

**THE BOARD OF COUNTY COMMISSIONERS OF MORA COUNTY,  
OIL AND GAS ORDINANCE  
NO.**

**I. SHORT TITLE**

**THIS MORA COUNTY OIL AND GAS ORDINANCE CONSTITUTES AN AMENDMENT TO THE MORA COUNTY DEVELOPMENT GUIDANCE SYSTEM ZONING AND SUBDIVISION ORDINANCE AND AS AN INDEPENDENT PUBLIC NUISANCE AND ENVIRONMENTAL PROTECTION ORDINANCE PURSUANT TO THE COUNTY'S POLICE AND HOME RULE POWERS APPLICABLE TO THE EASTERN PORTION OF THE UNINCORPORATED AREA OF THE COUNTY.**

**II. AUTHORITY AND SCOPE**

This ordinance, officially cited as the "Mora County Oil and Gas Ordinance", XIII of the New Mexico Constitution (1912); NMSA 1978 Sections 3-18-1; 3-19-1; 3-21-1; 3-21-13, 4-37-7; 4-38-1; and 19-10.4.1, 4.2 and 4.3. This Ordinance constitutes an exercise of the County's police power, planning, zoning, environmental, health, safety, general welfare, public nuisance and land use powers, for the regulation of Oil and Gas drilling, production, transportation and off-site impacts and applies to Eastern Mora County outside of the boundaries of incorporated municipalities, state and federal land.

This Ordinance amends the Development Guidance System ("DGS") by: (1) adding new Definitions and Rules of Interpretation; (2) amends the DGS through regulating Oil and Gas Projects in Eastern Mora County; (3) establishes new Floating Zone provisions; (4) requires consistency with the 2018 Comprehensive Land Use Plan, its Oil and Gas Element, and all state and federal statutes and regulations; and changes the name of the Planning and Zoning Committee to the Planning and Zoning Commission.

**III. STATE AND FEDERAL STATUTES**

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

Oil and Gas Act, NMSA 1978, §§ 70-2-1 and the Oil and Gas Regulations issued by the Oil Conservation Commission, §§ 9.15.2

Water Quality Act, NMSA 1978, §§ 74-6-1;

Rangeland Protection Act, NMSA 1978, §§ 76-7B-1;

Governor's Executive Order 2008-004;

Governor's Executive Order 2008-038;

Emergency Planning and Community Right to Know Act, 42 U.S.C.A. § 11001;

New Mexico Public Health Act, NMSA 1978 §§ 24-1-1;

New Mexico Senate Joint Memorial 71;

Wildlife Conservation Act, NMSA 1978, §§ 17-2-37;

Cultural Properties Act, NMSA 1978, §§ 18-6-1;

Federal Land Policy and Management Act, 43 U.S.C.A §§ 1701

National Historic Preservation Act, 16 U.S.C.A §§ 470;

Uniform Trade Secret Act NMSA 1978, §§ 57-3A-1;

Prehistoric and Historic Sites Act, NMSA 1978, §§18-8-1;

Cultural Properties Protection Act, NMSA 1978, §§ 18-6A-1;

Archaeological Resources Protection Act, 16 U.S.C.A § 470 aa;

Surface Owners Protection Act, 70-2-1, NMSA 1978;

Solid Waste Act, 74-9-1, NMSA 1978;

Environmental Improvement Act, § 74-1-2, NMSA 1978.

National Environmental Policy Act, 42 U.S.C.A 4321;

Energy Policy Act, 42 U.S.C.A 6301;

Oil Pollution Act, 33 U.S.C.A §§ 2701;

Safe Drinking Water Act, 42 U.S.C.A §§ 300F;

Clean Air Act, 42 U.S.C.A §§ 7401 to 7671q. and Regulations, 40 C.F.R. § 52.21(b).

Clean Water Act, 33 U.S.C.A §§ 1251 to 1387 and Regulations, 40 C.F.R. Part 130

(z) Resource Conservation and Recovery Act, 42 U.S.C.A §§ 6901 to 6992k, and Regulations §§ 261.1;

(aa) Endangered Species Act, 16 U.S.C.A §§ 1531 to 1544 and Regulations, 50 C.F.R. §§ 17.1;

