and in the Water Availability Report.
- 2118.1.13. The County shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the County determines that water supplies will not be sufficient, the County shall include that determination in its findings for the Water Availability Assessment.
- 2118.1.14. If the project has been the subject of an assessment that complies with the requirements of this Section, than 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 are:
  - 2118.1.14.1. Changes in the oil and gas project that will substantially increase water demand,
  - 2118.1.14.2. Changes in circumstances that substantially affect the ability to provide a sufficient water supply, and
  - 2118.1.14.3. Significant new information as it becomes known.

#### **2118.1.15. CUP Conditions on Water Quantity**

- 2118.1.15.1. Prior to the approval of a CUP, the Zoning Administrator shall require that a baseline groundwater quantity monitoring program shall be conducted at a sufficient number of locations prior to constructing an Oil or Gas Facility, and followed by an ongoing monitoring program to detect changes in well productivity caused by the oil and gas development.
- 2118.1.15.2. The Operator, contracting with an independent, qualified, water specialist approved by the County, shall measure the depth to water in the monitoring wells and in each existing groundwater well within a three mile radius of the periphery of the oil and gas facility's subsurface disturbance, where the Operator can obtain voluntary permission from the well owner to make and report the measurement results.
- 2118.1.15.3. Between 10 and 30 days after completion of drilling and each hydraulic fracturing operation, semi-annually during production, and at least annually until plugging and abandonment, the Operator contracting with independent, qualified, water specialists approved by the County, shall repeat the water quantity monitoring program measurements at the same locations to determine the change in depth to water after the operation of the Oil or Gas Facility. Such results shall be provided to the Administrator. Water withdrawn from all sources will be metered, and consumption reported to the State Engineer.
- 2118.1.15.4. The County's regular inspection of facilities shall include observation of water uses. If this inspection reveals that any use of water is not consistent with all of the submitted Office of the State Engineer (OSE) permits and requirements of this ordinance, the County shall notify the Office of the State Engineer and coordinate enforcement actions.

#### **Section 2119. Traffic Impact Assessment.**

- 2119.1. General.** The intent of this section is to provide the information necessary to allow the Board to assess the transportation effects and impacts of site-

generated traffic associated with considering a CUP for a proposed oil and gas project. The isolated and cumulative adverse effects and impacts of the proposed project to the traffic shed need to be understood in relation to the existing and future required capacity of the County and State road system, and to ensure that traffic capacity will be provided at established levels of service so as not to hinder the passage of police, fire and emergency response vehicles, oil tankers to and from the project site, degrade the quality of life, or contribute to hazardous traffic conditions. This section establishes requirements for the analysis and evaluation of adverse transportation effects and impacts associated with proposed oil and gas projects.

**2119.2. Purpose.** The purpose of the traffic impact assessment is to identify the impacts on capacity, adopted level of service (LOS), and safety, which are likely to be created by the proposed oil and gas project within the unincorporated county, and municipalities within the county. The traffic impact assessment shall identify needed improvements, services and maintenance and repairs in order to:

- 2119.2.1. Ensure safe ingress to and egress from the site;
- 2119.2.2. Maintain adequate road capacity on the County and State road system to accommodate all traffic to and from the site generated by the project;
- 2119.2.3. Ensure safe and reasonable traffic operating conditions on roads and at intersections through which traffic to and from the site passes;
- 2119.2.4. Avoid creation of or mitigate unsafe and hazardous traffic conditions from heavy weights of oil trucks, drilling rigs and tankers travelling to and from the site;
- 2119.2.5. Minimize the impact of nonresidential traffic on residential neighborhoods and homes, farms and ranches in the County;
- 2119.2.6. Protect the public investment in the existing road system;
- 2119.2.7. Provide a basis for approving, modifying, or denying an application for a CUP based upon the adequacy or inadequacy of the County and State road systems, through to the nearest interstate highway access, to handle the needs generated by the project;
- 2119.2.8. Provide a basis for applicant financing of all County and State road improvements the need for which is generated by the oil and gas project, through impact fees, exactions, development agreements and/or

Public Improvement District assessments and financing for capacity needs;

- 2119.2.9. Evaluate whether adequate traffic capacity exists or will be available at the time a development order for a CUP is granted for the Oil and Gas project to safely and conveniently accommodate the traffic generated by the project on the County and State road system;
- 2119.2.10. Evaluate traffic impacts at site access points under projected types of traffic loads and weights;
- 2119.2.11. Evaluate the impact of site-generated traffic on affected intersections in the County;
- 2119.2.12. Evaluate the impact of site-generated traffic on the safety, capacity and quality of traffic flow on public and private roads within the County;
- 2119.2.13. Evaluate the impact of the proposed project on residential roads from the traffic to and from the site;
- 2119.2.14. Ensure that site access and other improvements needed to mitigate the traffic impact of the development utilize County and State accepted engineering design standards, requirements and access management criteria;
- 2119.2.15. Establish the monetary contribution that the applicant will be required to provide to the County or to any established public improvement district for the provision of all roads and highways the need for which is generated by the oil and gas project;
- 2119.2.16. Ensure that the proposed road layout is consistent with the public roadway design standards;
- 2119.2.17. Ensure the proper design and spacing of site access points and identify where limitations on access should be established;
- 2119.2.18. Ensure that potential safety problems on all roads to be used within the County have been properly evaluated and addressed;
- 2119.2.19. Ensure that internal circulation patterns will not interfere with traffic flow on the existing County and State road system;

**2119.3. Traffic Service Standards and Requirements.** The standards and requirements for traffic service that shall be used to evaluate the findings of traffic impact assessment are as follows:

- 2119.3.1. A volume-to-capacity (V/C) ratio of 0.80 shall not be consistently exceeded on any freeway or expressway as designated on the thoroughfare plan, and a V/C ratio of 0.90 shall not be consistently exceeded on any arterial or collector street as designated on the thoroughfare plan. "Consistently" means that the V/C ratios are exceeded based on average daily peak-hour traffic counts, projections, or estimates.
- 2119.3.2. Level of Service: For corridors, including mainline, merging areas, and ramp junctions, a LOS B shall be maintained on any highway, freeway, or arterial, and an LOS B on any other designated non local road on the transportation plan. At all intersections, an LOS B shall be maintained on any arterial or higher-order road and an LOS B on any other nonresidential road. Where the existing LOS is below these standards, the traffic impact assessment 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 standard of LOS B indicated for the CUP to be approved.
- 2119.3.3. The number of access points provided shall be the minimum needed to provide adequate access capacity for the site. Evidence of LOS B 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 this Article II.
- 2119.3.4. Average daily traffic impinging on residential roads shall be within the ranges spelled out in the Comprehensive Plan Transportation Element 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.
- 2119.3.5. Traffic flow and progression shall be ensured by locating new traffic signals or proposed changes to cycle lengths or timing patterns of existing signals to meet LOS B standards.
- 2119.3.6. The capacity of storage bays and auxiliary lanes for turning traffic shall be adequate to ensure that turning traffic will not interfere with through traffic flows on any public road.

- 2119.3.7. 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.
- 2119.3.8. To promote safety, access points and travel along all County and State roads within the County shall be designed to provide for adequate sight distance and appropriate facilities to accommodate acceleration and deceleration of site traffic. Where traffic from the proposed oil and gas project will impact 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.
- 2119.3.9. Access roads shall contain a minimum width of twenty (20) feet paved surface based upon County road construction standards and requirements for heavy vehicles. Access roads shall be sited in a manner that mitigates or minimizes their impact on the environment and neighboring land uses.
- 2119.3.10. All private roads must meet the same standards and requirements as provided for public roads in the San Miguel Oil and Gas Element of the Comprehensive Plan. Private roads will only be permitted if the applicant enters into a development agreement for which construction, operation, maintenance standards, requirements and financial terms will be provided in the development agreement.

#### **2119.4. Contents.**

- 2119.4.1. The traffic impact assessment shall contain the following information:
- 2119.4.2. The traffic impact assessment shall contain 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, S-104 or S-129. A description of potential uses and traffic generation to be evaluated shall be provided. A description of the proposed oil and gas project, including access plans, staging plans, and an indication of the number and location of well sites on all land in the same ownership shall be provided;
- 2119.4.3. 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, S-104 or S-129;

- 2119.4.4. The traffic impact report shall contain a summary of the data utilized in the study and an analysis of existing traffic conditions, as required by section 2119.4.5.
- 2119.4.5. Traffic count and turning movement information, including the source of and date when traffic count information was collected;
- 2119.4.6. Correction factors that were used to convert collected traffic data into representative design-hour traffic volumes;
  - 2119.4.6.1. 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; and
  - 2119.4.6.2. 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.
- 2119.4.7. The traffic impact assessment shall 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;
- 2119.4.8. For each defined horizon year, specific time periods are to be analyzed. For oil and gas, this time period will be the weekday peak hours;
- 2119.4.9. The traffic impact assessment shall 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, I-40, S-104 or S-129, and should identify the basis

of the trip generation, reduction, and distribution factors used in the study;

- 2119.4.10. The traffic impact assessment shall assign 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;
- 2119.4.11. The traffic impact assessment shall address the impact of traffic volumes of the projected horizon year(s) relative to each of the applicable traffic service standards and requirements 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;
- 2119.4.12. At a minimum, the applicant shall be required, at time of development approval of the CUP, to pay for applicant's roughly proportional share of the cost for construction and operation and maintenance of all roads, the need for which is generated by the Oil and Gas project, for transportation facilities for the area in which the oil and gas project is located. If such roughly proportional share is insufficient to meet traffic adequacy, the applicant shall advance the cost of additional roadway system improvements and shall be reimbursed when additional oil and gas projects are approved;
- 2119.4.13. In situations where the traffic LOS standards and requirements are exceeded, the traffic impact assessment shall evaluate each of the following mitigation alternatives for achieving the traffic service standards and requirements by identifying:
  - 2119.4.13.1. Where additional rights-of-way are needed to implement mitigation strategies;
  - 2119.4.13.2. Suggested phasing of improvements where needed to maintain compliance with traffic service standard;
  - 2119.4.13.3. The anticipated cost of recommended improvements;
  - 2119.4.13.4. If the applicant fails to advance improvements required in this section, the application for the CUP shall be denied for lack of adequate transportation system capacity, safety, and design.

- 2119.4.14. The traffic impact assessment shall take into account current priorities and budgeted projects for the State and County road system improvement, and in any future CIP adopted by the County. The applicant's traffic impact assessment shall identify study issues, assumptions, horizon years, and time periods to be analyzed; analysis procedures; available sources of data; past and related studies; assessment requirements; and other topics relevant to study requirements.

**2119.5. Traffic Impact Assessment Findings.**

- 2119.5.1. If the expert traffic consultant engaged by the County finds that the proposed project will not meet applicable traffic LOS, the traffic consultant shall recommend one or more of the following actions be undertaken by the Planning Commission in its recommendation or by the Board in determining whether to grant the CUP application:
- 2119.5.2. Reduction of the size, scale, scope, or number of well sites of the development to reduce traffic generation.
- 2119.5.3. Division of the project into phases and authorize only one phase at a time until traffic capacity is adequate for the next phase of development.
- 2119.5.4. Requiring additional dedication of right-of-way for street improvements.
- 2119.5.5. Construction of new roads;
- 2119.5.6. Expansion of the capacity of existing roads;
- 2119.5.7. Redesign of the ingress and egress to the project to reduce traffic conflicts;
- 2119.5.8. Reduction of background (existing) traffic;
- 2119.5.9. Elimination of the potential for additional traffic generation from undeveloped oil and gas properties in the vicinity of the proposed development;
- 2119.5.10. Integration of design components to reduce vehicular trip generation;
- 2119.5.11. Implementation of traffic demand management strategies (carpool or vanpool programs, flex time, and staggered work hours), to reduce vehicular trip generation; and

- 2119.5.12. Recommending denial or additional conditions or mitigation measures for conditional approval of the application for the CUP.

**Section 2120. Geohydrologic Report.**

- 2120.1. A geo-hydrologic report shall be prepared for each well and pad prior to final CUP approval, 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.

- 2120.2. The applicant shall drill sufficient oil and/or gas exploratory wells as part of the permit process application to adequately characterize the aquifer and the vadose zone. A maximum of one (1) well per acre shall be authorized but up to three (3) wells per acre may be authorized if complex geohydrologic conditions so require.

- 2120.2.1. Borehole Geophysics Requirements

- 2120.2.2. Electric Logs

- 2120.2.2.1. Long and Short Resistivity

- 2120.2.2.2. Spontaneous Potential

- 2120.2.3. Neutron Porosity

- 2120.2.3.1. Gamma-Gamma

- 2120.2.3.2. Caliper

- 2120.2.4. Temperature

- 2120.2.5. Fluid Movement (Spinner)

- 2120.3. Pump Test Requirements** for the Geological and Hydrological Report Concerning Water Monitoring Wells Needed for Final CUP Development Approval.

- 2120.3.1. Pump tests should be designed to record drawdown at the well for a sufficient time to determine transmissivity of the aquifer. Duration of the test shall be a minimum of 24 hours.

- 2120.3.1.1. All tests should 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.

2120.3.1.2. Standard best industry practices and values for storage or specific yield shall be utilized unless sufficient data is presented to justify an alternate storage or specific yield.

**2120.3.2. Technical Specifications for Well Construction.** All such monitoring wells shall be constructed according to specifications provided by the Office of the State Engineer, and shall be properly plugged and abandoned when no longer required according to specifications provided by the Office of the State Engineer.

2120.3.3. Preparation of a 20 foot water table or potentiometric surface contour map covering a 2 mile radius from the project site showing depth to water and direction of groundwater flow.

2120.3.4. Preparation of Geologic Maps, cross-sections and descriptions of the aquifer and surface water systems including information of recharge areas, springs, boundaries and estimated thickness of saturated units.

#### **2120.4 Water Quality**

2120.4.1. The applicant shall provide:

2120.4.1.1. An analysis of all single or multiple units or aquifers within a 2 mile radius of the project site;

2120.4.1.1.1. An analysis of all contaminant pathways leading from the project site to the aquifers in section 2120.4.1.1 above, including saturated sandy units within aquifers and unsaturated or vadose zone map;

2120.4.1.1.2. An unsaturated or vadose zone map; and

2120.4.1.1.3. An analysis of baseline water quality relating to:

2120.4.1.1.3.1. Up gradient Monitoring Wells;

2120.4.1.1.3.2. Down gradient Monitoring Wells; and

2120.4.1.1.3.3. Existing Wells

2120.4.1.1.4. Recommendations for the location and type of groundwater monitoring stations.

**Section 2121. Emergency Response and Preparedness Plan (“ERP Plan”).** An applicant for a CUP shall engage a professional consultant to provide an emergency response and preparedness plan (“ERP Plan”). The ERP Plan shall be reviewed by the appropriate County

Consultant(s). The ERP Plan 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. This plan shall be filed with the County at the time of application for the CUP and shall be updated on an annual basis or as conditions change (e.g. turnover in responsible field personnel, change in substances used). The ERP Plan shall consist of the following information, at a minimum:

- 2121.1. Name, address and phone number, including a 24 hour emergency number of at least two persons responsible for emergency field.
- 2121.2. 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 when the County shall have established a geographic information system for 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.
- 2121.3. 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, methane or other toxic gas emissions, or hazardous material vehicle spills or vehicle accidents.
- 2121.4. A fire prevention, response, and health and safety plan;
- 2121.5. Project-specific emergency preparedness plans are 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 final COP development approval. Systematic and independent data on groundwater quality, including methane, dissolved-gas concentrations and isotopic compositions should be collected before drilling operations begin. This baseline data will improve environmental safety, scientific knowledge, and public confidence. The operator shall be required by conditions of the CUP to provide for long-term monitoring of groundwater and surface methane emissions during and after extraction;
- 2121.6. A list, including Material Safety Data Sheets, of all chemicals, radioactive materials, additives, and organics used on site to the County. This information

will be held in the strictest confidence and shares with other relevant local emergency response personnel only on a “need to know” basis; and

- 2121.7. The County Consultant shall advise the Board as to whether the Emergency Response and Preparedness Plan is adequate to protect the public and whether the Board should approve conditionally or deny the Application for a CUP.

## **Section 2122. Fiscal Impact Assessment**

- 2122.1. The fiscal impact assessment involves a study of the fiscal implications of oil and gas drilling in the eastern area of the County and 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, schools, affordable jobs housing for employees 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, engaging expert consultants and staff costs to monitor oil projects, and maintain roads, drainage areas, water systems, environmentally sensitive areas and historic, cultural and archeological artifacts and sites.
- 2122.2. The fiscal impact assessment shall project urban levels of police, fire and emergency response service to affected eastern areas of the County and Basin. The assessment shall estimate the threshold minimum number of full time paid public service workers necessary to provide fire, police, emergency response service, school, affordable housing, road, drainage, protection of environmentally sensitive areas and historic, cultural and archaeological artifacts and sites necessary for maintenance and operation of the facilities and services. The assessment shall estimate the public service costs for new workers and worker families, together with additional employees of businesses, hotels, recreation, restaurants and entertainment venues, brought into the County to meet the demand generated by the an oil and gas project for the exploration, drilling and production periods. In collaboration with the University of New Mexico’s Bureau of Business and Economic Research, the Applicant’s fiscal impact assessment shall calculate changes in the Cost of Living Index for the County, municipal areas, and locations near active oil and gas development. This index will include housing, health care, insurance, utilities, entertainment, transportation and be compared to a 2013 baseline.”
- 2122.3. The fiscal and economic effects of oil and gas drilling shall be determined using nationally accepted and longstanding fiscal and economic models. The fiscal and economic models shall project what shall 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. Fiscal impacts shall include, but not be limited to, fire, police, emergency services, road, sewer and water, indigent fund relief, schools, incarceration facilities and County administrative services and facilities. The fiscal impact assessment shall also determine, for the proposed project, the effects of the cyclic nature of the oil and gas industry on County businesses and commerce. This determination will take into account the dependence of the County economy on oil and gas revenue, changes in population during the cycles, and other pertinent factors.”

