

# **NEW MEXICO**

## MODEL COUNTY OIL AND GAS REGULATIONS



Oil and Gas Accountability Project

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**NEW MEXICO COUNTY OIL & GAS MODEL REGULATIONS**

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I. AUTHORITY

This article is authorized by NMSA 1978 ' 3-21-1 et seq. and NMSA 1978 ' 4-37-1

II. PURPOSE

Whereas the county desires to promote the general welfare of its citizens, to protect the health, safety, and welfare of its citizens, as well as the county's scenic, aesthetic and environmental values, and to insure the harmonious, orderly, efficient growth and development of the county;

Whereas the county desires to facilitate the development of oil and gas resources within the county while mitigating its potentially adverse impacts and protecting the county's environment from the harmful, hazardous, and toxic effects, or nuisances resulting from oil and gas activities;

Whereas the county desires to have local in-put and oversight over certain aspects of oil and gas operations;

Wherefore, the county hereby enacts this ordinance as is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants.

III. JURISDICTION

This article shall apply to all unincorporated areas of the county, except where the county's jurisdiction is pre-empted by federal or state law.

IV. SEVERABILITY

Should any section, paragraph, clause or provision of this article be held to be invalid or unenforceable, for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this article.

V. PRE-EMPTION

Nothing in this ordinance shall be construed to supersede or contravene the authority which the state or federal governments or their agencies have with respect to the management, protection and utilization of the lands and resources under their jurisdiction. This ordinance shall apply to all lands, including state or federally owned lands, unless

they are expressly preempted from having authority in this area by state or federal law. The county recognizes that the State of New Mexico has enacted the Oil and Gas Act (Act). There is no provision in the Act which preempts the county from regulating zoning or reclamation of oil and gas land uses in the county, nor which preempts zoning or police powers previously granted to counties by the State. The county recognizes that it has concurrent jurisdiction with the state in those areas which are regulated by the Act. Any applicant must comply with any portion of the ordinance which imposes additional requirements beyond the requirements of the Act.

## VI. PROVISION OF SERVICES BY LOCAL GOVERNMENT

Where it is determined by the county that oil and gas exploration or development activities will have an adverse fiscal impact on the provision of services by local government, resulting from demographic changes which are directly attributable to the exploration or development use, such as housing supply, capacity of schools, local water supplies, transportation systems, utilities expansions, health care facilities, law enforcement and fire protection, such impact will be addressed through cooperative efforts toward financing of public improvements by the operator, such as phasing of the project, cooperation with the local government for impact fees, or other programs.

## VII. DEFINITIONS

The following definitions shall apply to the terms used in this ordinance. Terms not defined in this section shall be used in their ordinary sense:

*Agriculture* means currently in use for farm or ranch purposes, including pasture.

*Applicant* means that person, corporation or other legal entity possessing the legal right to develop the oil or gas resource or any other use proposed in connection thereof for the site in question; generally the applicant will be the owner or lessee of the oil or gas estate.

*Compressor station* means an installation consisting of one or more individual compressors, located on a gathering or transmission line, or both.

*Drilling Operations* means all of the physical and mechanical aspects of constructing a well for the exploration or production of oil or gas, or both, for injection of fluids associated with the production of oil or gas, or both, or the storage of natural hydrocarbons or liquefied petroleum gas derived from oil or gas, and includes all of the following:

- a. moving drilling equipment onto the drill site;
- b. penetration of the ground by the drill bit and drilling the well bore;
- c. construction of well sites and access roads; or
- d. workovers and recompletions.

*Easement* means authorization by a property owner for the use of a designated portion of his/her property by another, for a specified purpose.

*Evaporation pit* means an excavated pit used for storing and evaporating wastewater produced in degasification activities, during drilling or production, or both, sometimes lined.

*Exploration* means the phase of operations that covers the search for oil or gas through exploratory drilling and seismic activities, including the use of dynamite for blasting, land vibroseis or “thumping,” and any use of a vibrator.

*Facility* means any structure used in the production of, development of or exploration for oil and gas, including, but not limited to, those associated with individual well sites, gas gathering and water collection lines, compressors, storage yards or construction staging areas, water injection stations, gas treatment or pipelines.

*Gas well* means a well having a pressure and volume of natural gas; specifically, producing methane, often in combination with a variety of other hydrocarbon (e.g., ethane, propane, butane) and non-hydrocarbon (e.g., carbon dioxide, hydrogen sulfide, water) substances.

*Infrastructure* means any facilities or other man-made structures utilized in oil and gas activities, including but not limited to roads, related utilities and well site.

*Injection well* means a well or Underground Injection Control (UIC) program administered by the Environmental Protection Agency (EPA), State of New Mexico, or Native American Tribe under the Safe Drinking Water Act to ensure that subsurface injection does not endanger underground sources of drinking water.

*Legitimate public interest* means those concerns determined by the custom, conventions and mores of a community to implicate matters essential to human and environmental health, safety, and welfare.

*Lessee* means an individual or other legal entity leasing oil or gas rights for development purposes from the owner. The lessee may also be the applicant, for the purposes of this ordinance.

*Nuisance* means a facility which is not constructed, or being operated or installed in substantial compliance with the provisions of this ordinance and any applicable conditions of approval and as to which the applicant has failed or refused to abate, correct or discontinue any violation of this ordinance after being ordered to do so by the county.

*Operation* means the process of exploring for or producing oil or gas, or both, or the storage of natural hydrocarbons or liquefied petroleum gas, including all of the following:

- a. producing or pumping;
- b. processing;
- c. gathering;
- d. compressing;
- e. treating;
- f. transporting;
- g. conditioning;

- h. removing or disposing of produced water or brine;
- i. separating;
- j. storing;
- k. injecting;
- l. testing;
- m. reporting;
- n. maintaining or using surface facilities; or
- o. secondary recovery.