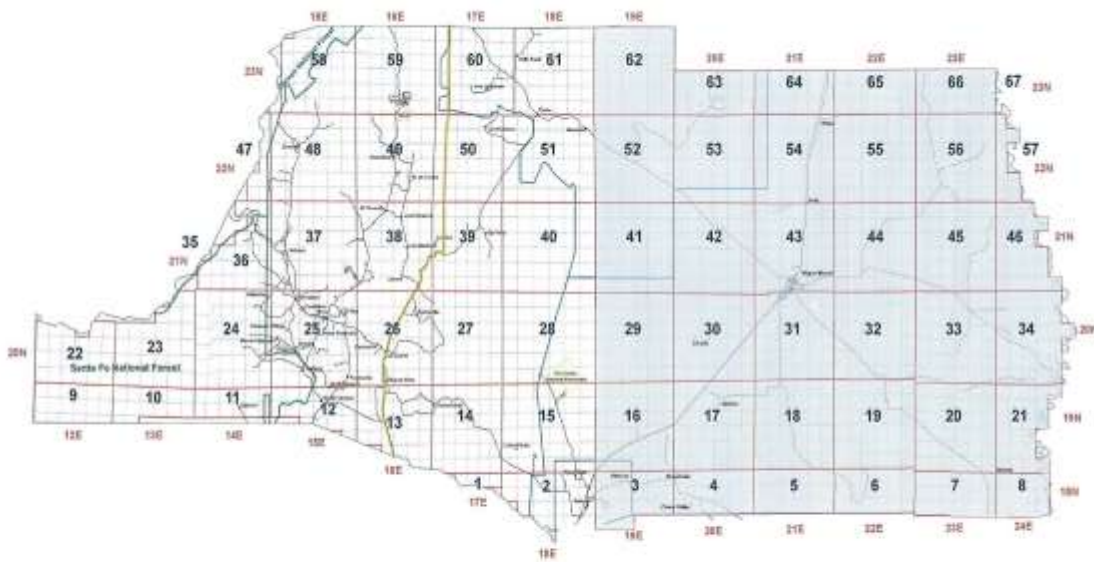
(bb) Toxic Substances Control Act, 15 U.S.C.A § 2601.

#### **IV. FINDINGS AND PURPOSES**

##### **A. Findings**

1. Oil and Gas exploration, drilling, fracking, production or transportation shall not be permitted in Western Mora County due to: (1) the danger of degrading the area's depleting groundwater supplies; (2) polluting the area's surface and groundwaters; (3) incompatibility with the intensity and density of residential, commercial, government offices, churches, and schools; (4) inconsistency with the 2018 Mora County Comprehensive Land Use Plan, and its Oil and Gas Element; (5) degradation of the existing roads which would be heavily impacted by Oil and Gas exploration, drilling, production, and transportation of water, equipment, oil and gas production to and from oil and gas sites; and (6) the 2008 geohydrological study shows that oil and gas reserves are located solely in the Wagon Mound area and the Las Vegas basin within the boundaries of Eastern Mora County.

2. Oil and Gas projects shall be authorized solely in Eastern Mora County which is sparsely populated containing mostly agricultural and ranching uses in which Oil and Gas facilities may be accommodated provided such development meets the extensive analysis required by this ordinance and utilizes appropriate mitigation necessary to protect the County’s interests in the documents attached to the development Application for a Floating Zone. The Easterly line along the following Townships designate the Division of the East and West Mora County: TWP’s 23N 18E; 22N 18E; 21N 18E; 20N 18E; 19N 18E; 18N 18E.



Eastern Mora County is home to: (a) significant archaeological resources and contains within it a number of areas protected under the auspices of the Archaeological Sites Protection Act, Public Law 108-208 (2004); (b) significant environmentally sensitive areas; (c) inadequate roads incapable of enduring “heavy” traffic required by the construction of Oil and Gas projects and concomitant transportation of water, equipment and Oil and Gas production in 80,000 pound loads, (d) inadequate and nonexistent public facilities and services; including fire, police, EMT, hospital and medical offices, parks, schools, affordable housing for Oil and Gas employees and their families, and (e) scarce surface and ground water

resources; all of which requires significant police power, zoning, public nuisance and environmental regulation of Oil and Gas projects to protect the County's health, safety and general welfare.

3. Eastern Mora County is part of the Mora Watershed and has few water wells, which are spread out much more so than Western Mora County and has a large system of streams spread out across the County that interconnect between the eastern and western portions of the county. Surface and ground water resources in Eastern Mora County are extremely limited and existing supplies must be fully used to support the agricultural, ranching, commercial, office, industrial and residential population in small communities. Oil and Gas drilling in Eastern Mora County has the potential to negatively diminish the availability of current water supplies and pollute local water supplies and sources of groundwater.

4. Eastern Mora County is home to a variety of native plant and animal species whose arid habitats will be impacted negatively by Oil and Gas drilling. Terrestrial wildlife, aquatic and riparian species and habitats such as those found around the springs, wetlands, and drainages in Eastern Mora County that must be protected.

5. Clean air and water are essential to most resources and activities in Eastern Mora County and will be degraded by Oil and Gas emissions of methane, carbon dioxide and toxic chemicals.

6. Sensitive environmental systems, hillsides, steep slopes, acequias, and cultural, archaeological and historic sites in Eastern Mora County require significant protection from Oil and Gas projects. New Mexico has strengthened protection for highly sensitive and significant historical, cultural and archaeological sites and landscapes.

7. 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 such 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.

8. The New Mexico Department of Game and Fish recommends enacting setbacks for Oil and Gas wells of 0.5 miles from important aquatic and riparian habitats such as springs, wetlands, and drainages including, but not limited to, Eastern Mora County.