- 2122.4. Costs shall be determined using current budgets, both operating and capital, and interviews with service providers to determine areas of deficient capacity and service where additional expenditures will be necessary. Revenues shall be determined using budgets and formulas for calculating additional taxes, infrastructure and service fees, licenses, administrative fees, grants and improvement district assessments.
- 2122.5. 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.

**Section 2123. Completeness Determination of Application for CUP.**

- 2123.1. Prior to the Zoning Administrator certifying the completeness of the application for a CUP, the applicant shall receive and forward to the Zoning Administrator, approval of Applications for Permit to Drill (“APD”) and an Exploration and Development Plan from the OCD. Each application for CUP approval shall be accompanied by a nonrefundable application fee in the amount set forth in Appendix D, together with a sum sufficient for the County to engage expert consultants for review and recommendations on all permits and for assistance during the operation of the Oil and Gas facility. The application fee shall be paid by cashier's check, wire transfer or certified funds. The experts shall review the application for the CUP and subsequent ministerial permits and certificates to evaluate specific technical issues, to make recommendations to the Zoning Administrator, Planning Commission and Board, to testify at public hearings, to review subsequent applications for building and grading permits and certificates of completion and all attachments, and to monitor the operation of the oil and gas project after all required permits and certificates have been obtained until the Oil and Gas project is legally abandoned or terminated. Prior to the issuance of a certificate

of completion the applicant shall prepare an 'as built' plan of all surface and subsurface facilities, ponds, roads, pipelines, well bores, well casing, fractured zones, other altered features, and injected materials and chemicals, and submit the plan to the Administrator and file the plan with the County clerk.

- 2123.2. The Zoning Administrator, after having determined that the application is complete, shall refer the application to other government agencies, cities within the County, or entities having a statutory interest in the matter, or otherwise affected by the application, for review and comment, including but not limited to, the New Mexico Department of Cultural Affairs, Historic Preservation Division, Soil and Water Conservation District, Agricultural Extension Service, Board of Trustees of any Spanish or Mexican Land Grant, United States Forest Service, New Mexico Department of Transportation, affected Indian Tribes, SMC Fire Chief, SMC Office of Emergency Management, the New Mexico Oil Conservation Division, the New Mexico Taxation and Revenue Department, the New Mexico Environment Department, the New Mexico State Engineer, the New Mexico State Land Office, all properties lying within one mile of the exterior boundaries of the property in which the project is located, and adjacent Indian tribes. When the application is scheduled for public hearing before the Planning Commission, the Zoning Administrator shall provide to the Planning Commission the comments received from other government agencies and interested parties prior to the public hearing.
- 2123.3. An application for approval of a CUP shall be reviewed by the Planning Commission and the Board of County Commissioners:
- 2123.3.1. For consistency with the Comprehensive Plan including the adopted Oil and Gas Element, and any applicable Regional and Area Plan including, but not limited to, a Canadian River Basin Area Plan.
  - 2123.3.2. To ensure that any environmental effects and impacts identified in the environmental impact report are appropriately mitigated;
  - 2123.3.3. To assure that improvements identified in the adequate public facilities assessment can be provided at levels of service set forth In Table 2, or as set forth in a future capital improvement plan and when such facilities will be available without impact to existing users or approved but unbuilt projects.
  - 2123.3.4. That water is available for the various phases of the oil and gas facility as set forth in the water availability assessment;

- 2123.3.5. That the impacts of traffic generated as a result of activities taking place in the proposed oil and gas project can be mitigated.
- 2123.3.6. That the fiscal impacts and geo-hydrological impacts as set forth in their respective Reports can be fully mitigated.
- 2123.3.7. To determine whether the proposed location is compatible with adjoining uses given the size, design and operational characteristics of the proposed Oil or Gas project, and whether the project facilities can be made compatible with the surrounding area by assuring the complete mitigation of 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, public safety, impacts on cultural, historical and archeological 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.
- 2123.3.8. To determine whether the proposed Oil or Gas Facility or Facilities meet or exceed the performance standards and requirements as set forth in section 2124 et seq.
- 2123.3.9. To determine whether 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.
- 2123.3.10. To the extent consistent with the other review criteria, to locate the facility or facilities within the area determined by the OCD for such Facility or Facilities.
- 2123.3.11. To determine if the proposed location is in a geologic hazard area or an area with slopes equal to or exceeding eleven (11 %) percent.
- 2123.3.12. To determine whether the requirements for co-location and 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.
- 2123.3.13. To determine whether the applicant or operator has violated any federal, state, and local laws regulating or pertaining to oil and gas exploration and production in New Mexico or elsewhere. Relevant

considerations include whether the applicant or operator has experienced spills or leaks, water contamination (whether surface or subsurface), other environmental problems; the owner's, lessee's, applicant's or operator's prior reclamation activities; whether the applicant or operator has damaged fauna, flora, historical, cultural or archaeological resources, streams, wetlands, floodway, and floodplains, hillsides, and adjacent properties in previous ; as well as any measures taken by the applicant or operator to alleviate any such problems.

- 2123.3.14. Whether the proposed Oil or Gas project will have an adverse effect or impact fiscal, economic or environmental factors, including County services including affordable housing, water availability, transportation systems, utilities, health care, law enforcement, fire protection, and emergency response.
- 2123.3.15. To assure that the Oil and Gas project meets the performance standards and requirements in section 2124 et seq.
- 2123.3.16. To determine whether the proposed Oil and Gas project will be detrimental to the safety, health, prosperity, order, comfort and convenience of the County pursuant to NMSA 1978, § 4-37-1.
- 2123.4. The Planning Commission shall hold a public hearing within forty-five (45) days after the Zoning Administrator has certified the completeness of the application and provide a written recommendation to the Board within forty-five (45) days of the close of the public hearing.
- 2123.5. The Board shall hold a public hearing within forty-five days of receipt of the recommendation of the Planning Commission, and within forty-five days after the close of the public hearing shall issue a written development order approving, approving with conditions and mitigation measures or denying the application, with findings of fact and conclusions of law.
- 2123.6. An application for development approval for an oil or gas project is subject to quasi-judicial procedural due process standards. Any member of The Board, Planning Commission, or the Zoning Administrator having: a conflict of interest; or having received any ex parte communication from any person regarding the application; or, made an unauthorized site visit without approval of the Board, Planning Commission, Zoning Administrator and the County Attorney, shall recuse himself or herself from the proceedings.
- 2123.7. In the enforcement of any development order, County staff, officials and expert consultants shall recuse themselves in the event of a conflict of interest.

**Section 2124. Performance Standards and Present and Future Requirements.** These additional Performance Standards and Requirements shall be required by the Board to have been met at the time of CUP approval. Where the performance standards and requirements apply to future operations they shall be attached as conditions and mitigation measures to the development orders approving the CUP and other ministerial development permits and certificates and inserted into the Development Agreement to be entered into by the County and applicant, to be approved concurrently with, and incorporated within, the development order approving the CUP.

- 2124.1. All drilling and other operations conducted at an Oil or Gas Facility or construction of buildings or other structures shall strictly follow the requirements of this Ordinance and shall be conducted at all times in accordance with the practices of a reasonable and prudent operator.
- 2124.2. The operator of an Oil or Gas project is required to provide an updated Emergency Response and Preparedness Plan (including but not limited to emergency response, fire prevention, health and safety) complying with the conditions and terms of the development order and development agreement granting approval of the Application for the CUP. The plan shall be filed with the County's emergency management officer, the Fire Chief and the Zoning Administrator and shall be updated annually or more frequently as conditions change. The updated Emergency Response and Preparedness Plan shall consist of the following, at a minimum:
  - 2124.2.1. Name, address and phone number, including a 24-hour emergency number of at least two persons responsible for emergency response.
  - 2124.2.2. A 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.8.7.5 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.
  - 2124.2.3. Copies of the Material Safety Data Sheet (MSDS) for each chemical or substance present at the Oil and Gas Facility.
  - 2124.2.4. A written response plan for the potential emergencies that may be reasonably 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.

- 2124.2.5. Project specific emergency preparedness plans are required for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas; as determined by the County. This plan shall be coordinated with and approved by the County prior to beginning such drilling or penetration.

**2124.4. Fire Fighting.** In addition to the requirements related to Adequate Fire Protection Facilities and Services, each Oil or Gas project shall maintain adequate firefighting apparatus, equipment and supplies at the site of the facility at all times during drilling and production, including, but not limited to, all of the following:

- 2124.4.1. Each Oil or Gas project shall comply with all fire prevention requirements set forth in 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 which shall be in addition to all fire facilities operated by full time professional fire fighters as required in the APFA. 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 pad 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.
- 2124.4.2. During drilling, 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").
- 2124.4.3. 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.

- 2124.4.4. All hazardous materials and/or special hazards at the facility shall be protected as set forth in applicable NFPA standards.
- 2124.4.5. Lightning protection equipment shall be provided at each facility containing crude oil, natural gas or water storage tanks. The lightning protection equipment shall be in accordance with recommendations of the NFPA.
- 2124.4.6. Crude oil, gas and water tanks shall be installed with a vent system approved by the OCD. A flame arrestor shall be installed on the vent line.
- 2124.4.7. 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.

#### **2124.4.8. Hazard Identification and Label Protection**

- 2124.4.8.1. 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.
- 2124.4.8.2. 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.
- 2124.4.8.3. When traffic or safety is a concern, on-site security must be provided during active drilling phases.

#### **2124.5. Appearance and Maintenance of the Site**

- 2124.5.1. The premises upon which an Oil or Gas Facility is located shall be kept in a clean and orderly condition at all times.
- 2124.5.2. After a well has been completed or plugged and abandoned, the operator shall clean the premises, complete restoration activities pursuant to a restoration plan, remove equipment no longer being used and repair all damages to the premises:

- 2124.5.3. No mud, wastewater, oil, slush, radioactive materials or other waste shall be permitted to flow off of the drill site.
  - 2124.5.4. Suitable and adequate toilet facilities shall be made available and kept in a clean and sanitary condition during drilling, fracking and production.
  - 2124.5.5. 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.
  - 2124.5.6. The premises shall not be used for the storage of pipe or other equipment or materials except during the drilling or servicing of wells.
  - 2124.5.7. All above-ground production equipment shall be painted a uniform flat tan color.
  - 2124.5.8. 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 re-application to the disturbed areas during site reclamation.
  - 2124.5.9. An Oil or Gas Facility shall not cause significant erosion or sedimentation. When possible, vegetative buffers, swales, berms or waterbars 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.
- 2124.6. Storage Tanks.** 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 project 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.
- 2124.7. Closed Loop Systems.** Each site where there is a producing oil or gas well shall have a gas and liquid containment system using a series of enclosed above ground tanks to control the escape of methane, dissolved-gas concentrations, wastewater, oil, radioactive liquids or particulate or other non-solid waste materials and isotopic compositions. Only closed loop systems that

meet or exceed the requirements of NMAC 15.1.21, shall be used during the drilling, fracking, production and transportation process of operating the Well. Open pits and reserve pits are prohibited under all circumstances.

**2124.8. Water and Air Quality Protection Program.**

2124.8.1. Subsequent to obtaining final approval of the CUP, the operator shall complete a baseline water quality testing program prior to obtaining a building permit authorizing construction of the Oil or Gas project. At least three monitoring wells shall be constructed according to guidelines prepared by the County's expert hydrologist. The location of the monitoring wells shall be specified by the County's expert hydrologist. 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 bottomhole 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 Zoning Administrator and the County's expert hydrologist, using appropriate EPA analytical methods to test the following parameters, including but not be limited to: Alkalinity, Arsenic, Barium, Boron, Calcium, Chloride, Eh/ORP, Gross Alpha/Beta (for all radioactivity, including Thorium, Potassium-40, Uranium-series decay products (e.g., Radon), Hardness, Iron Total, Ferrous Iron, Magnesium, Manganese, Methane/Ethane, Nitrate, Oil/Grease (HEM), Potassium, pH, Selenium, Sodium, Strontium, Sulfate, Total Dissolved Solids, Uranium, Volatile Organic Compounds (i.e., BTEX-Benzene, Toluene, Ethylbenzene, Xylenes).

2124.8.2. In the event a property owner refuses access to a well for purposes of locating a monitoring well, an affidavit from the operator 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 to provide the baseline data and monitoring required by this Ordinance.

- 2124.8.3. Between 10 and 30 days after completion of drilling and each hydraulic fracturing operation, and semi-annually during production, the Oil and Gas Consultant Inspector shall require 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. If water resources have been degraded the Operator contracting with independent, qualified, water specialists approved by the County, shall repeat the water quality monitoring program measurements at the same locations to determine the change to water after the operation of the Oil or Gas Facility. Such results shall be provided to the Zoning Administrator. 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 Zoning Administrator.
- 2124.8.4. The Zoning 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.
- 2124.8.5. 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.
- 2124.8.6. If groundwater is to be drawn from other than a public or private water system, the applicant shall document that he or she has the legal right to pump that water for the proposed purposes and in the needed quantities.

**2124.8.7. Supplemental Water Quality Standards.**

- 2124.8.7.1. The Oil or Gas project shall not cause significant degradation in the quality and quantity of off-site surface waters from the addition of non-point source pollution, exceeding baseline measurements, in violation of state and federal law or OCD standard or regulation; as determined by the Board in the development order for the CUP.

- 2124.8.7.2. The Oil or Gas Facility project shall not cause degradation in the water quality of any off-site public or private well so that any baseline measurement or regulated groundwater standard is exceeded or cause a reduction in water pressure of any public or private water wells in violation of any OCD standard or regulation.
- 2124.8.7.3. The Oil or Gas Facility project shall not pose any significant risk, nor cause any significant degradation to subsurface water resources exceeding baseline measurements in violation of any OCD standard or regulation, or state or federal law.
- 2124.8.7.4. The operator shall maintain all safety and pollution monitoring equipment deemed necessary by the Board and shall inspect the equipment quarterly. The results of the monitoring and inspections shall be submitted to the Zoning Administrator.

**2124.8.8. Supplemental Air Quality Standards.**

- 2124.8.8.1. Oil and gas facilities, singly or cumulatively, shall not pose any nuisance (odors) or significant risk, nor cause significant degradation in the quality of ambient air near facilities or in region-wide airsheds.
- 2124.8.8.2. All Oil and gas facilities shall comply with the New Mexico Environment Department's Air Quality Bureau standards pursuant to N.M.A.C. 20.2.1. and the U.S. EPA Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 40 CFR Parts 60 and 63.
- 2124.8.8.3. A baseline air quality testing program shall be conducted prior to constructing an Oil or Gas Facility, followed by an ongoing monitoring program to detect changes in air quality caused by the oil and gas development. Air monitoring shall include measurements and information to characterize the quality of air at each monitoring station, including meteorological conditions and concentrations of pertinent analytes, including VOCs (benzene, ethylbenzene, toluene, xylene, and n-hexane), CO, NOX and NO2, SO2, PM2.5 and PM10, ozone (O3), and methane (CH4). Such

results shall be provided to the Zoning Administrator. Collection and analysis of air samples shall be performed using appropriate EPA methods and an independent, certified testing laboratory approved by the County and contracted by the Operator. Air sampling will be conducted by the Oil and Gas Inspector, or an independent, qualified, air quality specialist contracted by the Operator, with approval of the County. In consultation with an air quality specialist, air monitoring stations shall be emplaced approximately 700 feet downwind and upwind of wells and all other Oil or Gas Facilities, with at least one station located at the Oil or Gas Facility, to manually or semi-continuously monitor the target air contaminants over minimum 5-day periods. Additional monitoring of VOC emissions shall be performed with infrared (IR) scanners during unannounced inspection visits. Results will be provided to the Zoning Administrator.

- 2124.8.8.4. During drilling and each hydraulic fracturing operation, and at least semi-annually during normal production operations, the Inspector, or Operator contracting with independent, qualified, air quality specialists and laboratories approved by the County shall repeat the air monitoring program at the same locations described in 2124.8.8.3, above, to determine whether ambient air has 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 or State or Federal regulations. Such results shall be provided to the Administrator.
- 2124.8.8.5. In the event ongoing monitoring indicates degradation or pollution of ambient air, monitoring of the suspect analyte(s) shall be repeated immediately. If the degradation is confirmed, 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, and face possible enforcement actions by the County.
- 2124.8.8.6. The County shall require that the operator install additional air pollution controls at a particular well site depending on the location, size, and nature of pollutants at a particular

site. The County shall notify the operator in writing of its determination that additional air pollution controls shall be installed at a well (or facility) site and provide a schedule of compliance.