*Operator* means any individual or firm who conducts operation of an oil and gas well and/or facilities or is otherwise engaged in all or a portion of the extraction operations at a facility; usually the lessee of the oil or gas estate, although day-to-day operations may be contracted to another firm.

*Permit* means a development or exploration permit issued to an operator by the county.

*Permit Area* means the area over and through which the county authorizes the permittee to conduct its oil and gas exploration and/or development activities.

*Permittee* means any person, corporation or other legal entity that has successfully completed the application/permit process and, upon county approval, has acquired a permit to conduct oil or gas operations.

*Pit* means any surface or sub-surface impoundment, man-made or natural depression, or diked area on the surface. The term "pit" includes but is not limited to produced water pits, dehydrator pits, blowdown pits, separator pits, tank drain pits, pipeline drip collector pits, compressor scrubber pits, flare pits, drilling pits, reserve pits, workover pits and all other pits which receive exploration, production and processing wastes.

*Reclamation* means the restoration of lands and any natural resources disturbed by oil and gas operations.

*Reserve Pit* means an excavated, lined and temporary pit used for storing wastes that include but are not limited to drill cuttings or evaporating wastewater produced in degasification activities during oil or gas operations.

## VIII. APPLICABILITY

Development, construction or operation of oil and gas facilities, and all exploration activities for oil and gas resources, shall be subject to the provisions of this ordinance and any other applicable county regulations. Applicants seeking to obtain an exploration or development permit shall also be subject to any state and federal requirements and permits.

- A. **DEVELOPMENT PERMIT REQUIRED:** Construction, installation and operation of oil and gas facilities shall not commence, nor shall any ground-disturbing work in preparation for construction and installation of such facilities,

be allowed within the county until approval has been granted by the county and a Development Permit has been issued by the county. *[Depending on existing infrastructure and county resources this can be the Board of County Commissioners, the county's Planning Department or a separate entity created for the purpose of reviewing and authorizing oil and gas activities in the county.]*

- B. EXPLORATION PERMIT REQUIRED: Exploration for oil and gas resources shall not commence until approval has been granted by the county and an Exploration Permit has been issued.
- C. EXISTING OPERATIONS: Existing exploration or development operations which are in operation, or in a state of temporary cessation, prior to the effective date of this ordinance may continue operations provided the operator submits to the county a description of operations and a reclamation plan pursuant to the requirements of sections IX (C), (D) and (E).
- D. STATE OR FEDERAL LANDS: In order to preserve the welfare, health, safety and environment of its residents, the county shall, unless specifically preempted, require that exploration or development activities permitted on state or federal lands be subject to, and coordinated with, the provisions of this ordinance for the purpose of imposing certain of its regulations.
- E. APPROVAL OF APPLICATION:
  - 1. Applications for development or exploration activities which meet the standards and criteria laid out in this article shall be approved by the county.
  - 2. Notwithstanding subsection (1) above, an application otherwise meeting all the standards and criteria may be denied based upon any of the following circumstances:
    - a. Failure to provide the proper documentation required in this ordinance;
    - b. Failure to meet the required deadline for public notification;
    - c. Failure to demonstrate notification through certified mail of all surface and adjoining property owners and/or owners or tenants within 400 feet of proposed activities;
    - d. Presentation of a written protest signed by the owners of 50 percent or more of the lands (surface) within 400 feet of the permit area, which protest demonstrates a legitimate public concern;
    - e. A county determination that the proposed activity will have a significant adverse affect on the health, safety, morals and/or general welfare of county residents and/or the county's scenic values, aesthetic resources, environment or natural resources;
    - f. Failure to pay the proper permit fee;
    - g. Failure to post the required financial guarantee;

- h. Failure to demonstrate that the proposed activity is compatible with the purpose and intent of the county's Comprehensive Plan and/or Land Use Code;
- i. The county may deny an application if:
  - (1) It is determined that, based upon the applicant's submittals and the past performance of the applicant anywhere throughout the world, that the applicant's proposed activity in County would, more probably than not, result in conditions which would adversely impact the health, safety, or welfare of the county, its residents and its environment in a significant way; and
  - (2) The applicant has not established that there would be sufficient safeguards to assure that adverse conditions created or caused by the applicant anywhere throughout the world would not happen in the proposed permit area.
  - (3) The county shall consider conditions existing at the applicant's past project areas involving toxic waste spills, environmental problems or dangers caused by the applicant, the success of the applicant's prior reclamation activities, destruction caused by the applicant's activities to fauna, flora, water supplies and adjacent properties, as well as any measures the applicant took to correct or alleviate these problems.

F. **SPECIAL EXCEPTION:** Where activities proposed in an application do not meet the Standards and Criteria laid out in Section X of this article, and the county finds that extraordinary hardships or significant practical difficulties may result from strict compliance with the Standards and Criteria in that section, the county may grant a special exception and approve the application with conditions imposed to avoid or mitigate the adverse impacts of the proposed activity.

- 1. Permit conditions may be proposed by the permit applicant or developed and imposed by the county on a case-by-case basis.
- 2. Such conditions may include but are not limited to:
  - a. Relocation or modification of proposed access roads, facilities or structures;
  - b. Visual mitigation including but not limited to landscaping, buffering, or screening;
  - c. Posting of additional financial guarantees to assure compliance with permit conditions and/or completion of the permittee's reclamation plan;
  - d. Compliance with specified surface reclamation measures;

- e. Reduction in the size of the permit area from the size proposed by the applicant;
  - f. Splitting the exploration and/or development activities into defined phases;
  - g. Requiring that the permittee conduct reclamation activities, such as reseeded, contouring, or waste removal, concurrent with any phase or part of the exploration or development operations; or
  - h. Any other measures necessary to mitigate any impact on the surrounding environment, properties and infrastructure.
3. The county shall not grant a special exception without a factual determination that:
- a. Granting such exception will not be detrimental to adjacent property; and
  - b. Such conditions are in the interest of the health, safety, or welfare of the county, its residents or its environment; or
  - c. Site-specific conditions justify such special exception conditions.
- G. **APPLICANT'S RIGHT OF APPEAL:** An applicant shall be entitled to appeal a county decision denying a permit or granting a permit with a special exception. An applicant who has been denied a permit or has been granted a permit with a special exception must file an appeal of such decision within two (2) weeks after the county decision was issued. An applicant's appeal must state with specificity the reasons why the permit denial was unlawful or why the special exception permit conditions are unreasonable and/or impracticable. When appealing a special exception permit, an appellant must propose in writing alternative conditions, acceptable to the applicant, which would fulfill the same mitigation purposes as the county's proposed conditions. At the time of filing its appeal, an applicant may request a public hearing on its appeal. The county shall decide appeals within two weeks of their filing or within two weeks of a public hearing, if one is requested, and shall notify the applicant in writing of its final determination. An applicant may appeal a final decision of the county to any court of competent jurisdiction.
- H. **EFFECT OF APPROVED PERMIT:** Permit approval constitutes approval of the applicant's development or exploration plan and surface reclamation plan and incorporates those plans into the terms of the permit. After approval and issuance of a permit, the applicant shall be entitled to have processed any necessary building, grading, access, flood plain or other county permits and to otherwise proceed with the proposed operation. The approval of a permit by the county does not result in the vesting of any rights, nor does it authorize the violation of other county, municipal, federal or state regulations or preclude other governmental entities from refusing to issue permits.

- I. INSPECTIONS: Any operations, facilities and/or activities permitted by the county under this article may be inspected by the county at any time to ensure compliance with the terms of the county permit, as well as any permit conditions, if a special exception permit was granted. The county shall provide at least one hour's notice of such inspection by calling the phone number listed in the application submitted to the county and leaving a message if the contact person does not answer.
- J. ENFORCEMENT OF PERMIT: Failure to comply with any part of an applicant's development, exploration, and/or surface reclamation plans is considered a permit violation, as is failure to comply with a special exception permit condition. In addition to any other remedy authorized by law, the county shall be entitled to draw on any financial guarantee provided by an applicant to ensure permit compliance pursuant to this ordinance if the applicant violates the permit or any term or condition of the permit.
  - 1. If the county has reason to believe that a violation of the permit for which a financial guarantee has been provided has occurred, the county shall provide written notice to the applicant describing the violation, and stating a reasonable time within which the violation must be corrected. If, within that time period the applicant has either not corrected the violation or has not filed a written objection with the county stating why the county's determination of a violation was in error, the county shall be entitled to draw on the applicant's financial guarantee to pay for the costs of corrective measures.
  - 2. If the applicant files an objection with the county within two (2) weeks of the county's written notice, the applicant may request a hearing on the county's finding, at which the applicant may present evidence and testimony as to why the county's determination was in error. The county shall provide an opportunity for public participation and comment at such hearings. If, after such hearing, the county confirms that the violation has occurred and has not been corrected, the county may, in its discretion, allow the applicant additional time to correct the violation or the county may specify the time at which the county will draw on the financial guarantee to cover the costs of corrective measures.
  - 3. To insure the county's ability to enforce the provisions of any approved permit, the county shall not release any financial guarantee back to the permittee until the county determines that all activities have been completed and that all terms and conditions of the permit have been adequately carried out.

## IX. ADMINISTRATION

Any person or entity seeking a permit from the county must submit eight copies of (1) the completed application; (2) the proposed development or exploration plan; (3) the proposed surface reclamation plan; and (4) a completed surface use agreement or declaration that the applicant has made a good faith effort to negotiate a reasonable surface use agreement and was unable to do so.

- A. PERMIT FEES: The county may charge a non-refundable reasonable fee for processing the application. Where applicable, the county may charge an additional fee for inspecting and/or monitoring sites to ensure that permit conditions and other applicable county regulations are met.
- B. APPLICATION: The application shall contain the following:
  - 1. The names and addresses of:
    - a. Every legal owner of record of the property (surface and mineral) to be developed, explored, or otherwise affected by the proposed operation;
    - b. The holders of record of any leasehold interest in the property;
    - c. Any purchaser of record of the property under a real estate contract;
    - d. The operator, if he or she is a person different from the applicant;
    - e. The owners of record of all surface and subsurface areas adjacent to any part of the permit area;
    - f. All property owners within 400 feet of the well head location; and
    - g. Designated agents.
  - 2. Copies of application forms for all applicable local, state, or federal permits including, where applicable, completed state lease forms.
  - 3. A copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, and which includes information regarding ownership, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation may be located by local residents, and the location of where the application is available for public inspection.
  - 4. Proof of liability insurance.
  - 5. A statement of any violations of federal, state, and local laws regulating or pertaining to oil and gas activities related to the applicant/permittee's operations in the United States and throughout the world during the past ten years. Applicant shall submit the following: a statement of all oil or gas operations owned, operated, or directly controlled by the applicant, and the names and the addresses of regulatory agencies with jurisdiction

over the environmental aspects of those operations. The county may use these submittals to obtain information regarding past performance, and may also require the applicant to produce other relevant documentation of such operations.