**2124.9. Noise.**

- 2124.9.1. All construction and maintenance of any Oil or Gas Facility shall be conducted in a manner to minimize the noise created to the greatest extent possible.
- 2124.9.2. 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.
- 2124.9.3. Production equipment shall be powered by electric motors if located within the service area of an electrical utility capable of powering production equipment on the project site. Production equipment may be powered by internal combustion engines prior to the time that the facility has access to electric power but subject to the restrictions contained in this subsection.
- 2124.9.4. Drilling, fracking and production 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 a non-residential inhabited building is within 500 feet of the facility, drilling and production 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 Environmental Impact Report determines that the sound levels for a specific site require further mitigation.
- 2124.9.5. For drilling and servicing activities, the operator is responsible for noise control at the well site. Compliance regarding drilling and servicing activity noise is evaluated on a complaint basis. While noise impacts from facility-related heavy truck traffic and vibration impacts from facility operations are not specifically addressed in this section, receipt of a complaint with regard to these sources may require corrective action from the operator. The County acknowledges the special nature of these sources and is prepared to consider these on a site-specific basis. An operator is expected to take every reasonable measure to avoid or minimize the impacts of heavy truck traffic and vibration. If a

valid noise complaint is received for a facility, compliance with the directive is established if a comprehensive sound survey indicates that the cumulative facility contribution is equal to or less than the prescribed sound level. In unique situations where a comprehensive sound survey is not practical, the County may approve a noise management plan. If a facility is found to be noncompliant, the operator is given the time stated in the enforcement document to undertake corrective action. This includes time for sound monitoring, analysis, evaluation, and equipment procurement and installation. The operator must be in communication with the County through all phases of corrective action.

#### **2124.10. Light.**

- 2124.10.1. All Oil or Gas projects shall comply with this Ordinance and the Night Sky Protection Act, NMSA 1978, Sections 74-12-1 et seq. (1999)(as amended) at all times, whichever is more stringent. All lighting shall be limited to the minimum required to meet security and safety standards and requirements consistent with the practices of a reasonable and prudent operator. Site lighting shall be directed downward and inward and shielded so as to avoid glare on public roads and building units within five hundred (500) feet.
- 2124.10.2. The operator shall log all lighting levels and shall provide night ambient light levels prior to commencing work on the Oil or Gas project. Levels shall be provided during the development and operation of the Oil or Gas Facility on a daily basis.
- 2124.10.3. 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.
- 2124.10.4. Lighting that does not comply with the Code shall not be permitted.

#### **2124.11. Fracking and Acidizing.**

- 2124.11.1. Fracking and acidizing of any well shall be performed in strict compliance with applicable OCD rules and the practices of a reasonable and prudent operator. Fracking pressures shall be controlled to limit the extent to which fractures escape the zone being fracked. Fracking shall

be monitored by the Oil and Gas expert petroleum engineer engaged by the County to ensure compliance with these standards.

2124.11.2. Fracking shall only use fresh water as the fluid component of the fracturing material. Water and sand used in fracking shall not contain dissolved hydrocarbons or other toxic contaminants. The use of synthetic fracking fluids is prohibited. Fracking with brine is prohibited. Reused water that meets drinking water standards and requirements may be used and such water shall be obtained from the County or a municipal system or facility that supplies drinking water, or a treatment facility that processes reused water, or a private source, and shall comply with the Water Availability Assessment. If the County expert petroleum engineer agrees, subject to clear and convincing evidence, that use of fresh water during fracturing 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 expert petroleum engineer and approved by a medical professional, both to be selected by the County. Fracking pressures shall be strictly controlled as provided in the previous paragraph to the satisfaction of the County expert petroleum engineer.

2124.11.3. After fracking is completed, all fluids, sand and other materials used in the fracking process shall, to the extent technologically possible, be removed from the well and treated.

2124.11.4. Pollution of the surface or any surface or subsurface fresh waters before, during and after the fracking process is prohibited.

## **2124.12. Setbacks**

2124.12.1. No Oil or Gas facility shall be located closer than the front, side and rear yard setbacks permitted in the Board's development order approving the CUP or the following distances for the following types of land uses; whichever is greater.

2124.12.1.1. Inhabited Dwelling – 4000 feet

2124.12.1.2. Building Used as a Place of Assembly, Church, School or Non-profit or Public Institution – 4000 feet

- 2124.12.1.3. Non-residential Use or Building – 1000 feet
  - 2124.12.1.4. Public Road or Highway – 500 feet
  - 2124.12.1.5. Residential lot on approved plat – 4000 feet
  - 2124.12.1.6. Groundwater Re-charge Area, Alluvial Aquifer, Acequia, floodplains, springs, Playa Lake, wetland and drainages as defined by the United States Corps of Engineers – 1.5 miles.
  - 2124.12.1.7. Canadian and Conchas Rivers – 2,640 feet
  - 2124.12.1.8. Creeks and major arroyos as identified on Map 18 in the San Miguel County Comprehensive Plan Oil and Gas Element – 1,320 feet.
  - 2124.12.1.9. 100 Year Floodplain Line as Designated by the Federal Emergency Management Agency – 1.5 miles.
  - 2124.12.1.10. Water Well Permitted by the State Engineer – 1 mile
  - 2124.12.1.11. Cultural, Historic or Archeological Resource – 1000 feet
  - 2124.12.1.12. Conchas Lake – 2 miles
  - 2124.12.1.13. Scenic Byways – 1320 feet
  - 2124.12.1.14. All other setbacks, including but not limited to, Capital Facilities, Treatment Plants, Transmission Lines, Parks, Recreation Areas, Bicycle and Pedestrian Paths, Open Space Set-asides, Agricultural Uses, Forest Lands, State and Federal Lands-1000 feet.
- 2124.12.2. The setbacks listed above are intended to be “minimum” protections for the listed structures and resources. Individual circumstances will be taken into account throughout the CUP application process. The Board is ultimately responsible for deciding where drill sites may be located on an individual property. At the Board’s discretion, these setbacks may be increased on a site by site basis. The Board should also pay particular attention to protecting sensitive neighboring uses such as residences when locating drill sites.
- 2124.12.3. Setback Exceptions.** When an applicant cannot locate an Oil or Gas Facility anywhere on the surface because doing so would violate the

setback requirements, the Application for the CUP shall be denied and an Application for a Beneficial Use and Value Determination shall be required.

- 2124.13. Hours of Operation.** All oil or gas development, including fracking and drilling, shall be conducted only between 8:00 AM and 5:00 PM. Upon an applicant's request, drilling (but no other activity) may be permitted up to twenty four (24) hours per day if approved by the Board on a case-by-case basis. The Board shall take into account whether the specific land use or environmental conditions warrant such an allowance. If approved for extended exploratory drilling or fracturing hours, applicants shall at all times abide by all performance standards and requirements established in this Ordinance. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation, and other related work conducted on the oil or gas facility shall be limited to between the hours of 8:00 AM and 5:00 PM except in cases of fires, blowouts, explosions and any other emergency or where the delivery of equipment is necessary to prevent the cessation of drilling or production.
- 2124.14. Visual Impact.** The Oil or Gas project shall use structures and equipment of the minimum size necessary to satisfy the project's visual requirements. The operator shall use low profile pumps and equipment to mitigate adverse visual impacts. Drill site dimensions for an Oil or Gas Facility or Facilities shall be the minimum size, recommended by best industry practices, 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.
- 2124.15. Flaring of Gas.** Gas shall not be flared except as necessary during drilling and workover, and then only as permitted by OCD regulations.
- 2124.16. Landscaping and Screening.** An Oil or Gas project shall be sited in areas that maximize the amount of natural screening available for the facility or facilities. Natural screening includes, but is not limited to, the use of existing vegetation as a background, the construction of the facility or facilities near mature stands of vegetation or behind ridges or natural rock formations. Where natural screening is inadequate, as determined by the Board, other screening or fencing, including but not limited to trees, shrubs, grass, ground cover or flowers, bricks, rocks, walls or stones may be required. In exercising this power the Board shall consider the existence of any surface use agreement between the surface owner and the mineral owner or lessee. Natural screening includes, but is not limited to, the use of existing vegetation as a background.

the construction of the facility near mature stands of vegetation or behind ridges or natural rock formations. Where natural screening is inadequate, as determined by the County, other screening or fencing, including but not limited to trees, shrubs, grass, ground cover or flowers, bricks, rocks, walls or stones shall be required. In exercising this power the County shall consider the existence of any surface use agreement between the surface owner and the mineral owner.

**2124.17. Security.** A security fence and a locked gate for an Oil or Gas project and facilities shall be required where there is a determination by the Board that public safety so requires.

**2124.18. Disposal of Salt Water or Other Deleterious Substances.**

2124.18.1. There shall be no disposal of saltwater, produced water or water containing salts, radioactive materials or other minerals in quantities that exceed applicable ground water standards and requirements established by the Water Quality Control Commission, at the site of any Oil or Gas facility.

2124.18.2. 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.

2124.18.3. The operator shall make sufficient provisions for the safe disposal of water containing salts or other minerals in quantities that exceed applicable ground water standards and requirements 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-approved disposal well or site. No disposal of such substances shall be permitted at the site of the Oil or Gas Facility. Disposal of waste via an injection well within the County is prohibited, unless the injection well is at an OCD approved disposal facility.

2124.18.4. 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 Zoning Administrator. If, in the judgment of the County's Consultant(s) such leak or spill represents a potential hazard to surface or ground water resources or the environment, the Zoning Administrator shall immediately notify OCD. The Zoning Administrator shall 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.

2124.18.5. All other waste shall be treated, stored and disposed of in accordance with all local, state and federal requirements.

2124.18.6. Surface disposal of wastes of any kind is prohibited at an Oil or Gas facility.

2124.18.7. No person, under the control, supervision or employment of the operator, shall deposit, drain or divert into or upon any public or private 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 approved facility.

**2124.19. Bottom Hole Protection.** The bottom hole assembly must provide force for the bit to break the rock (weight on bit), survive a hostile mechanical environment and provide the driller with directional control of the well. The assembly shall include a mud motor, directional drilling and measuring equipment, measurements-while-drilling tools, logging-while-drilling tools and other specialized devices. This regulation shall not exceed OCD bottom hole protection regulations.

**2124.20. Financial Assurance and Insurance.**

2124.20.1. An applicant seeking a CUP for an Oil or Gas project shall furnish financial assurances acceptable to the County.

2124.20.2. Acceptable financial assurances may include: 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 project 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 order and accompanying development agreement granting the CUP; or 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 similar terms unless the issuer notifies the County in writing of non-renewal at least ninety (90) days prior to the end of the five (5) year period.

2124.20.3. 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.

2124.20.4. The County shall release the financial assurance 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 the terms of this Ordinance; if the Oil or Gas project 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 II and a new CUP development order has been granted. Release of financial assurance shall be consistent with the long-term provisions of Section 2106.12.

**2124.20.5. Comprehensive General Liability Insurance.** In addition to the required financial assurance, the applicant shall submit with the application for the CUP, a policy or policies of commercial general liability insurance, including contractual liability, covering bodily injuries and property damage that names the owner, lessee, applicant and operator as the insureds 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 must 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 ninety (90) days prior to the effective date of such cancellation.

**2124.20.6. Pollution Liability Insurance.** The applicant shall submit, with the application for the CUP, a pollution insurance policy or policies that provide standard pollution liability insurance with a 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 owner, lessee, applicant and operator as insureds. Such insurance policy shall be maintained in full force and effect from the date the application is submitted and continuing in force until 10 years after 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 required by section 2124.19.5. The insurance policy or policies shall provide that they may not be cancelled without written notice to the County at least ninety (90) days prior to the effective date of such cancellation.

**2124.20.7. Self-Insurance.** An operator offering a plan of self-insurance shall provide a certificate of insurance with coverage of not less than \$10,000,000.00 per occurrence 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. Pollution Liability Insurance as required in section 2124.20.6 shall be required to be in force for a period of 10 years after abandonment of the well or project.

**2124.21. Transfer of Development Rights ("TDR").**

2124.21.1. The County herein adopts these provisions for use of TDRs, in the manner prescribed in this section.

2124.21.2. The purposes of this section are to authorize the owner of oil and gas estates or oil and gas leaseholds to seek relief pursuant to a beneficial use and value determination through the transfer of one or more one or more rights to develop oil or gas drill sites and pads from a sending parcel to a receiving parcel to:

2124.21.2.1. Conserve agriculture, ranch, open space, forestry and environmentally sensitive lands;

2124.21.2.2. Protect lands and structures of cultural, architectural, and historic significance;

- 2124.21.2.3. Ensure that the owners of land that is so preserved, conserved, or protected may make reasonable use of their property rights by transferring their right to develop to other oil and Gas estates and leases that can make use of it;
- 2124.21.2.4. Provide a mechanism whereby drill site development rights may be reliably transferred;
- 2124.21.2.5. Ensure that development rights are transferred to oil and gas fee simple estates and leases that have received development approvals for an Oil and Gas CUP;
- 2124.21.2.6. Authorize the County to create a TDR Bank, whereby oil and gas development rights may be purchased and conveyed by the County, in order to stabilize the market in development rights and to regulate or control the development property that the County intends to protect;
- 2124.21.2.7. Authorize transfers or donations of development rights to the County or the TDR bank.

**2124.22. Development Agreements.** The County and the Applicant (including but not limited to, applicants, operators, owners, lessees of subsurface oil and gas estates or leases) shall enter into and adopt a development agreement, in order to implement the requirements and performance standards of Article II, and all conditions and mitigation measures incorporated in the CUP development order approving, or approving with conditions and mitigation measures the application for the CUP. The Development Agreement shall be fully negotiable as to all of its terms by all the parties, provided that failure of the applicant, the operator and the owners and lessees of subsurface mineral estates and/or oil and gas lessees to consent to those terms of the Development Agreement that require compliance with the mandatory provisions of Article II shall be considered by the Board to be a termination of the CUP application. Such Development Agreement, with regard to the provision of adequate public facilities may be entered into with other governmental units, public improvement districts and public or private utilities with jurisdiction, pursuant to this section. The Development Agreement shall be approved by the Board concurrently with the final development order granting approval, or conditional approval of the CUP application. A development agreement shall be entered into and adopted only pursuant to this Section and shall have the force and effect of a land development regulation.

- 2124.22.1. Except as provided expressly to the contrary in a development agreement, development and use of the oil and gas property that is the subject of a development agreement shall occur according to the terms, conditions, and other provisions of the agreement, notwithstanding inconsistent land development code regulations and amendments.
- 2124.22.2. Except where the development agreement does not include any term, condition, or other provision concerning a matter that is regulated by one or more land development code regulations as amended, then those land development code regulations shall apply.
- 2124.22.3. A development agreement will not take effect until it is recorded, by either of the parties to the development agreement, with the County Clerk within thirty (30) days after its adoption.
- 2124.22.4. A development agreement may contain terms that:
- 2124.22.4.1. Grant vested rights to the applicant, operator, owners, lessees of subsurface oil and gas estates or leases for the term of the CUP and subsequent grading and building permits and certificates of completions, vesting the approvals from any subsequent amendment of Article II, Ordinance 86-2, or other County ordinances and regulations, the terms of which abrogate rights conferred by the CUP, the development agreement, and subsequent building and grading permits and certificates of completion. Vesting shall also apply for all phases of multiphase projects where the applicant will be seeking supplemental CUPs, building and grading permits, and certificates of completion, over a multiple year period not to exceed fifteen (15) years in duration. Vesting, however, may be abrogated by the adoption of subsequent state or federal statutes and regulations that constitute significant measures providing for the protection of health or safety.
  - 2124.22.4.2. Grant consent to the County for the requirement that the applicant, operator, owners, lessees and operator of subsurface oil and gas estates or leases pay monies or dedicate land for the advancement of adequate public facilities that relate to past deficiencies or public facility or service needs that are not proportional to the needs generated by the Oil and Gas project, provided the County

shall endeavor in good faith to reimburse the applicant, operator, owners, lessees of subsurface oil and gas estates or leases from exactions, dedications, impact fees, public improvement district assessments and public or private utility charges, or provisions of reimbursement contained in development agreements imposed on subsequent oil and gas projects sharing the facilities and services that were advanced.

2124.22.5. A development agreement shall be:

2124.22.5.1. Consistent with the County Comprehensive Plan including the Oil and Gas Element, and any applicable Regional, or Area Plan, including but not limited to, a Canadian River Basin Plan.

2124.22.5.2. Adopted by an ordinance of the Board after notice and hearing as required for the adoption of amendments to Ordinance 86-2.

2124.22.5.3. Enforceable by the County and other governmental units, party to the development agreement, in the same manner as enforcement of the provisions of Ordinance 86-2.

2124.22.5.4. Enforceable by the owners of subsurface mineral estates and oil and gas lessees who are party to the development agreement and their successors in interest by civil action against the local government or other parties as may be necessary, except that if an enforcement action upon the development agreement by the County has previously been commenced and is still pending, any and all enforcement or disputes shall be determined in the enforcement action.

2124.22.5.5. Written and include the following terms:

2124.22.5.5.1. The names of all parties to the development agreement.

2124.22.5.5.2. A description of the oil and gas project which is the subject of the development agreement.

2124.22.5.5.3. A statement detailing how the development agreement is consistent with the Comprehensive Plan, including the Oil and Gas Element, and any

applicable Regional or Area Plan, including but not limited to a Canadian River Basin Plan.

2124.22.5.5.4. The effective date of the development agreement and the duration of the development agreement, which shall not exceed ten (10) years except where the development agreement authorizes phased development, the duration of the agreement shall not exceed fifteen (15) years.

2124.22.5.5.5. A development agreement, upon consent of all parties, shall contain a mediation or arbitration procedure by which disputes concerning the development agreement may be decided. The decisions reached under such procedure shall be considered land-use decisions.

2124.22.5.5.6. A development agreement may be modified by:

2124.22.5.5.6.6.1. The mutual written consent of all parties thereto, with the consent of the Board by adoption of an ordinance after a public hearing; or

2124.22.5.5.6.6.2. The County if it finds in writing, after a public hearing with proper notice, that a hazard, unknown to the County at the time the development agreement was adopted, exists on or near the property of the oil and gas project that is the subject of the development agreement that would endanger the public health, safety or general welfare if development were to commence or proceed pursuant to the development agreement.