6. A copy of the written notice letters apprising persons of applicant's submission to the county. Applicant must send such notice letters at least two (2) weeks before submitting its application to the county. Notice shall be made by either personal service or first class mail.
  - a. Notice shall be given to:
    - (1) Current surface owners, or their lessees, of the parcels of land on which the proposed activity will be carried out; and
    - (2) Current surface owners, or their lessees, of those parcels of land adjacent to the parcels on which the proposed activity will be carried out. For purposes of notice, a parcel is adjacent if it is physically contiguous to the subject parcel upon which the proposed activity is to be carried out, or, if not physically contiguous, is separated from the subject parcel by a public or private right-of-way, or body of water.
  - b. Notice shall contain the following:
    - (1) A description of the location of the proposed activity, including a legal description, as well as a street address for the site, if available;
    - (2) The name and current address of the applicant and its designated agent;
    - (3) A brief description of the proposed activity including the facilities and equipment to be used and any proposed construction of facilities or infrastructure including roads;
    - (4) The submittal date of the application to the county; and
    - (5) A proposed timeline for the activities.
7. The county will make all completed applications available to the public for review.

#### C. EXPLORATION PLAN REQUIREMENTS

1. The proposed exploration plan must include a vicinity map indicating the section, township, and range of the affected area and its relation to surrounding public and private roads, municipal boundaries, existing or planned buildings and structures and their uses.
2. The plan must include a detailed drawing of the affected area at a scale of 1 inch to 100 feet which includes the following:
  - a. The dimensions of the affected area clearly showing land to be

- affected in square feet and acres. This should include a depiction of the surface area the applicant has the legal right to enter and reasonably use. The map or plan shall show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas adjacent to the permit area, and the location of all buildings within 1,000 feet of the permit area;
- b. The proposed grid pattern to be followed throughout the exploration process and any existing vegetation, and/or fences or other features which may be affected by the exploration activity;
  - c. Existing and proposed roads within the site, as well as ingress and egress from public or private roads;
  - d. Where the proposed activity may impact or be near farm or range lands and/or agricultural cropland, those must be designated in the drawing;
  - e. Lease lines, if applicable;
  - f. On-site features such as flood plain designations, water courses, watersheds, drainages, utility lines and easements, ditches, ephemeral water bodies (including but not limited to playa lakes, arroyos and draws), wetlands or aquatic habitat, significant plant ecosystems, wildlife habitat and migration routes, geologic features, vegetative cover, dams, reservoirs, active and inactive wells, known areas of historical, archeological or cultural significance, recreational areas, and otherwise environmentally culturally or socially significant areas which may be impacted by the proposed plan.
  - g. Off-site features such as those listed above in (f) which may be impacted by the proposed plan;
  - h. The location of sub-surface water including the location of aquifers, water wells and other underground water sources, as well as the estimated elevation of the water table and a statement as to the quality of groundwater including the dissolved and suspended solids;
  - i. Existing topography of the site at intervals of five feet;
  - j. Designation of the surface and groundwater resources to be used and/or impacted through the course of the operation; and
  - k. The anticipated or actual starting and termination dates of each phase of the activity and number of acres and location of the affected land.
3. A description of the type and method of operation proposed, the engineering techniques proposed or used, and the equipment used or

proposed to be used.

4. An undesirable plant management plan for the site.
5. A narrative describing any consideration which has been given to making the exploration operations consistent with surface owner plans, and the county land use plan, if any.
6. Written plans setting forth applicant's measures for addressing emergency response, visual mitigation, noise mitigation, and dust mitigation.
7. The steps to be taken to comply with applicable air quality and water quality and quantity laws and regulations and any applicable health and safety standards.
8. A detailed description of the measures to be taken during the exploration process to assure the protection of:
  - a. The quality of surface and groundwater systems, both on-site and off-site, from adverse effects of the exploration activity; and
  - b. The rights of present users of such water.
9. A statement of whether the permit applicant, any subsidiary, affiliate, or persons controlled by or under common control with the permit applicant, has ever held any federal or state permit authorizing any aspect of oil and gas activity which, in the five-year period prior to the date of submission of the application, has been suspended or revoked, or has had a bond or similar security deposit in lieu of bond forfeited and, if so, a brief explanation of the facts involved.
10. Proposed Mitigation Measures: Where the proposed activity fails to meet the standards and criteria laid out in this ordinance, the application should detail with specificity any proposed measures which may mitigate the anticipated adverse impacts on the site and surrounding area.
11. A socio-economic assessment of the effects of the proposed activity on the socio-economic characteristics of the county or its services and infrastructure, including any negative fiscal impact to the county due to the expansion of services, such as fire and police protection, or impacts to roads; whether the project will affect, in a negative manner, the rate, distribution and demographic characteristics of the County as that relates to the provision of roads, water supply, sewage disposal, housing, landfills, schools, recreation and local business; as well as any anticipated employment, tax revenues, orders to local suppliers for goods and services, and similar items.

**D. DEVELOPMENT PLAN REQUIREMENTS**

1. The proposed development plan must include a vicinity map indicating the section, township, and range of the site and its relation to surrounding public and private roads, municipal boundaries, existing or planned

buildings and structures and their uses.

2. The Plan must include a detailed drawing of the site at a scale of 1 inch to 100 feet which includes the following:
  - a. The dimensions of the site and any surrounding areas off-site clearly showing land to be affected in square feet and acres. This should include a depiction of the surface area the applicant has the legal right to enter and reasonably use for developing his mineral interest. The map or plan shall show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within 1,000 feet of the permit area.
  - b. The location of all structures, flowlines or pipelines, tanks, wells, pits, and any other oil and gas operation facilities or equipment.
  - c. Existing and proposed roads within the site, as well as ingress and egress from public or private roads.
  - d. Where the proposed activity may impact or be near agricultural or range lands, those must be designated in the drawing.
  - e. Lease lines, if applicable.
  - f. On-site features such as flood plain designations, water courses, watersheds, drainages, utility lines and easements, ditches, ephemeral water bodies (including but not limited to playa lakes, arroyos and draws), wetlands or aquatic habitat, significant plant ecosystems, wildlife habitat and migration routes, geologic features, vegetative cover, dams, reservoirs, active and in-active mines, known areas of historical, archeological or cultural significance, and recreational areas.
  - g. Off-site features such as those listed above in (f) which may be impacted by the proposed plan.
  - h. The location of spoil, waste, or refuse areas, and other stockpiling areas.
  - i. The name of the watershed and drainage, as well as the location of the surface body of water (if applicable), where surface and pit drainage would run in the event of a discharge.
  - j. The location of sub-surface water or aquifers, the estimated depth of the water table and a statement as to the quality of groundwater including the dissolved and suspended solids.
  - k. Existing and proposed topography of the site at intervals of five feet.
  - l. Existing and proposed vegetation, buffers, berms, fences, and other screening devices.

- m. Designation of the surface and groundwater resources to be used and/or impacted throughout the course of the operations.
  - n. The anticipated or actual starting and termination dates of each phase of the activity and number of acres and location of affected land.
3. A drainage and erosion control plan.
  4. A statement as to whether produced water or wastewater will be piped off-site or transported in vehicles.
  5. A description of the type and method of operation proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used.
  6. An undesirable plant management plan for the site.
  7. Designation of any area natural resources which will be utilized in any stage of the operation.
  8. A narrative detailing an consideration which has been given to making the surface drilling operations consistent with surface owner plans, and the county land use plan, if any.
  9. Written plans regarding emergency response, including specific measures for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas, visual mitigation, noise mitigation, and dust mitigation.
  10. The steps to be taken to comply with applicable air quality and water quality and quantity laws and regulations and any applicable health and safety standards.
  11. A detailed description of the measures to be taken during the drilling process, including whether the operator will do off-site well monitoring, to assure the protection of:
    - a. The quality of surface and groundwater systems, both on-site and off-site, from adverse effects of the oil and gas activity; and
    - b. Rights of the present users of such water.
  12. A statement of whether the permit applicant, any subsidiary, affiliate, or persons controlled by, or under common control of, the permit applicant, has ever held any federal or state permit authorizing any aspect of oil and gas activity which in the five-year period prior to the date of submission of the application has been suspended or revoked, or has had a bond or similar security deposit in lieu of bond forfeited and, if so, a brief explanation of the facts involved.
  13. Proposed Mitigation Measures: Where the proposed activity fails to meet the standards and criteria laid out in this ordinance, the Plan should detail with specificity proposed measures which may mitigate the anticipated

adverse impacts on the site and surrounding area.

14. A socio-economic assessment of the effects of the proposed activity on the socio-economic characteristics of the county or its services and infrastructure, including any negative fiscal impact to the county from expansion of services, such as fire and police protection, or impacts to roads; whether the project will affect, in a negative manner, the rate, distribution and demographic characteristics of the county as that relates to the provision of roads, water supply, sewage disposal, housing, landfills, schools, recreation and local business; as well as any anticipated employment, tax revenues, orders to local suppliers for goods and services, and similar items.

E. SURFACE RECLAMATION PLAN REQUIREMENTS: Each applicant for a permit must submit as part of the permit application a surface reclamation plan that must include information outlined in this subsection, in the degree of detail necessary to demonstrate that full site reclamation can be accomplished.

1. The reclamation plan must include a statement of:
  - a. The condition of the permit area as it exists prior to any proposed activity, including all of the following:
    - (1) Uses existing at the time of the application;
    - (2) The capability of the land prior to any proposed activity to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;
    - (3) The productivity of the land, including appropriate identification of agricultural land; and
    - (4) An inventory and detailed description of existing vegetation, wildlife and wildlife habitat according to species and density of occurrence.
  - b. The use to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support the surface owner's preferred use.
  - c. Consideration which has been given to making reclamation operations consistent with surface owner plans, and the county land use plan, if any.
  - d. Consideration which has been given to developing the reclamation plan in a manner consistent with local, physical, environmental, cultural and hydrological conditions.
  - e. Designation of any area resources which will be utilized in any stage of the operation (including surface materials used for reclamation).

- f. Plans for:
    - (1) The control of surface water drainage and of water accumulation and measures to be taken during the reclamation process to provide for the protection of the quantity and quality of surface and groundwater systems;
    - (2) Cleaning up polluted surface and ground water;
    - (3) Backfilling, soil stabilization, compacting, grading, and appropriate revegetation;
    - (4) Soil reconstructions, replacement, and stabilization;
    - (5) Configuration of the reshaped topography;
    - (6) Waste disposal;
    - (7) A plan for revegetation of affected lands including the location and depth of soil types, degree of slope, precipitation patterns, density of each species of vegetation to be used, methods for protecting and restoring topsoil and adding other growth mediums where required, time of planting, method(s) of planting, proposed seed rates and/or density of planting, and if necessary, use of fertilizers, and any recontouring;
    - (8) Road reclamation; and
    - (9) Other practices necessary to ensure all disturbed areas will be reclaimed.
  - g. A detailed description of the measures to be taken during the reclamation process to assure the protection of:
    - (1) The quality of surface and groundwater systems, both on-site and off-site, from any adverse effects of the reclamation process; and
    - (2) The rights of present users of such water.
  - h. A detailed timetable for the accomplishment of each major step in the reclamation plan, including a reasonable reclamation schedule in light of the specific surface use, surrounding land use and surrounding environmental features.
  - i. A cost estimate for the reclamation plan.
- F. **DEADLINE FOR COUNTY DETERMINATION:** The county shall make a determination of whether to issue or deny a permit, or to issue a special exception permit, in writing and which shall be mailed or otherwise provided to the applicant no later than 20 business days after the date on which the application was filed; or where a hearing has occurred, no later than 20 business days after the hearing date. Failure to make a determination on the application within this time period shall result in the application being considered approved.