**Section 2125. Beneficial Use and Value Determination.** The purpose of these provisions is to ensure that a denial or conditional approval of a CUP application does not result in an unconstitutional deprivation of private property. The intent of the Board is to provide through this section an administrative variance process to resolve any claims that the application of Article II has created as applied

unconstitutional taking of property under the U.S and New Mexico Constitutions. This section is not intended to provide relief related to regulations or actions promulgated or undertaken by agencies other than the County.

**2125.1. Contents of Application.** An application for a beneficial use and or value determination shall be made to the County by filing an application together with an application fee as established by the Board within one year subsequent to the Board's final development order with respect to denying or modifying an application for an Oil and Gas CUP. The application shall be submitted in a form established by the Zoning Administrator and shall include the following:

- 2125.1.1. The name, address, and telephone number of the applicant; the name, address and telephone number of the owner of the subsurface mineral estate and/or the oil and gas lessee, if applicable.
- 2125.1.2. A legal description and the real estate or parcel number for the subsurface and surface property in the same ownership.
- 2125.1.3. If a person other than the applicant is requesting relief pursuant to this division, a notarized letter of agency from the owner of the subsurface mineral estate and/or oil and gas lessee ("Owner") authorizing the person to represent them with respect to filing the application. The owner or lessee will be bound by the representations, obligations, and agreements made by the owner's or lessee's agents in the course of the beneficial use and value determination process. The term "applicant" as used in this division refers to the owner or lessee, or the owner's and lessee's agent, as applicable.
- 2125.1.4. Date of acquisition, offers to purchase, and attempts to sell. Documentation of the date of acquisition 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.
- 2125.1.5. A statement describing the land development code regulation, general or area plan policy, or other final developmental order or action of the County, which the applicant believes necessitates relief under this Section, including the effective date of the land development code regulation or general or area plan policy and/or the date of the final action by the County related to the property. The application shall

identify the land development code regulations or general plan or area plan policies of the County by section and number.

- 2125.1.6. A description of the property's physical and environmental features, total acreage, and use at the time of acquisition, on the effective date of the development order and presently.
- 2125.1.7. Evidence of any investments made to improve the property, the date the improvements were made, and the cost of the improvements.
- 2125.1.8. A description of the type and extent of land uses allowed on the surface and subsurface of property, from the time the applicant acquired the property until the date of application under this section, including allowable density, permitted and special uses, number and location of oil and gas wells, transfer of development rights permitted, opens space ratios, and other factors affecting the property's development potential.
- 2125.1.9. A statement regarding the relief requested by the owner.
- 2125.1.10. Maps shall be included in the application, which show the property presently, at the time of acquisition, and upon the effective date of the development order of the County the applicant asserts requires relief under this Section. Maps shall indicate the land use designation, future land use designation, aerial photography, and environmental conditions and habitat, cultural, historical or archaeological artifacts or sites on the property.
- 2125.1.11. A description of all efforts to seek approval to develop the property for oil and gas exploration, or for any other use, including dates of applications; names of the local, state, or federal agencies; nature of approvals, denials, or appeals sought; dispositions; and the dates of disposition.
- 2125.1.12. Evidence of whether the applicant has received necessary approvals from governmental agencies other than the County, which are required in order to undertake development of the property for oil and gas exploration and drilling, or for other uses.
- 2125.1.13. The signature of owner(s), lessee(s) and agent(s), attesting to the accuracy of the statements and representations made in the application.
- 2125.1.14. Appraisals, studies, documentary evidence, or additional materials supporting the applicant's contention that relief under this division is

appropriate, including appraisals related to any alleged diminution of all or substantially all fair market value of the property.

- 2125.1.15. The Planning Commission's and Board's development orders and the findings on all of the assessments, plans, reports and studies required for the application for the application for the CUP.
- 2125.1.16. The owner or lessee and the owner's or lessee's agent ("applicant") shall file a memorandum setting forth the legal basis asserted for relief under this Section.
- 2125.1.17. The signature upon the application shall constitute a certification that the applicant has undertaken due diligence in the filing of the application, that to the best of its 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.
- 2125.1.18. The applicant shall have a continuing obligation throughout the proceedings to correct any statement or representation found to have been incorrect when made or which becomes incorrect by virtue of changes circumstances.
- 2125.1.19. If a claim for relief pursuant to this section is based upon facts the applicant knew or should have known were not correct or upon assertions of law that were frivolous, the Board shall deny the application.

## **2125.2. Completeness.**

- 2125.2.1. Within fifteen (15) calendar days of the date of filing the application, the Zoning Administrator shall determine if the application is complete and includes the materials and information listed in section 2125.1.
- 2125.2.2. If the Zoning Administrator determines that the application is not complete, the Zoning Administrator shall within fifteen (15) days from the filing of the application send a notice of incompleteness by certified mail return receipt request to the applicant specifying the application's deficiencies and the additional information that needs to be attached to the application. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct all the deficiencies within thirty (30) calendar days of receipt of the notice of incompleteness, the Zoning Administrator shall within fifteen (15) days

prepare a development order specifying in detail the deficiencies that have not been rectified and notifying the owner or lessee in writing by certified mail return receipt request that the application has been denied. The owner or lessee shall have the right to appeal from the Zoning Administrator's development order to the Board within fifteen (15) days after receipt of the notice

- 2125.2.3. When the application is determined to be complete, the Zoning Administrator shall notify the applicant in writing and, within fifteen (15) calendar days, forward the application to the Board to set a hearing date and shall prepare the item for consideration by the Board.

### **2125.3. Beneficial Use and Value Standard and Processing**

- 2125.3.1. In furtherance of the purpose and intent of this section relief under this section may be granted where a court of competent jurisdiction likely would determine that a final action by the County has caused an as applied regulatory taking of applicant's property and a judicial finding of liability would not be precluded by a cognizable defense, including public nuisance, lack of distinct reasonable investment-backed expectations, failure to establish all or substantially all loss of economic use and value of the property in the same ownership, taking into account the available property interest in transfers of development rights granted by this Ordinance, whether utilized or not, statutes of limitation, laches, or other preclusions to relief. Whether such liability, at the time of application under this section is likely to be established by a court shall be determined based on applicable statutory and case law at the time an application is filed under this Section.
- 2125.3.2. The applicant shall have the burden of showing that relief under this section is appropriate.
- 2125.3.3. The Board shall schedule and hold a quasi-judicial discretionary public hearing on the beneficial use or value determination application within sixty (60) calendar days of receipt of the complete application from the Zoning Administrator.
- 2125.3.4. At the hearing, the applicant shall present the owner's or lessee's case and the County Attorney or County Attorney's representative shall present the County's case. The Board shall accept documentary or testimonial evidence, briefs, reports, or proposed recommendations from the parties. Cross examination of witnesses shall be allowed through the submission of written questions to the Chair, who shall

pose the questions to the witness. Interested parties other than the applicant may be permitted to intervene in the proceedings provided: the intervenor shall be an organization or association registered to receive notice under this Ordinance; any public or governmental agency; any owner of a surface or subsurface estate or lessee of an oil and gas lease within one (1) mile of the site perimeter, or any person aggrieved or with standing to intervene.

- 2125.3.5. Within forty-five (45) days after the close of hearing, the Board shall grant a development order by resolution, approving, approving with conditions or denying the application based on the standard of this section. The development order shall state all of the findings of fact and conclusions of law and policy underlying the Board's determination, including but not limited to, that the Board's development order, nor any or evidence submitted by the County constitutes an admission of a taking of property, or other unconstitutional deprivation. If the application be granted in whole or in part, the Board shall spell out all the terms of the remedies afforded to the applicant and direct the Zoning Administrator and County Manager to undertake any additional steps necessary to implement the development order.

#### **2125.4. Granting Relief**

- 2125.4.1. If the Board determines that relief is appropriate under this section, relief may be granted consistent with the Comprehensive Plan, or any regional or area plan, including but not limited to, a Canadian River Basin Plan.
- 2125.4.2. In order to avoid an unconstitutional as applied taking and to provide the applicant with an economically viable use and value of property pursuant to this section, the Board may allow for the minimum additional use(s), density, area dimensions or relief necessary to alleviate any as applied unconstitutional taking or other unconstitutional deprivation, including:
- 2125.4.2.1 Eligibility for real property tax relief, reduction of property assessment or adequate public facility incentives.
  - 2125.4.2.2 Authorization of additional oil or gas well sites or further collocation of oil and gas drill sites.

2125.4.2.3 Granting a CUP with exploration, drilling, fracking, storage, transportation and operation of the Oil and Gas project scheduled for a future time or phase, especially where adequacy of public facilities and services require are not fully available for the entire project at the time of CUP approval and advancement of the facilities is not feasible.

2125.4.2.4 Granting a use or area variance needed for operation of an Oil and Gas project, or for any other use of land not associated with Oil and Gas development, consistent with the Comprehensive Plan.

**Section 2126. Operation of the Oil and Gas Project and Supplemental Permits.**

2126.1. When a CUP has been issued for an Oil and Gas project, or a beneficial use and value determination development order has been granted, in whole or in part, the CUP together with subsequent Grading and Building Permits and a Certificate of Completion, shall constitute sufficient authority for commencement of exploration, drilling, fracking, production, transportation of equipment, materials and oil and gas, workovers, maintenance, repair and testing and all other usual and customary activities associated with the exploration, drilling, fracking, transportation, development, operation and production for Oil and Gas projects.

2126.2. An amendment to the CUP shall be required prior to undertaking any substantial modification to the Oil and Gas project including but not limited to, recompletion of a well or substantially altering equipment at the facility, a change in well configuration, type of product being produced (e.g. oil or gas), or a substantially altering of the site layout, or any material change from conditions presented by the applicant during the CUP permitting process (including but not limited to a substantial increase in traffic or water use or consumption from that authorized or predicted in the assessments submitted for the CUP, use of different materials or processes than those disclosed during permitting. Any change in the location of wells or pads shall require a reapplication for amendment to CUP development order.

2126.3. Any operation that deviates from the CUP development order, or building and grading permit specifications, that the operator determines in good faith is extremely necessary to preserve the public health, safety or general welfare or to prevent property damage or pollution, may be performed on an immediate basis without prior notice or approval by the County. The applicant shall provide the Zoning Administrator with notification of such emergency

modifications within six (6) hours after performing emergency modifications, and thereafter by filing a request for a written amendment to the CUP development order, specifying the modifications made, within two (2) working days of completion.

- 2126.4. Once a well has either been completed as a producer or abandoned as a dry hole, an amendment to the CUP is required to case the well. The application for the CUP amendment shall specify:
  - 2126.4.1. The condition of the well and the casing therein.
  - 2126.4.2. The depth to which it is proposed such well be deepened or the new intervals to be perforated.
  - 2126.4.3. The proposed casing program to be used in connection with proposed deepening.
  - 2126.4.4. Evidence of adequate current tests showing that the casing strings in the well passed such tests.
- 2126.5. In the event the Board 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 Article II.
- 2126.6. A non-refundable annual inspection fee shall be levied upon each Oil and Gas project operated or maintained within the County. The amount of such fee is set forth in Appendix C. The fee shall be paid by cashier's check, wire transfer or certified funds. The fee shall be payable to the County on or before the annual anniversary date of the issuance of the CUP. Failure to pay the fee within thirty (30) days after the annual fee is due shall lead to a public hearing with due notice to revoke the CUP development orders. A late fee of an additional five hundred (\$500.00) dollars per facility per month shall be imposed.
- 2126.7. Fees collected pursuant to this Ordinance shall be placed in a special fund, the principal and interest from which shall be used solely to: install infrastructure, eliminate deficiencies and provide services the need for which is generated by the Oil and Gas project; retain and pay County staff, or professional consultants and to administer and enforce Article II of this Ordinance.
- 2126.8. Each Oil and Gas project shall provide on an annual basis the following information to the Zoning Administrator:

- 2126.8.1. 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 Zoning Administrator, and information including, but not limited, to the following:
- 2126.8.2. The name(s) of such person or persons;
- 2126.8.3. The job description(s) of such person or persons;
- 2126.8.4. The residence, office and mobile telephone numbers of such person or persons.
- 2126.8.5. A current 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 Zoning Administrator, including but not limited to the following:
  - 2126.8.5.1. The lease name and well number of each well.
  - 2126.8.5.2. The legal description of each well.
  - 2126.8.5.3. The current status and use of each well.
  - 2126.8.5.4. The current status and use of each Oil and Gas Facility.

**2126.9. Change of Operator, Applicant, Owner or Lessee**

- 2126.9.1. If a new operator is proposed to be designated for an Oil and Gas Facility, a supplemental amendment to the CUP, building and grading permits and certificates of completion shall be required.
- 2126.9.2. The new operator must provide copies of the approved Change of Operator, Form C-145, from the OCD, in addition sufficient proof that the new operator will meet all of the character, financial, insurance, security, performance standards and requirements of Article II and to all operator requirements under Article II for an application for a CUP.
- 2126.9.3. The obligations stated in this Ordinance on the previous operator shall not be released (including required financial security and insurance) until the supplemental CUP is obtained by the new operator.
- 2126.9.4. Any sale, assignment or sublease of the ownership or lessee interests for the Oil and Gas project, must be approved by the Board after

certification of the financial worth of the new owner(s) or lessee(s) to assume all of the obligations of the approved CUP and the development agreement accompanying the CUP. Absent such Board approval, the CUP for the project shall be subject to termination by the Board at a quasi-judicial discretionary public hearing to determine reasonable grounds for termination.

- 2126.9.5. The new operator shall provide a detailed description of the 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. The new operator shall furnish: a notarized letter of indemnity from all parent or subsidiary corporations or entities, with the County identified as a third-party beneficiary in such letter; 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 this section; 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; and a list of Oil and Gas facilities owned or operated by the applicant or new operator that are not in compliance with regulatory approvals in the relevant jurisdiction. For each such facility listed, provide details concerning the compliance issues experienced.

#### **Section 2127. Supplemental Conditional Use Permit.**

- 2127.1. Issuance of a supplemental CUP is required before any person may substantially change, expand, or modify an existing Oil or Gas project or facilities, propose a new well or a workover of an existing well, or re-enter a well that has been plugged and abandoned as shown in the records of the OCD. The applicant shall submit a supplemental CUP application where any other requirements of sections 2126.9 and 2127 and Article II apply. The application shall provide a supplemental material to update the LESA, site plan, assessments, reports and studies. The same process for applying for the original CUP shall apply to an application for a supplemental CUP.
- 2127.2. The Planning Commission, upon the recommendation of the Zoning Administrator and the County's expert consultants, may determine that the change, modification or expansion is not substantial, in which event it may order that only supplemental building and grading permits be applied for. If the change is determined to be substantial an supplemental CUP shall be required to be approved.

**Section 2128. Abandonment, Plugging, and Site Remediation.**

- 2128.1. Prior to plugging and abandonment of a well, pad site or the project as a whole, a plugging and abandonment plan shall be submitted to the Zoning Administrator that details the proposed plugging and/or abandonment, together with a proposed final use of the site compliant with all environmental standards and requirements, and otherwise consistent with requirements imposed by the OCD. The Board, upon recommendations of the Planning Commission and the County's expert consultants, shall adopt the plan by resolution, with any required conditions or mitigation measures and upon sufficient surety
- 2128.2. Upon the abandonment of a well, pad site or the entirety of the Oil or Gas project, the operator shall comply with OCD regulations, Water Quality Control Commission regulations, or relevant federal agency regulations, in connection with the abandonment, plugging and remediation.
- 2128.3. A copy of the OCD plugging and abandonment forms and plan shall be furnished to the County within ten (10) days of the date of submission to the OCD.
- 2128.4. No building shall subsequently be erected on or over, or restricting access to any abandoned well.
- 2128.5. Within four months following abandonment, the area formerly occupied by the well, pad site or Oil or Gas Facility shall be fully restored to a safe and clean condition pursuant to a reclamation plan compliant with all environmental standards and requirements, submitted by the applicant and approved by the Board prior to abandonment. All of the financial assurance and insurance requirements contained in Article II shall be furnished.
- 2128.6. Where the application is one for the re-entry of an abandoned well, an application for a supplemental CUP shall be filed containing all of the information required by Article II, and shall further provide in a detailed statement:
  - 2128.6.1. The condition of the abandoned well at the time the application is filed.
  - 2128.6.2. The depth to which it is proposed such well shall be deepened.
  - 2128.6.3. The casing program to be used in connection with the proposed deepening.

- 2128.6.4. A statement of the tests which will be run on the casing strings to show that the casing strings meet the same requirements for an original well. Include any proposed remedial cementing.

## **ARTICLE VIII Other Provisions**

### **8050. Service of Process, Violations, Enforcement and Penalties**

- 8050.1. Applicants, owners and lessees of the property and the operator of the Oil and Gas project, who file applications for development approvals of an Oil and Gas project, or an operator who manages such project subsequent to development approval, shall furnish with the application the name and address of the person or agent residing in New Mexico upon whom service of process or legal notices may be made on each and all such applicants, the owners and lessees of the property and the operator of the Oil and Gas project.
- 8050.2. A nonresident applicant or operator shall provide copies of documents establishing the applicants or operators legal right to do business in the State of New Mexico, including but not limited to the Public Regulation Commission, and OCD and shall designate a person residing within the State who is authorized to receive all legal notices and service of process.
- 8050.3. It shall be unlawful to construct, install, or cause to be constructed or installed, any Oil or Gas Facility or Facilities without the issuance of development orders approving applications for both an Oil and Gas CUP and requisite grading and building permits and certificates of completion.
- 8050.4. It shall be a violation of the Code to construct, install or cause to be constructed or installed, any Oil or Gas Facility in violation of Article II, or contrary to the conditions or mitigation measures attached to the development orders for the CUP or subsequent building and grading permits and certificates of completion.
- 8050.5. Any operator, person, firm, corporation or legal entity that violates any provision of Article II, or any conditions of the development orders approving a CUP or subsequent ministerial development approvals, or a valid directive or order of the Zoning Administrator, Planning Commission or Board, shall be subject to the penalties set forth in NMSA 1978, § 4-37-3 (1993)(as amended), as well as legal and equitable civil remedies, including injunctions and declaratory

judgment relief. The designated operator shall be held liable for any violations committed by his or her employees, affiliates, the lessee or owner of the project site, the oil and gas company employing the operator, and any contractors or subcontractors working on the project.