- G. FALSE OR INACCURATE INFORMATION: The county may revoke a permit or a special exception permit if it is determined at a public meeting, held with at least 10 business days notice to the applicant, that the applicant provided information and/or documentation to the county regarding the permitted activity which the applicant, its agents, servants or employees knew, or reasonably should have known, was substantially false, misleading, deceptive or inaccurate.
- H. AMENDMENTS TO PERMIT: Any proposal to change the development, exploration, or reclamation activities approved under a county permit shall require written submission of the proposed change or amendment to the county. Where the county determines that the proposed amendment amounts to a substantial modification of the permitted activity, the county may order the applicant to file a new application and receive a new permit from the county. Where the county determines the proposed amendment is not substantial, it may approve the modification by written letter to the applicant.
- I. FINANCIAL GUARANTEE OF PERMIT COMPLIANCE: Before a permit can issue, the applicant is required to post with the county a financial guarantee. The purpose of the financial guarantee is insure applicant's compliance with all terms and conditions of the permit and to provide for adequate resources to cover the costs of corrective measures in the event of a permit violation. Consistent with the provisions of this ordinance, the county is therefore authorized to draw on the financial guarantee where the permit and/or permit conditions have been violated.
1. Financial guarantees may consist of a surety bond running to the county, irrevocable letter of credit, a certificate of deposit payable to the county, or a reclamation trust fund held by an independent trustee.
  2. Financial guarantees must meet the following criteria: assurance of funds sufficient to cover the costs for which the financial guarantees are required; assurance that the funds will be available and made payable to the county as needed; assurance that the funds will be fully valid, binding, and enforceable under state and federal law; and assurance that the funds will not be dischargeable through bankruptcy.
  3. Minimum financial guarantee for development permit: \$20,000/ well.
  4. Minimum financial guarantee for exploration permit: \$10,000/permit.
- J. PUBLIC HEARING: If the mineral interest, surface or neighboring mineral and surface interest owner(s) requests a public hearing on the application, the county shall grant such request. The applicant and other interested persons shall be given an opportunity to testify in support of, or in opposition to, the application at such hearing.
- K. PENALTY AND SANCTIONS: The county may prosecute violations of this ordinance in any court of competent jurisdiction of the county. Prosecution may be commenced by the issuance of a citation charging the violation. Citations may

be issued by the code enforcement officer of the county or an employee of the county authorized by the board of county commissioners.

1. Failure to obtain a county permit prior to commencement of any construction, development and/or exploration activities constitutes a violation of this ordinance and will result in a fine of five hundred dollars (\$500) or imprisonment for ninety days or both. With respect to violations of this ordinance that are continuous with respect to time, each day the violation continues is a separate offense.
  2. Other penalties may include suspension or revocation of the exploration or development permit or the calling and exercise of the financial guarantees.
- L. **RIGHT TO INJUNCTIVE RELIEF:** In addition to penalties and sanctions outlined above in section IX (K) and below in section IX (M), the county is hereby authorized to institute an action to enjoin any activity which violates this ordinance, including action to abate commencement of oil and gas development, construction of facilities, digging or drilling, or exploration without a county permit or otherwise in violation of this ordinance.
- M. **ATTORNEYS' FEES AND COSTS:** The county is entitled to attorneys' fees and costs if it prevails in any action prosecuted for a violation of this ordinance.
- N. **CITIZEN ENFORCEMENT:** Any citizen may file a written complaint with the county regarding violations of a permit issued under this ordinance. If the county fails to make a written determination regarding said complaint within 60 days, then said citizen may seek redress in a local court of competent jurisdiction for violations of this ordinance and permits issued pursuant to this ordinance.
- X. **DEVELOPMENT PERMIT STANDARDS AND CRITERIA FOR APPROVAL**  
All oil and gas facilities shall be spaced, located, drilled, operated and maintained at a minimum in accordance with applicable state or federal laws and regulations. In addition, all operators of oil and gas facilities, including those who complete an oil and gas facility or modify or upgrade an existing facility within the county shall operate in accordance with the following provisions. A determination as to whether to issue a development permit, or special exception permit granted with conditions, shall be based on compliance with the provisions of the section VII (E) and the following standards and criteria:
- A. **AREA:** The area to be occupied by the producing equipment shall be confined to an area not to exceed one hundred (100) feet by one hundred fifty (150) feet.
  - B. **SETBACK:** In order to provide a buffer between oil and gas operations and surrounding properties, the following minimum setbacks are required:
    1. A minimum setback of at least 1000 feet shall be required between the well head location and any existing residential, office, institutional, commercial or industrial structure or 300 feet from a public right of way;
    2. A minimum setback of at least 300 feet shall be required between the well

head location and any surface waters, or watercourse (including ephemeral wetlands, arroyos, and draws);

3. A minimum setback of at least 1000 feet shall be required between the well head location and any areas of cultural, scenic or environmental significance; and
4. A smaller setback may be granted by the county if the surface owner and adjacent owner(s) within 400 feet of the proposed operations agree that there will be no adverse impact caused by the proposed activity.