8050.6. The violation of each separate provision in Article II and this section, shall be considered a separate offense, and each day the violation is allowed to continue shall be considered a separate offense. In addition to penalties, the Operator shall pay an additional compliance inspection and monitoring fee of \$6,000 dollars for each week that the violation continues, to cover the County's cost of consultants to inspect the premises and monitor the violation.

8050.7. 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 Oil and Gas CUP or subsequent building and grading permits and certificates of completion governing the Oil or Gas project that the County finds to be violating the provisions of Article II upon the same notice and public hearing requirements applicable to the application for the CUP. The County may also revoke any development order if it is determined that the applicant, owner, lessee or operator provided false, misleading; deceptive or inaccurate information and/or documentation to secure issuance of the Oil and Gas CUP, or subsequent ministerial development approvals.

8050.8. Any default specified in Article II shall also constitute a default of any development agreement entered into upon the issuance of the CUP. In such event, remedies are available both under this Ordinance and under the development agreement.

## SECTION 22. EFFECTIVE DATE.

This ordinance shall become effective thirty (30) days after it is recorded in the office of the San Miguel County Clerk, as provided in Section 4-37-9, NMSA 1978.

## SECTION 23. SEVERABILITY.

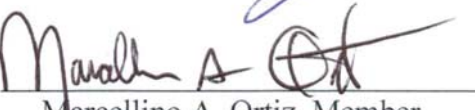
If any provision of this Ordinance shall be held invalid or non-enforceable by any court of competent jurisdiction for any reason, the remainder of this Ordinance shall not be affected and shall be valid and enforceable to the fullest extent of the law.

**MOVED, SECONDED, ADOPTED, ENACTED, EXECUTED AND ORDAINED**  
this 12<sup>th</sup> day of November, 2014, by the Board of County Commissioners of San Miguel County,  
New Mexico, in accordance with, pursuant to, and in furtherance of. Resolution No. 11-12-14-  
O&G.

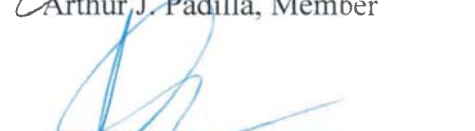
THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW  
MEXICO.

  
\_\_\_\_\_  
Nicolas T. Leger, Chairman

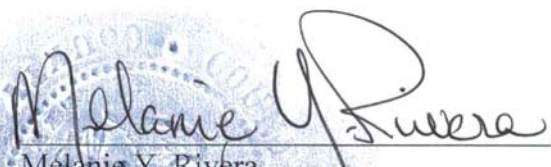
  
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Ron R. Ortega, Vice Chairman

  
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Marcellino A. Ortiz, Member

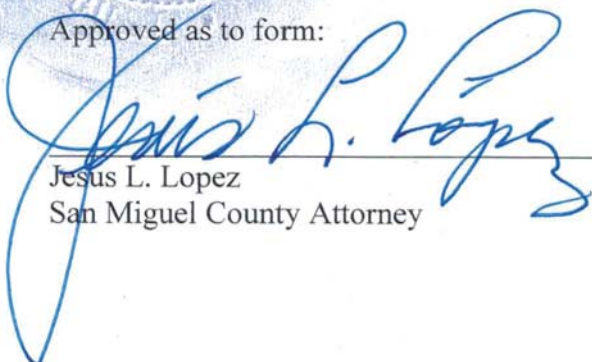
  
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Arthur J. Padilla, Member

  
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Gilbert J. B. Sena, Member

Attest:

  
\_\_\_\_\_  
Melanie Y. Rivera  
San Miguel County Clerk

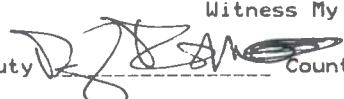
Approved as to form:

  
\_\_\_\_\_  
Jesus L. Lopez  
San Miguel County Attorney

COUNTY OF SAN MIGUEL )  
STATE OF NEW MEXICO ) ss

SAN MIGUEL COUNTY  
PAGES: 182

I Hereby Certify That This Instrument Was Filed for  
Record On The 13TH Day Of November, 2014 at 02:37:59 PM  
And Was Duly Recorded as Instrument #201403503  
Of The Records Of San Miguel

Witness My Hand And Seal Of Office  
Melanie Y. Rivera  
Deputy  County Clerk, San Miguel, NM

## **APPENDIX A. Rules of Interpretation for Ordinance 86-2.**

Words, phrases, and terms defined in Ordinance 86-2 shall be given the meanings set forth below. Words, phrases, and terms not defined 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 this Ordinance 86-2. They are intended as a legal guide to the administration and interpretation of this Ordinance and shall be treated in the same manner as other aspects of legislative history.

Whenever the provisions, standards, or requirements of any other County Ordinance are 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.

## **APPENDIX B: Definitions**

Words with specific defined meanings are as follows:

**Abandon:** Relinquishment of a property or any cessation of an existing use of land or of any structure thereon for a period greater than that specified by this Ordinance other than a cessation necessarily incident to probate or mortgage foreclosure proceedings, or to the temporary absences of part-time residents or to temporary absences due to seasonal use.

**Abandonment or abandoned (Oil and Gas):** The permanent abandonment of an Oil or Gas facility, project or well, 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 Zoning Administrator. The County shall 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 Operator with the OCD or other records maintained by the OCD, or independent observations of the Zoning Administrator. The County shall maintain records of all Oil and Gas wells, pads and facilities for 25 years after they have been plugged and abandoned, to monitor leakage after abandonment.

**Absorption field:** An area in which open joint or perforated piping is laid in gravel packed trenches or excavations for the purpose of distributing the effluent discharged from a tank used as a part of an individual liquid waste disposal system for absorption into the soil, established from the records of the OCD; plugging and abandonment of a well pursuant to OCD Rule 19.15.4.202 NMAC; or any other evidence that the well has been abandoned or plugged as established by filings of the owner or Operator with the OCD or other records maintained by the OCD or the Zoning Administrator.

**Abut or abutting:** Having property lines in common, or a bordering or touching of two property lines where there is no intervening space or where they connect at a single point.

**Acceptance:** Acceptance of any dedicated land, including county roads for public use and/or for maintenance. Development approval does not constitute acceptance of dedicated land for the purpose of maintenance. Such acceptance shall be accomplished in a separate procedure apart from the development approval. The acceptance procedure shall include, but is not limited to, petitioning the Board at an open meeting and inspection of the site by the Board, or Board appointed viewers, to assure that County specifications or development approval conditions have been met.

**Access:** A means of vehicular approach to, or exit from, property.

**Access level:** The allowable turning movements to and from access points on a highway or road.

Accessory: A use, building or structure detached from the principal building or structure, clearly incidental, subordinate and related to the principal use or structure and located on the same lot with the existing principal use or structure.

Accessory apartment: An independent dwelling unit that has been added onto, or created within, a single family house.

Acidizing: The pumping of acid into an Oil and Gas wellbore to remove near-well formation damage in order to enhance production of the well.

Acre: Forty three thousand five hundred sixty (43,560) square feet.

Acre foot: The volume of water one (1) foot deep covering an acre of land.

Adequate public facility or public service requirement: An on or off-site public facility, system of facilities, or public services including but not limited to: roads and transportation, fire, schools, police, affordable housing, sewer, solid waste, storm water management and substances retention, parks and recreation, hospitals, and emergency service and preparedness, that has sufficient available facility capacity, personnel and equipment to service an approved oil or gas project at an adopted Level of Service (LOS), whether provided by the Operator of the Oil and Gas facility, by public improvement districts, utilities, or County, city, 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 abut, except where separated by a roadway or street, right-of-way, or railroad line, or any acequia, stream, river, canal, lake, or other body of water.

Administrator: The Zoning Administrator appointed by the Board, to perform any portion of the functions required to be administered or exercised pursuant to this Ordinance 86-2; see Zoning Administrator.

Adopted level of service (LOS): The LOS standards and requirements adopted for Adequate Public Facilities and Services.

Adverse effect or impact: A negative change in the quality of the environment (floodplains, floodways, streams, wetlands, hillsides, steep slopes greater than 11%, 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 created by Oil and Gas projects, including but not limited to, exploration, drilling, fracking, production or transportation.

**Aesthetic zoning:** Regulations intended to preserve or improve building or site development design and amenities so as to reflect community design goals and objectives.

**Affordable housing:** Housing with a sales price or rent within the means of very low, low or moderate households as defined by the U.S. National Housing Act, including but not limited to, factory built housing units, affordable units set aside by market rate housing development and governmental subsidies and tax credits made available for the construction or rental of affordable units.

**Agricultural:** Property currently used, or used for five of the last 10 years, for farming or ranching purposes, including pasture for purposes of producing profit and not as a hobby.

**Agricultural land prime:** Land that qualifies for rating as Class I in the U.S. Department of Agriculture Soil Conservation Service land use capability classification.

**Airport:** An area used or intended to be used for the landing and takeoff of aircraft.

**Air quality standards and requirements:** The prescribed level of pollutants, including but not limited to, greenhouse gases, carbon dioxide, methane, sulfur dioxide, that contribute to global warming, or constitute pollutants regulated by federal national, state or OSHA ambient air quality standards, and cannot be exceeded legally during a specified time in a specified area.

**Alley:** A public way or service roadway reserved as a secondary means of access to abutting property and is not intended for general traffic circulation.

**Alteration:** Changes in structural parts, type of construction, or kind or class of occupancy. The word alteration shall include the words "alter," "repair," "improve" or "reconstruct."

**Alternative disposal system:** A disposal system other than a standard absorption system.

**Amenities:** Natural or created features that enhance the aesthetic quality or visual appeal or makes more attractive or satisfying a particular property, place or area.

**Analyte(s):** A substance or chemical that is the subject of an analytical procedure, typically to determine concentration.

**Animals:** Include, but is not limited to, both domestic pets and farm animals.

**Apartment:** One more structures containing two or more attached dwelling units.

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

**Applicant:** A person submitting an application for a legislative, quasi-judicial or ministerial development approval.

**Applicant (Oil and Gas):** The owner of an Oil and Gas 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, for the purpose of applying for a Conditional Use Permit or other ministerial permits or certificates of completion for development or establishment of an Oil and Gas project, involving exploration, drilling, fracking, production or transportation. Consent to file such application shall be required from the legal owner, lessor or lessee of the premises (surface or subsurface estate) and any person, corporation, partnership, sole proprietorship, association, fund, group, trust, unit operator or business entity in the same ownership as the legal owner, lessor or lessee. An applicant shall include any person or entity 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 county application fees and other expenses, including but not limited to, administrative, staff, consultant, engineering and laboratory analyses costs and fees, exactions, dedications, impact fees, costs of securing a bond, trust agreement, or irrevocable letter of credit posted with the County to assure compliance with conditions of development approval.

**Application:** Any application for a legislative, quasi-judicial or ministerial development order or development approval.

**Approval:** Written authorization, such as approval of a subdivision application or issuance of a building permit, or other forms of official action required by the County prior to commencement of construction.

**Aquifer:** A geological formation, or groups of formations, that can be brought to the surface through wells or natural springs.

**Aquifer recharge basin:** Surface lands, wetlands, streams, lakes, reservoirs, rivers or other water areas through which an aquifer is replenished.

**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, requirements 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 archeological resources, and land-use characteristics of the area; including maps, diagrams, and other appropriate materials showing existing and future conditions.

Arroyo: A dry wash or draw which has flow only from customary, occasional or incidental precipitation.

Assisted living facility: Residences for sick, frail, elderly or disabled persons that provide rooms, meals, personal care, supervised self-administered medication, recreation facilities, and medical rooms for doctor visits and examinations.

Automobile service station: Any premises principally used for the repairing, fueling and servicing of automobiles and for the sale of automobile and general retail products and refreshments.

Average daily traffic: The total yearly traffic volume on a specified portion of a street, road or highway segment divided by 365; or average daily traffic volumes at a given location over a 24 hour period.

Bar: Premises devoted primarily to the retailing and drinking of liquor, ale, beer, malt, wine or any other alcoholic beverages, whether or not a principal use or attached to a restaurant; premises where any sign is exhibited or displayed indicating that alcoholic beverages are obtainable for consumption on the premises. The word "bar" shall include, but not be limited to, "bar," "tavern," "pub," "bar-room," "cocktail lounge," and "cabaret."

Base map: A map included in a site plan having points of reference including state, federal, county boundary lines, streets, highways, easements, lakes, streams, rivers, property lines, major developments or subdivisions, environmentally sensitive lands, and other significant natural features, to allow the plotting of other data.

Base zoning district: The zoning district that underlays an overlay zoning district or Planned Unit Development.

Basement: A floor or portion of a building which has more than one-half of its height below the finished grade.

Bathroom: A room containing a wash basin, toilet, and bath or shower facility; bathrooms referred to as one -half or three -quarter baths are considered one bath for the purpose of this ordinance.

Bedrock: consolidated earth materials including cavernous rock located below soil surface.

Best management practices: State-of-the-art technology as applied to specific infrastructure solutions and maintenance procedures that include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the air or waters of the United States. Best management practices also include treatment requirements, operating procedures and practices to maximally control or abate discharge of air and water pollutants, plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

Billboard: See sign

Block: The distance measured along a street between intersecting streets from center line to center line.

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

Board of adjustment: Board established in Section 7000 of Ordinance 86-2.

Boarding house: Premises other than a hotel or restaurant where meals and lodging are furnished for compensation to three or more persons unrelated to the owner of the premises by marriage, birth or legal adoption. See also Group Dwellings.

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

Bond: A written obligation in the form of a surety, collateral deposit, letter of credit or security agreement, drawn in favor of San Miguel County, by an applicant, or by a third party acting for the applicant, guaranteeing the performance of certain acts as required by the Board of County Commissioners, Board of Adjustment, Planning Commission or Zoning Administrator, as conditions or mitigation requirements for the public health, safety or general welfare, for development approval, where the applicant either agrees to perform such acts or agrees to indemnify the county if the applicant fails to perform such acts and, it becomes necessary for the County to perform those acts in lieu of the applicant.

Bottom-hole: The lower portion of the drillstring, consisting of (from the bottom up in a vertical well) the bit, bit sub, a mud motor (in certain cases), stabilizers, drill collar, heavy-weight drill pipe, jarring devices ("jars") and crossovers for various threadforms.

Buffer strip: A portion of land separating adjoining tracts of land; land adjoining a watercourse or drainage channel with a vertical bank of at least 45 degrees; land extending perpendicularly from the vertical bank of a water course or drainage channel to a distance three times the depth of the watercourse or drainage channel measured from the bottom of the watercourse or drainage channel to the top of the vertical bank.

Buffer yard: 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 and requirements set forth in the Zoning Ordinance..

Building: Any structure built or intended for the support, shelter, use or enclosure of persons, animals or personal property of any kind. When any portion of a building is completely separated from any other portion by a division or partition wall without an opening, or by a fire wall, then each portion constitutes a building.

Building height: The vertical distance from the finished grade measured at the midpoint of the front building facade or the midpoint of the rear building facade, whichever results in a greater height, to the highest point of a flat roof, to the deck line of a mansard roof, to the average distance between eaves and ridge for gable, hip and gambrel roofs, or, if no roof, to the highest point of any structure. Building height does not include the height of any antennae, gable, solar or wind roof top facility that is above the height of the roof.

Building permit: Includes a building permit, grading permit, and certificate of occupancy or completion. A ministerial permit or certificate required after all valid discretionary development approvals have been granted, authorizing the completion of construction of a new building or structure, including any extension, remodel or renovation that results in a change of dimensions of the building or structure; or upon a change in the use or occupancy of the land, building or structure that requires certification of compliance with all the requirements of this Ordinance.

Building setback line or building line: A front, side or rear line parallel to the respective lot line and of a distance from the lot line as established by this Ordinance.

Bureau: The United States Bureau of Land Management (BLM).

Campground: A park facility for recreational vehicles, trailers and camping tents.

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 improvements or facilities: A public facility, or a facility operated or maintained for the benefit of the public, with a life expectancy of three or more years, which shall also include equipment for roads, highways, fire, police, schools, affordable housing, storm water or liquid material detention for treatment and re-use, or emergency service response.

Capital improvements plan ("CIP"): 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 year period.

Caretaker residence: A dwelling unit which is used exclusively by the manager, superintendent, or operator of a multiple dwelling unit or an industrial facility or complex.

Carrying capacity: A measure of the ability of the County to accommodate growth and development set by existing infrastructure and services as measured by environmentally sensitive lands, 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.

Carwash: Structures and grounds using specialized mechanical apparatus and facilities for washing and polishing motor vehicles.

Certificate of completion: A document indicating that the Oil or Gas Facility complies with all the provisions of Article II and the building and fire codes. The certificate of completion is issued after development approval for Conditional Use Permit, building or grading permits, and construction has been completed pursuant to all development approvals, conditions and requirements. Oil and Gas operations, drilling, exploration, extraction, and transportation may not be conducted until a Certificate of Completion is obtained."

Certificate of occupancy: A document issued by the County allowing the occupancy or use of a building and certifying that the building, structure or use complies with state statutes and County codes and ordinances

Certify: Whenever this Ordinance requires that the Board, Planning Commission, Board of Adjustment, Zoning 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.

Change of use: Any use that substantially differs from the previous use of a building, structure or use of land.

Character: Special physical features of a structure or area that set it apart from its surroundings and contribute to its interest or individuality.

Charrette: A highly focused broad-based public meeting to develop consensus among developers, community groups and interested persons on a variety of issues.

Cistern: A tank, pit, barrel or reservoir used for storing rainwater.

Clean Air Act: The federal statute establishing national ambient air quality standards.

Clinic: Premises where patients or domestic animals not lodged overnight are admitted for examination and treatment by one or more persons practicing a form of the human or veterinary healing arts, whether they are medical doctors, chiropractors, licensed nurses, osteopaths, chiropodists, podiatrists, chiropractors, optometrists, veterinarians, dentists or any similar professional duly licensed by the State of New Mexico. Clinic does not include kennels.

Closed loop system: A system for oil and gas exploration, 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 water, chemicals, gases, work over 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, that concentrates buildings on a part of the site to allow the remaining parts of the site to be used for recreation, common open space and preservation of environmentally sensitive lands.

Code: The San Miguel County Zoning Ordinance, and any successor amendments.

Collateral: A property or surety instrument which is pledged as security for performance of any promises, conditions or mitigation requirements made by an applicant in a disclosure statement, or for any promise, condition or mitigation requirement contained in a development approval, development agreement or development order which is security for performance of the conditions of approval or obligations, and shall constitute a security interest in the real property sought to be developed.

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 liquid waste treatment system: A liquid waste system which provides liquid waste management collection and treatment to more than one lot by an entity other than the individual lot owner.

Common Ownership: See Same Ownership.

Common water system: A supply system which provides water to more than one individual lot or building owner by an entity other than the lot or building owners.

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, any Area Plan, the Zoning Ordinance 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 design: The compatible visual relationship between adjacent and nearby structures, buildings and streetscape, in terms of consistency of materials, colors, building elements, building mass, and other constructed elements.

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.

Complete application: An application for development completed as specified by this Ordinance, rules and regulations and the provision of all required documents, assessments, site plan, studies and reports.

Comprehensive plan: The statutorily defined long-range plan, presenting the data, considerations and policies for the physical, social, economic, and environmental development of the unincorporated area of San Miguel County, which is intended to guide the growth and development of the County which includes inventory, analytical sections, an oil and gas element, 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 the Oil and Gas Element, and all area, neighborhood or community Plans.

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

**Concurrency:** A finding by the Board that required public facilities and services are adequate to serve the proposed development or project at the time of development approval.

**Conditional use:** A use designated in this ordinance that would not be appropriate generally or without restriction throughout a particular zoning district, and would not adversely affect the public health, safety, comfort, good order, appearance, convenience, morals or general welfare when authorized by a Conditional Use Permit within a particular district in regard to location, number, area, relationship to the surrounding neighborhood and is consistent with the Comprehensive Plan and other County policies, plans, CIP and ordinances.

**Conditional use permit (CUP):** A quasi-judicial discretionary use permit issued by the Planning Commission authorizing uses not permitted by right in a zoning district but allowed for specified uses set forth in the Zoning Ordinance, with required findings, requirements and standards set forth in the base zoning district or in a Planned Unit Development approval or district 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, archeological, 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.

**Construction:** Duly permitted permanent placement or erection of construction materials into an authorized site consistent with a valid development approval. When excavation or removal of an existing structure has commenced in preparation for new construction, such excavation or removal shall be deemed to be the start of construction provided that work continues thereafter until the new construction is completed. The term includes built, constructed, reconstructed, moved upon or any physical operation on the premise required for building or structure completion.

**Consultants:** Expert professionals engaged by the County to review and make recommendations with respect to pending applications for development approval.

**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.

Cost benefit analysis: An analytic method where the primary and secondary costs of a proposed project are measured against the fiscal benefits to be derived from the project.

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 Ordinance 86-2.

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

County Consultants: Experts engaged by the County with the following expertise: environmental engineer or specialist, wildlife specialist, botanist, geologist, hydrologist, civil engineer, air quality specialist, and petroleum engineer.

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

County planning and zoning supervisor: see Zoning 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 Zoning Administrator of this Ordinance and authorized to perform any portion of the ministerial functions assigned to the Zoning Administrator.

Crafts store: A commercial premises selling handmade crafts, art works and souvenirs.

Cultural 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.

Cumulative impact: The total impact that results from the amalgam of individual projects when added to the impacts of other past, present, project approvals that have not been completed, and reasonably foreseeable future needs.

Decibel: A logarithmic unit of sound pressure level compared with a reference pressure, used to measure sound intensity and amplitude.

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. Dedicated to public use is an easement granted by the property owner for use by the public; dedicated to public use and accepted by the County is an appropriation of land by the County for public easement purposes, accepted for such use by the County on behalf of the public; dedicated to the county and accepted for maintenance is an

appropriation of land by the County for public easement purposes and accepted for such use by the County on behalf of the public. Such property, having met minimum specifications for acceptance by the County and accepted thereby for maintenance by the County.

Dedication, fee in lieu of: Payments in cash as an alternative to dedication of land or construction of improvements.

Degradation or pollution of air: Degradation or pollution of air that unreasonably reduces the quality of such air compared to the: (1) baseline quality measurements; or (2) standards and regulations, as required by the EPA acting pursuant to the Clean Air Act, or the State of New Mexico, whichever is stricter. The quality of a representative sample of air is unreasonably reduced when such air exceeds the: (1) baseline quality measurements; or (2) the standards and regulations established by the State of New Mexico, whichever is stricter, or is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or the public health, safety, or general welfare, or impairs the usefulness or the public or private enjoyment of the water for any lawful or reasonable purpose.

Degradation or pollution of water: Degradation or pollution of ground or surface water that unreasonably reduces the quality of such water compared to the: (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 stricter. The quality of a representative sample of water is unreasonably reduced when such water exceeds the: (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 stricter, or is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or the public health, safety, or general 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, archeological or historic artifacts, whether on or off-site.

Density bonus: The granting of additional floor area, dwelling units, and additional Oil and Gas wells and pad sites, on off-site land, in exchange for on-site land providing an amenity or preserving environmentally sensitive lands or Oil and Gas producing subsurface estates and leases that cannot be developed under the regulations of this Ordinance. See, Transfers of development rights.

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.

Design flow: the quantity of liquid waste to be received by a liquid waste system.

Design review: That part of site plan review by the Planning Commission and Board to require conformance to compatible community design standards.

Design standards: A set of guidelines defining parameters to be followed in site and/or building or project design and development.

Developer: any person engaged in developing or improving a project or group of lots for use, occupancy or sale.

Development: The making of any material change in the use or appearance of any structure or land, including: construction, reconstruction, alteration, repair, addition to or location of a structure or use of land or a structure; and division of surface area of land;

Development of oil and gas facilities: 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 closed loop systems, structures, containers, or any other detention facility accompanying conditions incorporated into a development order for conditional use permits, variances, grading or building permits; certificates of completion or occupancy; or administrative appeals.

Development agreement: An agreement between the County and an Applicant concerning 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 this Article II or refrain from adopting new regulations that adversely affect 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.

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

Development site (Oil and Gas): The designated and approved oil or gas surface drill site or well 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 and requirements: Standards, requirements and technical specifications for improvements to land required to meet the conditions for development approval, including but not limited to, specifications for the placement, dimension, composition, and capacity of: derricks, drilling equipment, oil and gas wells and drill sites, 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; sewer and water mains and connections; facilities and level of service for the suppression of fires; facilities and service for police and emergency medical care; 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 protection; reduction of global warming and greenhouse gas emissions; and preservation of historic, cultural and archeological sites and artifacts. See also, Performance standards.

Development timing or phasing: Regulating the rate and sequence of development to the availability of adequate public facilities and services.

Director: the Planning and Zoning Supervisor of San Miguel County, constituting the Zoning Administrator of Ordinance 86-2.

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.

Disclosure statement: a written presentation containing such information as the Board may require to permit a prospective purchaser or lessee to make an informed decision about the purchase or lease of land.

Dissolved solids: The total amount of dissolved material, organic and inorganic, contained in water or wastes, including but not limited to the surface discharge of water and wastes from Oil and Gas drilling, fracking and production at the surface of the well.

District: A designated zoning classification applied to an area of land within which the regulations for particular types of structures are uniform.

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 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.

Due public notice: when used in connection with notification for public hearing held pursuant to the provisions of this Ordinance, it shall mean the following for public hearings scheduled to hear applications for conditional use permits, variance, and appeals from ministerial development orders, the following shall apply: (1) Notice of the time, place and purpose of the hearing shall be published at least once in a newspaper of general circulation within the County of San Miguel at least fifteen (15) days prior to the date of the hearing; (2) If the hearing concerns an area of one block or less, notice of public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer of lots of land within the area proposed to be affected by the zoning decision and within one hundred (100) feet, excluding public right-of-way, of the area proposed to be affected by the zoning decision; or if the hearing concerns an area of more than one block, notice of public hearing shall be mailed first class mail to the owners, as shown by the records of the county treasurer, of lots or land within the area proposed to be affected by the zoning decision and within one-hundred (100) feet, excluding public right-of-way, of the area proposed to be affected by the zoning decision. If the notice by first class mail to the owner is returned undelivered, an attempt shall be made to discover the owner's most recent address and to re-mail the notice by certified mail, return receipt requested, to that address; and (3) For public hearings scheduled to hear petitions or motions for discretionary quasi-judicial amendments to the text of this Ordinance or for legislative adoptions of a comprehensive revision of the text of this Ordinance, or for adoption of amendments to the Official Zoning Map which are applicable generally throughout the County and are necessitated by virtue of changes in the text provisions of this Ordinance or for amendments to the Comprehensive Plan the following shall apply: Notice of the time, place and

purpose of the hearing shall be published at least once in a newspaper of general circulation within the County of San Miguel at least fifteen(15) days prior to the date of the hearing.

Dwelling: A building designed exclusively for residential purposes, including single family and multi-family dwellings, but not including hotels and motels.

Dwelling unit: A room or suite of rooms with kitchen and bath facilities designed as a unit for occupancy by one family.

Dwelling, single family: A dwelling designed for and occupied by not more than one (1) family.

Dwelling, multiple family: A building designed exclusively for occupancy by two (2) or more families living independently of each other and containing two (2) or more dwelling units. This definition includes duplexes, town house, and attached row houses.

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

Effect: See adverse effect or impact.

Enclosed storage area: An area that is surrounded on all sides by a continuously connected fence or wall except where it is necessary to provide for pedestrian or vehicle openings.

Engineer: a professional engineer serving as a consultant for an applicant, or 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, including but not limited to; the effect of proposed public or private development and Oil and Gas projects on the environment.

Environmentally sensitive lands: lands including but not limited to arroyos; aquifer recharge and discharge areas; acequias; steep slopes; earthquake fault areas; soils classified as having high water tables; lands incapable of meeting percolation requirements; lands formerly used for hazardous industrial operations or land fill operations; soils classified as highly erodible or acidic; hillsides; flood areas, flood plains and floodways; wetlands; estuaries, rivers and streams; lands containing rare or endangered species; wildlife, tall stands of trees 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.

**Evaporation ponds:** Shallow artificial ponds where sewerage sludge or the waste products of drilling and fracking of Oil and Gas deposits are pumped and permitted to dry. Oil and Gas evaporation ponds are prohibited by this Ordinance.

**Exaction:** The requirement for an applicant for a discretionary or ministerial development approval to dedicate a portion of land or render a payment in lieu of land for the costs of public facilities or services required as a condition of a development order, to meet the proportional need generated by the development.

**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.

**Exterior storage:** Outdoor storage of fuel, raw materials, products, and equipment.

**Extraterritorial zoning area:** That area which is within the boundaries agreed to by the governing bodies of a municipality and the San Miguel Board of County Commissioners in conformance with state law.

**Extraterritorial zoning authority:** The joint County/Municipal Board appointed by the Board of County Commissioners and the governing body of a municipality which has zoning jurisdiction within the Extraterritorial Zoning Area.

**Extraterritorial zoning commission:** A commission appointed by the governing body of a municipality and Board of County Commissioners who shall recommend a Zoning Ordinance to the Extraterritorial Zoning Authority which is applicable to the Extraterritorial Zoning Area.

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

**Family:** One or more persons occupying a single dwelling unit, as a single housekeeping unit, provided that, unless all members are related by blood, marriage, or adoption, no such family shall contain over eight (8) persons, including any roomers, boarders, and/or domestic servants.

Family split or family transfer: division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception is limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member. All family splits or transfers are subject to the zoning provisions of Ordinance 86-2.

Feedlot: A place of penned confinement for cattle, poultry, sheep or swine, which are operated as a commercial enterprise as the primary use.

Finished grade: The completed surface of lawns, walks, driveways or streets brought to the grade shown on any building or development plans.

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

Fiscal impact assessment: The process of assessment of oil and gas and other 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, see Cost benefit analysis.

Flea market: The retail sale of primarily used goods but sometimes new merchandise from individually rented spaces or temporary structures on a lot. The term is not intended to apply to similar activities by churches or other non-profit organizations, or to a homeowner's garage sale, if no more than two such garage sales are held in any twelve (12) month period.

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.

Flood fringe: Any area which will be flooded by high water from a 50-year frequency storm.

Flood hazard boundary map: An official map of a community, issued by the Federal Insurance Administration where the areas within the boundaries of special flood hazards have been designated.

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: Any area which will be flooded by high water from a 25-year frequency storm; or a channel, river, stream, creek or other watercourse and the adjacent land areas that shall be reserved in order to discharge the base flood from a floodplain.

Floor area ratio: The total floor area of all buildings and structures on a zoning lot divided by the area of the lot.

Fracking: See, Hydrological Fracturing.

Frontage: Where a property line is common with a street right-of-way line, the frontage constitutes the distance along the street line from one intersecting street to another, or from one intersecting street to the dead-end of a dead-end street.

Future street line: A line running more or less parallel to the centerline of certain existing or proposed streets as established by the county in an official map, for the purpose of delineating the future widths of street right of way.

Garage, private: An attached or detached accessory building or portion of a building housing the motor vehicles of the occupants.

Garage, public: A building or portion thereof, other than a private garage, designed or used for equipping, servicing, repairing, hiring, selling, storing, or parking motor vehicles. The term "repairing" shall not include the dismantling or storage of wrecked or junked vehicles.

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.

Geo-hydrologic 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.

Golf course: A relatively large premise designed and constructed to accommodate the sport of golf as well as customary clubhouse facilities and other usual accessory uses. The term does not include miniature golf courses.

Grocery Store: A commercial premises selling groceries, foodstuffs and personal items not for consumption on the premises.

Gross developable area: The total area of a site or lot which remains after excluding those portions of the site or lot which lie within: existing street right-of-way; railroad right-of-way; easements; building covenants and restrictions; zoning requirements for front, rear, side, and street yards, buffer areas, open space; and environmentally sensitive lands and resource protection areas.

Gross floor area: The gross horizontal areas of the several floors including basements, cellars and penthouses (but excluding such areas within a building which are used for parking), measured from the exterior faces of the exterior walls of a building.

Guarantees: Cash, letters of credit, bonds, or similar financial instruments to ensure that required conditions of development approval are carried out.

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).

Groundwater contamination: The presence, not limited to Oil and Gas drilling and fracking, in excess of the maximum allowable contaminant level of substances designated by New Mexico and the federal government as a primary source of groundwater and aquifer contamination, or in excess of baseline measurements, whichever is more stringent.

Group development: A development comprising two buildings, such as a group of industrial, commercial, apartments or group dwellings where not subdivided into the customary streets and lots. Group developments shall require planned unit development approval where authorized by the zoning ordinance or zoning map.

Group dwelling: An establishment qualified for a license by the State, which provides resident services to individuals, of whom one or more are unrelated. The individuals can be handicapped, aged, disabled, mentally or physically ill, or undergoing rehabilitation or extended care and are provided services to meet their needs. This category includes, but is not limited to: rooming houses, group homes for all ages, halfway houses, recovery homes, nursing homes and foster homes, including a group residential facility with one or more supervisors residing on the premise, with professional staff service as needed, providing board, lodging, supervision, medication and other treatment and counseling, for persons progressing from relatively intensive

treatment for crime, delinquency, mental or emotional illness, alcoholism, drug addiction, or similar conditions, to full normal participation in community life, or for persons otherwise in need of a structured environment to deal with such conditions.

Guest house: A building accommodating guests.

Guest ranch: A resort where vacationers are accommodated.

Hazardous air and water pollutants: Pollutants which causes serious degradation of ambient air quality, global warming or surface or groundwater water quality including but not limited to methane, greenhouse gases, toxic materials and chemicals and other pollutant discharges from Oil and Gas drilling, production and fracking activities.

Height, building: The vertical dimension measured from the average elevation of a building or structure.

Highway: Any road on the Federal, State & County Road Systems.

Historical, cultural or archaeological resource: Historic Sites, Cultural Sites, Archeological 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, are on file with the Zoning Administrator.

Home occupations: Any occupation or activity clearly incidental and secondary to use of the premises for a dwelling. There shall be no exterior display, no exterior storage of materials, no nuisances emitted from the premises and no other exterior indication of the home occupation or variation from the residential character of the main building. Only one person in addition to members of the residing family may be employed. Not more than 35 percent of the floor area is devoted to the home occupation, nor more than 600 sq. ft. of an accessory building. One on premise, non-illuminated, wall sign is permitted not to exceed ten square feet in area.

Hospital: A premise with overnight facilities providing medical or surgical care for sick or injured persons.