C. SOUND EMISSIONS: All construction, maintenance, and operations of the oil and gas facility shall be conducted in such a manner so as to make the least noise possible. The following also apply:

1. Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented away from the closest existing residences and businesses unless otherwise specified by a New Mexico Environmental Department permit.
2. All facilities with engines or motors which are not electrically operated shall be equipped with mufflers that meet a 40 dB noise standard, when measured at the nearest dwelling or public facility. Such equipment shall be installed and maintained in proper working condition.
3. All mechanized equipment associated with an oil and gas facility shall be anchored or mounted on vibration dampeners so as to minimize transmission of vibration through the ground.
4. All facilities that have compressors, engines, or motors which generate sound and are located within 400 feet of an existing residence, office, institutional, commercial or industrial structure; or within 400 feet of known wildlife habitat and/or migration routes; or within 400 feet of recreational areas, must be placed behind a maintained, acoustically insulated housing or a cover enclosing the motor or engine to further reduce sound and lessen visual impact.
5. Under certain circumstances additional noise abatement measures may be required. These measures may include, but are not limited to:
  - a. Vegetative screening consisting of trees and shrubs placed within a fenced enclosure;
  - b. A solid wall or fence of acoustically insulating material surrounding all or part of the facility;
  - c. An acoustically insulated building enclosing the facility; or
  - d. A noise management plan identifying hours of maximum noise emissions, the type, frequency and level of noise to be emitted and proposed mitigation measures.

D. AIR QUALITY:

1. Meet any air quality standards that the county has adopted.
  2. Require all motorized equipment to have a catalytic converter and to use lean burn technology.
- E. SECURITY: Security of location and equipment shall be required for oil and gas facilities, including:
1. Temporary fencing at least six (6) feet high of barbed wire or other fencing equally acceptable during the drilling, construction, work-over or completion of the oil and gas facility; and
  2. Permanent perimeter fencing at least six (6) feet high with a single strand of barbed wire and locked gating for all facilities after construction and for the duration of the operation of the oil and gas facility.
- F. PITS: No unlined pits shall be permitted in the county. The county may require the use of closed-loop systems with secondary containment (i.e., lined gravel pads) on drilling sites in areas where oil and gas activities may pose a risk to the health, safety, and welfare of the county and/or its residents. Lined reserve pits are subject to the following conditions:
1. All lined reserve pits shall be constructed so as not to leak, break or allow discharge of liquids or produced solids.
  2. The pit should have adequate capacity to maintain 2 feet of free board at all times.
  3. Pits are not to be located in natural drainages or trail locations.
  4. Pit walls are to be “walked down” by a crawler type tractor following construction and prior to usage.
  5. Any plastic material used to line pits must be removed from the site before pits are covered.
  6. The final grade of the reserve pit (after reclamation) shall allow for drainage away from the pit area.
  7. All pits containing liquids shall be fenced with woven wire and any pits containing toxic liquids shall be screened or netted. Drilling pits shall be fenced on three sides and once the rig leaves location, the fourth side shall be fenced.
  8. All fencing must be a legal fence in accordance with New Mexico state law.
  9. Upon completion of a well, any reserve pit containing any sheen of oil across the pit shall be covered with screening or netting and shall remain covered until the pit is reclaimed or the oil is removed.
  10. Liquids in pits may be allowed to evaporate, or be pumped out as necessary. Any remaining solids shall be removed from the site before pits are filled and re-contoured. Under no circumstances may pits be cut and drained. All reserve pits shall be closed and rehabilitated within 120 days after completion.

- A. STORAGE TANKS: The use and maintenance of storage tanks is required where feasible. Storage tanks must meet the following conditions:
1. All oil separator, petroleum and brine storage tanks shall be covered. No gas, odors, or fumes from any storage tank, oil separator or casing head shall be vented into the open air without being filtered through a pollution control device containing activated carbon. Such devices shall be maintained to ensure their effectiveness. Burning of gases or fumes by use of flares from wells or storage facilities is not allowed without a specific air quality permit as required by local, state or federal authority.
  2. All storage tanks shall be located within a bermed area, where the berm is not less than two feet in height covering an area sufficient to contain and the area within the berm is able to hold one and one-half (1-1/2) times the entire liquid capacity of all tanks therein. Such bermed areas shall be lined to prevent seepage of any spilled substances into the soil and/or groundwater. Rainwater or other fluids shall not be allowed to accumulate within the berms and shall be removed periodically. Unless tested and approved for disposal by sanitary sewer, the fluids shall be considered as contaminated and disposed of in accordance with State regulations for such contaminated fluids.
  3. Storage tanks shall be equipped with automatic shut-off devices linked to the fluid level in the tank to prevent overfilling and spillage. In addition, a single overflow tank shall be provided to contain the overflow from the oil or brine storage tanks in the event that the shutoff devices fail. The capacity of the overflow tank shall be sufficient to hold twenty-four hours' production from the well or wells.
- B. OTHER EQUIPMENT: If the use and maintenance of other equipment is required, the following must be abided by:
1. All production equipment, structures and premises shall at all times be maintained and kept in a clean, sanitary and tidy condition;
  2. All equipment must be maintained so as to prevent leaks and other malfunctions which may contribute to discharges to the surface; and
  3. All pumping units must be electrically driven so as to reduce the unsightly and damaging emissions from motor driven pumping units.
- C. VISUAL IMPACTS: A visual mitigation plan shall be required for all new facilities, and all existing facilities being modified or upgraded. An applicant shall:
1. Locate all facilities away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings and other landmarks;
  2. Locate the facilities to avoid crossing hills and ridges (silhouetting);

3. Locate facilities at the base of slopes to provide a background of topography and/or natural color;
  4. Design structures of minimal size to satisfy present and future functional requirements and minimize impact to surrounding property owners;
  5. Minimize damage to existing trees, forage, vegetation and crops and where clearing of trees and vegetation is required in the construction of the facility, the applicant will feather and thin edges of vegetation;
  6. Replace earth and all natural surface materials adjacent to water crossings at slopes less than the natural angle of repose for the soil type of the site;
  7. Equipment must be painted in a uniform, non-contrasting, non-glare, non-chalking, non-reflective color tone, and in a color to match the landscape and not the sky. Safety rails, bollards or other safety devices may be painted with safety yellow, orange or other comparable color;
  8. Within six months of well completion, the pad area shall be reseeded with native grasses or existing vegetation acceptable to the surface owner, or in accord with local, state and federal guidelines or requirements;
  9. Apply the following landscape practices:
    - a. Establishment of ground covers, shrubs and trees;
    - b. Shaping cuts and fills to appear as natural forms;
    - c. Cutting rock areas to create irregular forms;
    - d. Designing the facility to utilize natural screens; and
    - e. Construction of fences such as woven wood or rock for use with, or in place of, landscaping.
  10. Enclose the areas to be occupied by the producing equipment in a locked, fenced enclosure. The fenced area shall be landscaped in such a manner as to provide a physical and visual buffer or screen that blocks the interior area of the facility from the neighboring areas;
  11. Exterior lighting shall be directed away from residential areas, or shielded from such areas.
- D. IMPACTS TO WILDLIFE: Where the proposed activity may adversely impact wildlife or wildlife habitat, the county may require preparation of a wildlife mitigation plan.
- E. ROADS:
1. No facility shall be constructed nor well drilled at any location which is within any of the streets, alleys, or public or private rights-of-way in the county. No street, alley or public right(s)-of-way shall be blocked or encumbered or closed in the construction of a facility, or during the drilling, production or pipeline operation, without the express written permission of the county or the private landowner, and then only temporarily with specific dates of closure identified.

2. Access to all facilities shall be through appropriately acquired right-of-way or easement; easements shall not be implied.
  3. Applicant shall meet all county road standards, where such standards exist. Where there will be a substantial increase in traffic or in the weight of vehicles using access roads, the county may require reasonable upgrades and improvements as a condition of the permit.
  4. Applicant shall make all reasonable efforts to use existing roads and/or minimize construction of new roads.
    - a. Roads should be maintained to prevent undue degradation to the surface and surrounding environment.
    - b. Roads should be aligned to follow existing grades and minimize cuts and fills.
  5. All unimproved road access to facilities adjacent to paved public rights-of-way shall be surfaced with a minimum of 3 inches deep of gravel road base and maintained through the duration of the well.
  6. All access roads must be graded, have catchment basins, be gravel packed and sealed.
  7. Following operations, all access roads must be fully restored and reclaimed to the condition that existed before the operations were constructed.
  8. The county may require preparation of a dust mitigation plan to reduce the amount of dust released as a result of the oil and gas activity.
- F. PROXIMITY OF WELL, TANKS OR PIPELINES TO BUILDINGS:
1. No permit shall be issued for any well to be drilled or storage tank to be placed nearer than one thousand (1000) feet to any existing residential, office, institutional, commercial or industrial structure, or three hundred (300) feet from any watercourse or drainage (including ephemeral wetlands and arroyos, draws, etc) or one thousand (1000) feet from any area of cultural, recreational or environmental significance.
  2. No high pressure gas injection well or compressor used in conjunction with the gas injection well shall be located nearer than one thousand (1000) feet from any existing residential, office, institutional, commercial or industrial structure, or surface water, watercourse or drainage (including ephemeral wetlands and arroyos, draws, etc) or any area of cultural, recreational or environmental significance. In exceptional cases for reasons of safety, the county may require that any such facility shall be located at a greater distance than one thousand (1000) feet to any such structure.
  3. No residential, commercial or industrial structure other than structures necessary to operate a pipeline shall be erected or moved to a location nearer than thirty (30) feet to any pipeline transporting gas, where the pipeline operating pressure is greater than two hundred fifty (250) psi,

unless a greater or lesser distance is recommended.

- G. USE OF ABANDONED WELL
    - 1. All abandoned wells, which are not be used and equipped for disposal purposes, shall be filled and plugged in accordance with applicable rules of the agencies of the state having jurisdiction thereof.
    - 2. The entire area of the well location and any adjacent areas affected by the operation shall be reclaimed to their original state or as close to their original state prior to installation of the well as possible.
    - 3. Any abandoned well scheduled to be re-used shall be subject to the same process and regulations as new oil and gas facilities or wells.
  - H. SOIL CONSERVATION: In order to prevent pollution to natural surface runoff and soils, soil erosion from coal bed methane wastewater impoundments during runoff events, the creation of saline seeps, the contamination of shallow ground water and the raising of water tables that will create such saline seeps, and to ensure the reclamation of such impoundments so as not to create salt flats, the county may require:
    - 1. Utilization of stock tanks to minimize impacts of water discharged from coal seams.
    - 2. That no coal bed methane wastewater impoundments be constructed in intermittent or ephemeral drainages or alluvial aquifers.
    - 3. That no run-off from land-applied coal bed methane wastewater be allowed.
    - 4. Reclamation of any surface materials (e.g., sand, gravel, caliche) used during the operation.
  - I. CONFORMANCE WITH COMPREHENSIVE PLAN: Applications shall be evaluated for conformance with the county's Comprehensive Plan, comprehensive zoning ordinance, and any other applicable local, county, state and federal plans and regulations.
  - J. ADDITIONAL REQUIREMENTS: The county may make additional requirements in permit in addition to those outlined above. Such requirements may include use of existing well pad(s) and access roads, directional drilling, increased setbacks, sound prevention methods or technology, or any other improved technology that may benefit the area affected by the oil and gas operations.
- XI. EXPLORATION PERMIT STANDARDS AND CRITERIA FOR APPROVAL: In addition to the standards and criteria listed in Section X above, the following additional standards and criteria may be considered when evaluating applications for Exploration Permits.