Hospital, animal: A premise with overnight facilities for the medical or surgical care of sick or injured animals.

Hotel: A building in which lodging, or boarding and lodging are provided and offered to the public for compensation, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all times. As such, it is open to the public in contradistinction to a boarding house, a lodging house, or an apartment house, which are herein separately defined.

Hydrological 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.

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.

Impact fees, dedications and exactions: Fees, exactions and dedications imposed upon development to finance the roughly proportionally costs of public improvements, infrastructure or services, the need for which is generated by the development.

Impervious surface: Surfaces which do not absorb water. They consist of all buildings, including but not limited to areas of concrete or asphalt.

Implementation: Carrying out and fulfilling plans, conditions of development approvals, ordinance and regulatory requirements.

Improvement district: An improvement district formed by the Board for the purpose of levying assessments, rates, or charges on public facilities and services to meet needs generated by oil or gas and other development facilities.

In the County, within the County: Areas within the boundaries of the County, which areas shall include all federal and state land leases for Oil and Gas Facilities, but not including lands within the limits of any incorporated municipality.

Incompatible or inconsistent use: A use which is inconsistent with the Comprehensive Plan or otherwise inappropriate to the existing land uses within the surrounding areas.

Individual liquid waste system: A liquid waste system or septic tank which provides liquid waste management to one lot by the individual lot owner.

Individual water supply system: A water supply system in which each lot provides its own water from a groundwater well or rainwater capture system.

Industry: Any activity involving the manufacture, assembly, packaging, canning, bottling or processing of goods.

Infrastructure: Any physical system or facility that provides essential improvements or services for roads and highways, storm water 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: A measure of the magnitude and negative impacts of a land use on the environment and neighboring land uses; including but not limited to the number of oil and gas wells permitted per square mile or section.

Interested party: In a civil or administrative proceeding, all persons whose right to use or enjoy his or her property is or may be affected by any request for development approval, or the proposed adoption of any ordinance or regulation, being reviewed by the County.

Inventory: A systematic listing of environmentally sensitive lands, 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 and requirements set forth by federal, state, and county regulations for evaluation of cultural properties.

Junkyard: Any land or structure used for salvaging operations, including but not limited to the storage and sale of wastepaper, rags, scrap metal and discarded material, and the collection, dismantling, storage, and salvage of three (3) or more unlicensed, inoperative vehicles or used appliances.

Kennel: A premise where five or more domesticated house pets are harbored, whether for profit or, personal use or institutional keeping.

Land bank: Government purchased or donated land, or property interests acquired by transfers or purchase of development rights where the land or property rights are being held for sale to designated buyers in order to compensate the land owners who transferred the land to the land bank in exchange for compensation.

Landfill site: Any designated county landfill used for the purpose of disposing of solid waste.

Land split: Any division of property of four (4) parcels or less by an owner, within a three (3) year period, and not part of a common promotional scheme or plan.

Landscaping: The process or product of installing vegetation, fences, screening, or material for purposes of screening or softening the appearance of a structure, including but not limited to oil and gas project sites, including grading and installation.

Ldn: Day/night equivalent sound level measured over a 24+ hour period; it is equivalent in terms of sound energy to the level of a continuous sound level of 10dB. Ldn is computed pursuant to United States Environmental Protection Agency Standards and Procedures.

**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 (LOS):** 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.

**Liquid waste:** Domestic wastewater (sewage) and includes non-water carried excreta.

**Liquid waste system:** A system which receives, treats and disposes of liquid waste.

**Livestock:** Domestic animals, such as cattle, horses, sheep, hogs, goats, rabbits and poultry raised for home use or profit, but excluding household pets such as cats and dogs.

**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, placed on the County Clerk's record and as shown on the Records of the Assessor and Treasurer of the County.

**Lot, corner:** A lot abutting two or more streets at their intersection.

**Lot, Depth:** The mean horizontal distance between the front and rear lot lines.

**Lot, double:** A lot having frontage on two non-intersecting streets, as distinguished from a corner lot.

**Lot, interior:** A lot having frontage on one street.

**Lot area:** An area of land of a lot measured in square feet or fractions of an acre.

**Lot coverage:** That percentage of the area of a lot which is occupied by principal and accessory structures or buildings.

**Lot frontage:** Required lot frontage is the minimum distance measured along the front lot line which is specified for a lot within a particular zoning district.

**Master development plan or master plan:** A sketch, drawing or chart to scale of the land of an applicant which he proposes to develop in stages and other information as required in this Ordinance. See also, Site Plan.

**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.

**Mineral rights:** rights of subsurface owners and lessees to extract, sell and receive royalties from mineral and Oil and Gas deposits.

**Mini warehouse:** A solidly enclosed storage area containing individually rented or owned cubicles for storage only.

**Minor subdivision:** for a Type 3 Minor subdivision 2-5 parcels where any parcel is less than 10 acres; for a Type 5 Subdivision 2-24 parcels where each parcel is greater than 10 acres. A Minor Subdivision includes any subdivision requiring any new road or extension of County facilities or the creation of any public improvements, including re-subdivision, amendment or modification of a major subdivision, or series of related minor subdivisions on contiguous land that cumulatively amount to the creation of 2-5 parcels lots where any parcel is less than 10 acres, 2-24 parcels where each parcel is greater than 10 acres.

**Mitigation:** a requirement that an adverse impact caused by a development be counterbalanced by creating an equivalent benefit through dedication, payments, offsets, and alternative construction of self-imposed restrictions.

**Mitigation, Oil and Gas:** 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.

**Mixed-use:** a land use development that includes the integration of residential and non-residential uses on the same development site.

**Mobile home:** A transportable structure, without motive power, to be used as a temporary or permanent human habitation, including trailer coach, trailer home, mobile home and house trailer, with or without wheels, and whether or not attached to or incorporated in a building. See also prefabricated or factory built housing

**Mobile home park:** Any lot on which two or more mobile homes are used for human habitation, except for in the A-I and A-2 zones.

Mobile Home Subdivision: Same as mobile home park except that the lots are offered for sale or condominium ownership.

Mobile office: A movable or portable office structure with all of the following characteristics: It is designed for or intended to be used for office occupancy purposes; it is designed to be transported after fabrication on its own wheels, on a flatbed or other trailer, or on detachable wheels and it is designed for use without a permanent foundation and provided that it shall remain a mobile office even if affixed to a foundation. The term office trailer is synonymous with mobile office.

Motel: Any building or group of buildings containing guest rooms or dwelling units, some or all of which have a separate entrance leading directly from the outside of the building with a garage or parking space conveniently located on the lot, and designed, used, or intended wholly or in part for the accommodation of automobile transients. The term "motel" includes motor court, motor lodge, and tourist court, but not a mobile home park.

Motor Vehicle, Large: Trucks and heavy equipment and similar sized vehicles which have gross weights in excess of 10,000 pounds, including but not limited to oil and gas vehicles.

National ambient air quality standards: Standards promulgated by the Environmental Protection Agency for specified air pollutants including suspended particulates, sulfur dioxide, carbon dioxide, nitrogen dioxide, ozone, methane, greenhouse gases, hydrocarbons and lead.

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 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.

Nightclub: A commercial premise where food, alcoholic beverages or other refreshments may be obtained for consumption on the premises and where floor shows, bands or other forms of entertainment may be provided for customers.

Nonconforming lot, parcel, structure or use: a lot, parcel, structure or use that was lawfully established or commenced prior to the adoption or amendment of Ordinance 86-2 that fails to meet its current requirements.

Nuisance: A condition or situation that results in an interference with the enjoyment and use of property. See also definition of public nuisance.

Nursing home: A group home where meals, lodging, nursing care and related medical services are furnished for compensation to five or more persons unrelated by marriage, birth or legal adoption. It does not include hospitals, clinics or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured.

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.

Office: A premises where professional, clerical, business management or public administration work is carried on and where the sale of merchandise on the premises is totally absent or constitutes a very limited activity in support of the work being done.

Official map: A map that may be adopted by the County in the future showing right-of-way lines for existing or proposed roads, highways, parks and recreation sites, police, fire, and emergency service facilities, off-site retention facilities, drainage rights-of-way, stream and river buffers. 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.

Off-street loading space: A permanently located off-street space for the temporary parking of vehicles which pick up, deliver, load or unload goods, supplies and merchandise.

Off-Street Parking: An area used for required temporary parking and having access at all times to a public street or alley.

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: includes, but is not limited to, the following: (1) 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); (2) Equipment involved in the re-working of an existing well bore, including, but not limited to, a work over rig; (3) A compressor station, including associated facilities that serve one or more wells employing engines and/or motors; (4) A storage or construction staging yard associated with an Oil or Gas operation; (5) A facility related to the production of crude oil and/or natural gas which contains engines and/or motors; (6) A gathering System consisting of crude oil or natural gas gathering lines or water lines; (7) A gas treating facility that serves multiple wells, pads or gathering systems; (8) Other structure, building or facility used in the exploration, drilling, fracking, transportation or production phase of oil or natural gas development; (9) A pipeline for transportation of oil, natural gas or water, including but not limited to, 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"); (10) Other capital facilities required for off-site roads, fire, police, emergency service, and OCD approved wastewater treatment plants; and (11) Buried electric power lines to and from an oil and gas facility. Oil and gas lease: A conveyance of a leasehold or fee simple determinable estate in oil and gas where the holder of the estate is granted the power to conduct exploration, drilling, fracking, production, transportation and marketing of subsurface oil and gas pursuant to its terms.

Oil and gas lease: A conveyance of a leasehold or fee simple determinable estate in oil and gas where the holder of the estate is granted the power to conduct exploration, drilling, fracking, production, transportation and marketing of subsurface oil and gas pursuant to its terms.

Oil Conservation Division: See OCD

Oil or Gas project: An oil or gas project includes any of the following: facilities, activities, exploration, drilling, fracking, production and transportation, and other components of oil and gas operations, including but not limited to, seismic survey testing, injection wells, storage and staging yards, gas plants, compressor stations and pipelines, which is subject to development approval of an Oil and Gas Conditional Use Permit, Grading and Building Permits, and Certificates of Completion.

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.

**Open space:** That portion of land or water not used for buildings, street rights-of-way or off street parking and loading areas.

**Operator:** A person, corporation, partnership, sole proprietorship, trust, association, or other legal entity who or which, being duly authorized, is in charge of the development of an oil and gas lease or estate 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. The operator is responsible for all contractors, subcontractors and employees involved in the activities of exploration, drilling, fracking, production and transportation of oil and gas operations. No more than one operator shall be in charge of an oil and gas project.

**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.

**Park:** An area set apart for open space, resource protection, or recreational purposes.

**Parking space:** A space adequate for parking an automobile consisting of a minimum area nine feet wide by twenty feet long, exclusive of streets, alleys, driveways, aisles and the areas of egress and ingress.

**Penal detention center:** A place of public confinement for persons charged or convicted of law breaking or juvenile delinquency. The term "penal detention center includes such other terms as the following: "jail, correctional institutions, prisons and juvenile delinquent homes."

**Perennial stream:** A body of water evidencing flow of the water during a majority of the year.

Performance standards: The set of criteria and standards relating to 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 and characteristics that a particular use seeking development approval shall comply with and shall not exceed.

Permit: See Development Approval or Development Order; including but not limited to discretionary, quasi-judicial Conditional Use Permits, variances and ministerial Building Permits, Grading Permits or Certificates of Completion or Occupancy.

Permitted use or structure: A use or structure which is allowed as a matter of right within a particular zoning district provided that it is listed as such and provided that it meets any general, district and particular use requirements, if any, which are specified in this Ordinance for such a use.

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

Person aggrieved: One whose legal right is affected by a development order, and whose pecuniary or property interest is directly affected by the development order. The person's interest must be specific and personal and not merely common to all members of the community. Any person who is required by this Ordinance to receive personal notification of a hearing by mail shall be construed to be qualified as a person aggrieved.

Person, interested: Any person who presents documentary evidence, testimony or argument at any public hearings, whether oral or written, in person or by representative and who provides his name and address to the hearing body.

Pipelines: A long tubular conduit or series of pipes, often underground, with pumps and valves for flow control, used to transport crude oil, natural gas, produced water, mud, finely divided solids, etc., especially over great distances.

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 Article II of this Ordinance 86-2 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.

Planned Development: a development under single ownership, planned and developed as an integral unit and consisting of a combination of residential, mixed or nonresidential uses on the land.

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

Plat: A map, chart, survey, plan or replat, certified by a licensed registered land surveyor, containing a description of the land to be subdivided, with references to a meets and bounds description, and permanently monumented. As used in the subdivision regulations, "plat" also means a map and other submittals as required by the subdivision regulations of a proposed land subdivision showing the character and proposed layout of the tract in sufficient detail to indicate the proposed subdivision of land.

Plat, consolidation: A plat graphically representing and legally describing a merger, incorporation or consolidation of two or more parcels, lots, or tracts of land.

Plat, final: A complete and exact map representing a tract or tracts of land, showing the boundaries and location of individual lots, easements, and/or streets, which has been approved in the office of the Administrator and recorded in the office of the County Clerk.

Plat, Preliminary: A plat which shall be approved before seeking final plat approval.

Plat, vacation: A plat executed by owners of lots in a recorded subdivision vacating all, or portions of, a previously approved and recorded plat.

Police power: Those powers necessary and proper to provide for the safety, preserve the health, promote the general welfare of the County and its inhabitants as set forth in law at §4-37-1 NMSA 1978.

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 general 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.

Potable water: Water classified as suitable for human drinking purposes.

Pre-fabricated or manufactured housing: A factory built, single family structure which is manufactured or constructed under authority of 42 U.S.C. Sec. 5403, Federal Manufactured Home Construction and Safety Standards and is to be used as a place for human habitation, but which is not constructed with a permanent hitch or other device allowing it to be moved, and which does not have, permanently attached to its body or frame, any wheels or axles.

Principal: Any building, use or structure which constitutes the principal zoning use of the lot, parcel or property.

Privy: Any non-water carried disposal facility for human excrement.

Poultry farm: A premise where more than 100 domesticated birds such as chickens, ducks, geese or turkeys are hatched, raised for sale or kept for the sale of eggs.

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 and Semi Public Utilities:** The use or erection of structures on any premise, by any governmental entity including its subdivisions or by another entity specifically authorized and regulated by the government, for the provision of community utility services. Community utility services includes the following services: water, sewerage and storm drainage, gas, electricity, telephone, cable television and solid waste disposal dumping sites. All television and radio broadcasting and receiving towers are categorized in this Ordinance as "Antennas or towers for transmitting, commercial" rather than as "public or semi-public utilities." Section 3500 exempts certain types of community utility lines from compliance with the provisions of this Ordinance.

**Public hearing (Administrative):** A quasi-judicial or administrative hearing on an application for development approval heard by the Board, Board of Adjustment or Planning Commission, in which notice shall be provided to the Applicant, the public and all property owners or lessees within one mile of the property seeking development approval who have 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 Chair or President of the Board, Board of Adjustment and Planning Commission. Site visits may be held at the discretion of the Board, Board of Adjustment, and Planning Commission 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 Board, Board of Adjustment, or Planning Commission. A public meeting, at the discretion of the Board, Board of Adjustment or Planning Commission, does not require the taking of public or applicant comments, testimony or the receipt of documentary evidence.

Public nuisance: public nuisances include 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; violations of ordinances, statutes and regulations and impacts upon environmentally sensitive lands, and other nuisances as defined in the state statutes, judicial decisions and ordinances of the County. See also, Nuisance.

Ranch, Farm, Dairy, or Vineyard: These terms, not to include feedlot, describe an agricultural activity generally conducted on the same premises where the principal residence of the owner is located or is leased to or occupied by an authorized caretaker.

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 permitted.

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 the 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.

Recovery homes: See Group Homes.

Recreational vehicle or shelter: A vehicle or shelter designed primarily for temporary use as a portable dwelling unit for travel, recreational or camping purposes. Such vehicles or shelters are customarily no more than 8 ft. in width and 40-ft. in length. The term "recreational vehicle or shelter" is not synonymous with "mobile home" or "house trailer," and includes the following types of vehicles or shelters: (1) Motor Home: A self-propelled and generally self-contained vehicle permanently constructed directly on or mounted on a truck or van chassis, and usually allowing for free access between driving and living compartments; (2) Tent or Tent Camper usually fabricated of canvas and fire resistant material; (3) Trailer: A portable shelter or other water-repellant material. The unit may be designed to collapse or fold out behind a motor vehicle; and (4) Travel Trailer: A vehicle constructed of fiberglass, with one or two axles be towed behind a motor vehicle.

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, Regional Water Plan, habitat conservation plans, natural community conservation plans, historic, cultural and archaeological site and preservation plans.

Requirements: The mandatory ordinance prescriptions applicable to an application for discretionary or ministerial development approval.

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, drilling, fracking and production are prohibited by Article II of this Ordinance.

Resource protection areas: Resource protection areas include but are not limited to areas of the following types:

- (a) land areas with a slope of greater than 15 percent; or
- (b) water impacted areas such as natural or man-made floodways, officially designated major arroyos, river and stream channels, lakes, ponds and wetlands, which shall incorporate a 25-ft. buffer strip adjoining the perimeter boundaries of all such water impacted areas.
- (c) Open space, cultural, historic, traditional, agricultural, recreational and tourism sites”.

Restaurant: An establishment whose principal business is sale of food and/or beverages in a ready to consume state for consumption within the building, within a motor vehicle parked on the premises, or off the premises as carry-out orders.

Retention facility or basin: A facility or basin 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, drilling, fracking and production by Article II of this Ordinance.

Road, county: A street:

- (a) included in the most current San Miguel County Road Log as duly authorized by the New Mexico Highway Department;
- (b) included in an official map or capital improvement plan to be established by the Board; or
- (c) created by a petition procedure provided by state law.

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 and

requirements 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, requirements 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:** Property owned or controlled 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, or entity. Ownership in whole or in part of the same or separate surface estates, sub-surface mineral estates, leases, parcels, tracts, or lots, whether contiguous or not, located anywhere within the County. For Oil and Gas ownership or leases, the effective date of same ownership shall be the date of adoption of the Oil and Gas Moratorium Ordinance 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 and electric power lines.

**Sawmill:** An industrial use on the premises which processes trees into firewood, lumber, ties, props or other wood products for sale.

**Schedule of compliance:** A written plan provided by a subdivider, containing detailed methods, procedures, and dates by which certain improvements, services, systems or activities will be completed within a one year period.

**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 performance bond, completion bond, surety bond, letter of credit, certificate of deposit, cash, deposit of collateral, or other assurance in an amount and form satisfactory to the County Attorney whenever security is required by this Ordinance.

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

**Septic, tank:** An underground system used for the decomposition of digested domestic waste through a period of detention together with an absorption field.

**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.

**Shopping center:** A premises containing a group of commercial establishments, or a mixed-use development containing residential and commercial establishments, planned, developed, organized and managed as a unit and utilizing such facilities in common as customer parking areas, pedestrian walkways and truck loading and unloading spaces.

**Sign:** A device, fixture, surface, or structure of any kind, made of any material, displaying letters, numbers, words, text, illustrations, symbols, forms, patterns, colors, textures, shadows, merchandise or lights; or any other illustrative or graphic display designed, constructed, or placed on the ground, on a building, architectural projection, wall, post, or structure of any kind, in a window, or on any other object for the purpose of advertising, identifying or calling visual attention to any place, structure, firm, enterprise, profession, business, service, product, commodity, person, or activity whether located on the site, in any structure on the site or in any other location. The term "placed" includes constructing, erecting, posting, painting, printing, tacking, nailing, gluing, sticking, sculpting, casting, or otherwise fastening, affixing, or making visible in any manner. The term does not include a religious symbol on a place of worship.

**Sign, advertising:** A sign intended to promote the sale or use of merchandise, services, activities, land or buildings.

**Sign, cabinet:** A sign that contains all the text and/or logo symbols within a single enclosed cabinet and may or may not be illuminated.

**Sign, commercial:** A sign designed to advertise a product or service.

**Sign, directional:** A sign utilized solely for the purpose of directing vehicular and/or pedestrian traffic to any object, place or event.

**Sign, display area:** The net geometric area included within the sign as measured from the outside edge or frame of the sign but not including the structural supports for free standing signs or ground signs unless the support(s) is designed in such a manner as to form an integral part of the background of the sign display. Where the sign has no frame or edge, the sign display area shall be defined by a single, imaginary, four sided geometric figure which most closely outlines the total area of the message symbols included in the sign display. In the case of free standing signs with message symbols on back to back sides, each surface display area shall be considered to be a sign display area.

**Sign, double-faced:** See Sign, freestanding.

**Sign, freestanding:** A sign that is supported by a base structure that rests on the ground and is not supported by or attached to a building, including pole mounted and pedestal signs that are

permanently affixed to the ground, supported by uprights or braces and are not attached to any building or structure. Free standing sign structures having two sign message display areas that are back-to-back shall be considered to be one sign.

Sign, information: A sign intended only for information purposes such as indicating the location or direction of a place, identifying a public building or monument or a private residence, or providing notice of governmental laws or directives or warning of hazardous areas. Informational signs do not display any advertising.

Sign, marquee: A permanent canopy projecting above an entrance and over a sidewalk or terrain.

Sign, monument: A permanent freestanding sign where the entire supporting base of the sign is affixed to the ground and is not attached to or supported by a building or structure.

Sign, neon: Glass tube lighting in which a gas and phosphors are used in combination to create a colored light.

Sign, nonconforming: A sign that was lawfully constructed or installed prior to the adoption or amendment of this Ordinance, which was in compliance with any land development requirements or regulations then in effect but which does not presently comply with the land development requirements established by this Ordinance.

Sign, off premise: A sign which directs attention to a product, place, activity, person, institution or business not located on the site where the sign is located.

Sign, on premise: A sign which directs attention to a product, place, activity, person, institution or business on the site where the sign is located.

Sign, projecting: A sign, other than a wall sign, that is suspended from or supported by a structure attached to a building and projecting outward generally at right angles to a building.

Sign, promotional: A sign erected on a temporary basis to promote the sale of new products, new management, new hours of operation, new service, grand opening, or to promote a special sale. See Sign, Commercial.

Sign, real estate: A sign indicating that a property or any portion thereof is available for inspection, sale, lease, rent, or directing people to a property, but not including temporary subdivision signs.

Sign, temporary: A temporary sign for a temporary event, such as signs for a carnival or fair, a community meeting, for an athletic event or competition, for a vehicle show, or for an election

campaign. A sign not intended or designed for permanent display that relates to an event, function or activity of a specific, limited duration.

Sign, vehicle: A sign that is attached to or painted on a vehicle that is parked on or adjacent to any property, the principal purpose of which is to attract attention to a product sold or business located on a property.

Sign, wall: A sign attached to, painted on, or incised into the wall of a building or structure in such a manner that the wall is the supporting structure for, or forms the background surface of, the sign and which does not project more than one foot from the wall on which it is are mounted.

Sign, window: A sign posted, painted, placed, or affixed in or on a window exposed to public view. An interior sign that faces a window exposed to public view that is located within three feet of the window is considered a window sign for the purpose of calculating the total area of all window signs.

Sign, yard sale: A temporary sign used to attract attention and advertise the date, time and location of a sale of personal property on a premise within a residential zoning district.

Sign, area: The net geometric area of a sign.

Site Development Plan: The combination of documents and exhibits required by Section 5100 of this Ordinance. See Site plan for further requirements of a site development plan.

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 a discretionary, quasi-judicial rezoning, conditional use permit, variance, parcel split or family transfer, or site development plan, including such drawings, illustrations, appendices, reports, studies, assessments, documents, maps or other information necessary to meet the requirements of this Ordinance; or a master development plan or master plan consisting of a sketch, drawing or chart to the scale of the land that an applicant proposes to develop in stages and other information as required by this Ordinance 86-2. A site plan is required for any Oil and Gas project applying for a discretionary CUP. See also Design review.

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.

Soil Survey: A national cooperative soil survey conducted by the United States Department of Agriculture in cooperation with the State Agriculture Experiment Station and other federal and

state agencies or any other survey containing information of comparable quality and detail approved by the local district. See LESA in Article II of this Ordinance.

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 containing gaseous material, but does not include water-borne waste in a sewage system or hazardous wastes.

Sound levels: The sound level in decibels measured by dB(A) on a sound level meter using the A-weighting network.

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

Special assessment: A fee levied by a public improvement district for the financing of infrastructure and services that is primarily of benefit to the landowners paying the assessment.

Stand: A structure for display and sale of products with no space for customers within the structure.

Standard absorption system: A below grade soil absorption disposal system whose excavated depth is less than 4 feet from the ground surface.

Standard: A criterion or rule that defines the meaning of a policy by providing a way to measure its attainment. Requirements in the ordinance that govern use, building and development including but not limited to site-design regulation, lot area, floor area ratio, height, landscaping, performance criteria, buffers, setbacks, open space reservations, financing of public facilities and services, environmentally sensitive lands, air and water quality measures, fiscal impact and water availability.

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%.

Street: A public or private right-of-way or alley (which meets the required minimum width of a street) which affords a primary means of vehicular access to abutting land, buildings or structures. It includes the terms: "street right-of-way," "avenue," "road," "boulevard,"

“thoroughfare,” “easement,” “drive,” “court,” “parkway,” or other similar terms. “Street” does not include driveways or alleys (that do not meet the required minimum street width).

Street, private: A street intended for public usage, which has not been dedicated nor deeded to the County and has not been duly accepted for public maintenance. The County is not responsible for maintenance of private streets.

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.

Subdivider: Any person requesting subdivision approval or who has created a subdivision, individually or as part of a common promotional plan or any person engaged in the sale or lease of subdivided land which is being sold or leased or has been sold or leased within the preceding three years by the owner in the ordinary course of business. “Subdivider” does not include any duly licensed real estate broker or salesperson not acting on his own account.

Subdivision: A process of development approval by the County, in which the surface area of land within the County has been divided into five or more parcels within the previous three (3) years for the purpose of sale or lease. Subdivision applies to single family dwellings, residential condominiums, commercial office, shopping and industrial areas. Subdivision does not include: (1) Any land retained by a subdivider after the recording of a final subdivision plat, which has not been divided for subdivision; (2) The lease of apartments, offices or stores; (3) Subdivisions which are annexed by a municipality subsequent to the time of approval of the subdivision by the County. (4) Any division of land in which gas, oil, mineral or water rights are severed from the surface ownership of the land; (5) Any division of land created by court order, except court orders involving land grant adjudications; (6) The leasing of land for grazing or farming activities; or (7) The alteration of parcel boundaries within a previously approved subdivision where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of platted lots is not increased nor the statutory type of subdivision changed.

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

Substantial: Any extension, repair, reconstruction or other improvement of a property.

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.

**Terrain Management Plan:** A developer's proposal for the control of floods, drainage and erosion, and measures required for adapting proposed developments to existing soil characteristics and topography.

**Townhouse:** An individually owned single family dwelling constructed as a group of three or more attached single family dwellings, each of which is situated on an individually owned, subdivided lot.

**Transfer of development rights:** The removal of the right to develop or build, expressed in dwelling units per acre, floor area, or number of Oil and Gas wells and pad sites per square mile, in which the restricted parcel transfers development rights to the County Land Bank or a receiving parcel by deed, easement, or other legal instrument.

**Trip generation:** The total number of vehicle trip ends produced by a proposed development.

**Truck highway stop:** Premises where the principal use is the refueling, parking and servicing of trucks, tankers and trailers.

**Type One Subdivision:** Any subdivision containing five hundred (500) or more parcels, any one of which is less than ten (10) acres in size.

**Type Two Subdivision:** Any subdivision containing not less than twenty five (25) parcels, but not more than four hundred ninety nine (499) parcels, any of which is less than ten (10) acres in size.

**Type Three Subdivision:** Any subdivision containing not less than five (5) parcels and not more than twenty four (24) parcels, any of which is less than ten (10) acres in size.

**Type Four Subdivision:** Any subdivision containing twenty five (25) or more parcels, each of which is (10) acres or more in size.

**Type Five Subdivision:** Any subdivision containing not than five (5) parcels and not more than twenty four (24) parcels, each of which is ten (10) acres or more in size.

**Unit (Oil or Gas):** The total area incorporated in a unitization agreement. An area of land, containing deposits of oil or gas, or a part or parts thereof, as to which parties with interests therein are bound to share oil or gas production on a specified basis and as to which those having the right to conduct drilling or fracking, 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 the acreage allocated to a particular well.

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

Urban Service Area Boundary: A boundary delineated on Growth Management Comprehensive Plan Maps adopted by an incorporated municipality within San Miguel County.

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 Board of Adjustment for permission to vary or depart from a requirement of this Ordinance as to the use, height, floor area ratio or density of the property where, due to special and exceptional conditions, not self-imposed by the Applicant, a literal enforcement of this Ordinance's 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.

Veterinary clinic: Premises for the medical and surgical care of sick or injured animals.

Viewshed: An unobstructed location that permits an unhindered panoramic view of the surrounding land.

Vision clearance: A triangular space at the street corner of a corner lot, which is bounded by the street right of way lines and a line connecting points located 30 feet distant from the intersection of the street right of way lines, within which no obstruction to view between 3 feet and 10 feet above the street level shall be placed or maintained.

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.

Visual impact: Any structure that limits the visibility of another off-site property.

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.

Watercourse: Any river, creek, acequia, spring, stream, or any other like body having definite banks and evidencing the occasional flow of water.

Water pollution: The addition of pollutant materials, chemicals or substances in sufficient quantities to result in measurable degradation of groundwater, reservoirs, aquifers, acequias, or surface waters.

Water table: The upper surface of ground water, or the level below which the soil is seasonally saturated with rainwater.

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.

Yard, rear: A yard bounded by the rear lot line which maintains open space for the minimum distance from the rear lot line that is prescribed for the zoning district in which the lot is located.

Yard, required: A minimum area of land within a lot within which no structure or portion of a structure shall be erected from the ground up unless otherwise expressly permitted by this Ordinance.

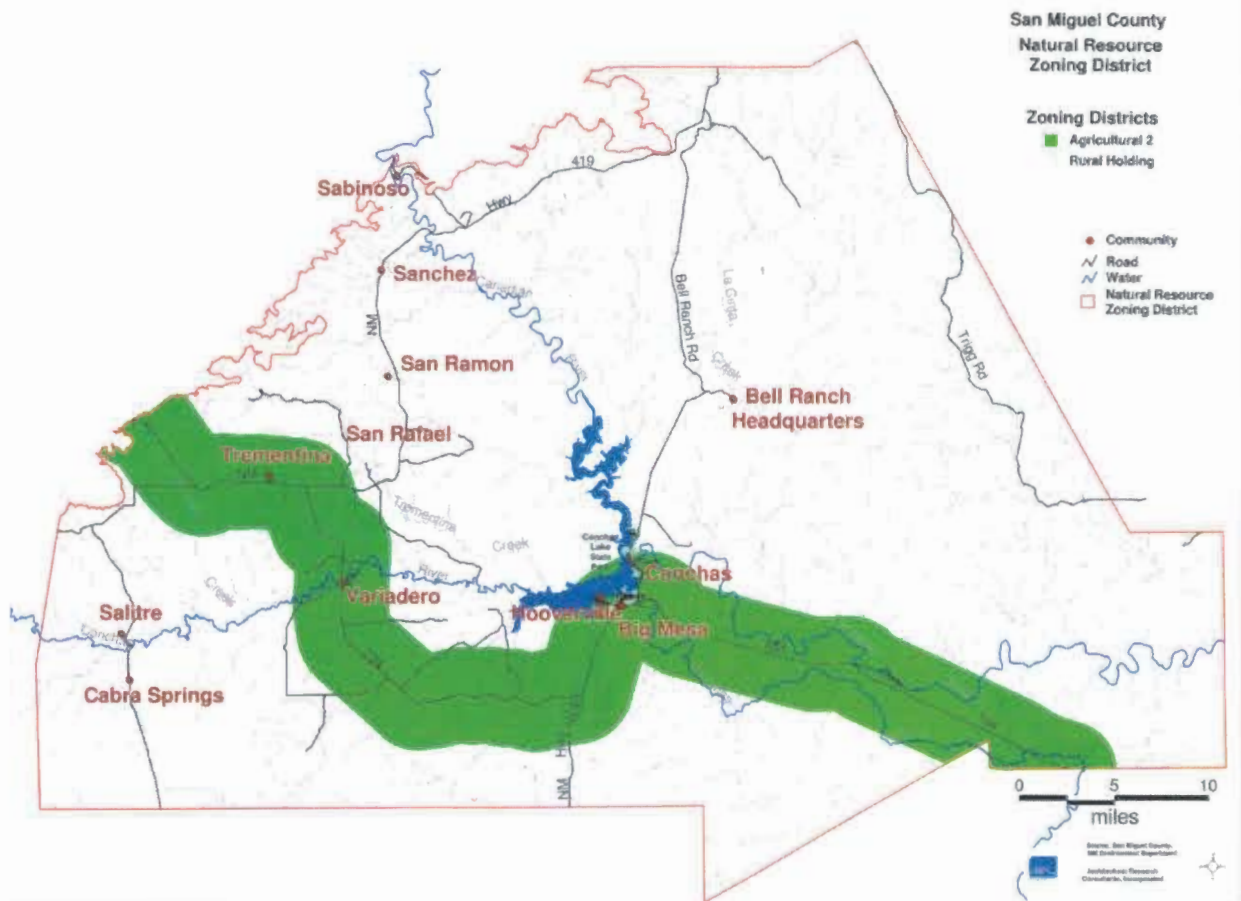
Yard, side: A yard bounded by a side lot line and on the interior side by a line drawn parallel to and located the minimum distance of the required side yard depth that is prescribed for the particular zoning district.

Yard, street: A yard which is bounded by a street lot line and is parallel to the street lot line for the required street yard depth that is prescribed for the zoning district in which the lot is located. A street yard extends across the lot. The street yard is the same as the front yard when it abuts the principal lot frontage.

Zoning Administrator: The designated Planning and Zoning Supervisor charge with administering Ordinance 86-2.

## **APPENDIX C: Official Zoning Map for Oil and Gas Project Approvals**

Official Zoning Map for Oil and Gas project Approvals within R-H Rural-Holding and A-2 Agricultural Zoning Districts in the Eastern portion of the County.



## APPENDIX D: Fees

Any fees collected that prove to be in excess of actual County costs and expenses shall be refunded to the Applicant or Operator.

Application, Conditional Use Permit, per well	\$40,000
Application, Building Permit, per pad	\$10,000
Application, Grading Permit, per well	\$2,500
Application for Certificate of Completion per Well	\$2,500
Annual Inspection Fee (per well)	\$25,000

COUNTY OF SAN MIGUEL )  
STATE OF NEW MEXICO ) ss

SAN MIGUEL COUNTY  
PAGES: 182

I Hereby Certify That This Instrument Was Filed for  
Record On The 13TH Day Of November, 2014 at 02:37:59 PM  
And Was Duly Recorded as Instrument #201403503  
Of The Records Of San Miguel

Deputy  Witness My Hand And Seal Of Office  
Melanie Y. Rivera  
County Clerk, San Miguel, NM

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