9. Oil and Gas drilling and fracking may presently or in the future cause irreparable harm to the County's water supply and pollution of water and air, and may cause cancer, lung disease, and respiratory diseases. The New Mexico "rule of reason" requires the Oil and Gas industry to meet the burden of proof to provide conclusory documentation that the Oil and Gas site will not create community health effects, and these effects must be scrutinized, and totally mitigated before drilling and extraction occur.

10. Pursuant to the New Mexico Public Health Act, NMSA 24-1-1 (1978), the Department of Health has the authority to "investigate, control, and abate the causes of disease... sources of mortality and other conditions of public health." Environmental hazards resulting from Oil and Gas projects potentially cause adverse health effects.

11. Air, soil, and water contamination may occur during different stages of Oil and Gas drilling, fracking and extraction operations, and such contamination could affect human health.

12. 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 fresh water aquifers.

13. Approximately 80% of the chemicals used in Oil and Gas development may possess inherent adverse health effects.

14. Senate Joint Memorial 71 of 2004 encourages 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.

15. Oil and Gas exploration or drilling could have a negative effect on tourism. Scenic beauty is the greatest attraction in Mora County. Oil and Gas exploration could have a significant negative affect on the landscapes and communities in this area.

16. Recognizes that Mora County has supplemental authority, in addition to the authority of the State to regulate adverse public nuisance, land use, and environmental impacts and effects not inconsistent with State legislation and

regulation, stemming from Oil and Gas projects in Eastern Mora County and these findings are not in conflict with State Oil and Gas regulation.

17. 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 ten (10) inspectors to view about 100,000 oil and gas wells and five (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 supplemented by required County inspection and monitoring to assure compliance with the state and federal statutes, rules and regulations.

### Purposes

1. This Ordinance is enacted to protect and promote the health, safety, environment and general welfare of present and future residents, businesses and the public of Mora County. This Ordinance implements the Mora County Oil and Gas moratoria and interim development Ordinances, controlling Applications to drill oil or natural gas wells from October 13, 2015 to June 30, 2018.

2. This ordinance enacts for the unincorporated area in Eastern Mora County: (1) countywide amendments to the Mora County unincorporated lands zoning and subdivision development guidance system; (2) separate police power, planning, zoning, environmental, health, safety, general welfare, public nuisance, land use and environmental provisions for the health, safety and general welfare designed to establish separate land use, preservation and flood plains, cultural, historical, archeological and natural resources), avoidance of water and air pollution; assurance of water availability and quality; air quality, and achievement of county fiscal balance; (3) establishing on and off-site regulation of Oil and Gas wells and drill sites, and the consequent drilling, production and transportation of Oil and Gas, water, equipment and materials to and from Oil and Gas project sites; (4) requiring adequate on and off-site public development approval process for Oil and Gas projects involving: (a) approval of an Oil and Gas floating zone prior to any property (fee simple, fee simple determinable, fee simple on condition subsequent, life estate, remainder and executory interest, leasehold, profit or easement) (surface or sub-surface) seeking Oil and Gas permits from the State Oil and Gas Commission and Mora County; and (b) ministerial development approval of grading, drilling, and building permits and certificates of completion; (7) providing for supplementary, complementary and operational consistency with all federal and state statutes, Oil and Gas Commission and OCD regulations and with the Mora County 2018 Updated

Comprehensive Land Use Plan including but not limited to, the Plan's Oil and Gas element adopted concurrently with this ordinance; and (8) requiring the following documents ("Application documents") as a condition of floating zone development approval: (a) a state background report; (b) a site plan; (c) a development plan; (d) a title report; (e) a reclamation plan; (f) a plan consistency report; (g) an environmental impact report; (h) an adequate public facilities and public services assessment; (i) a fiscal impact assessment; (j) a water availability assessment; (k) an emergency preparedness and response plan; (l) a traffic impact assessment; (m) a geohydrological report; (n) a land and environmental suitability process; (o) a beneficial use and value determination; (o) a development agreement process authorizing transfers of development rights, (herein after "Application documents"), provisions for Oil and Gas Applicants to assure environmental protection and provide improvements, roads, public schools, open space and parks; affordable housing for employees, storm-water drainage, fire, police and emergency response, the need for which the Oil and Gas project generates.

3. Applications for development approval of a floating zone shall be required to fully mitigate all adverse public nuisance, 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. Applications for floating zone development approval, building, drilling and grading permits and a certificate of completion shall conform with respect to every aspect of this Oil and Gas regulation, except when this Ordinance explicitly integrates the DGS guidelines as supplemental to the provisions of this Ordinance.

4. The Board's purpose in adopting this Ordinance is to maximally comply with procedural due process through ensuring that each stage of the development approval process provides for applicants and other concerned persons or organizations to receive full prior notice of public hearings and are given adequate opportunity at all hearings to provide testimony and documents and to appeal all final development orders granting, granting in part or denying applications for development approval.

5. The studies, reports, assessments and plans required of applicants for development approval are not designed to bar oil and gas development by cumulatively penalizing applications, but to uphold all substantive due process and equal protection rights to assure that all development approvals for oil and gas projects protects the County and its citizens, land owners, businesses and associations: (a) from environmental degradation of the air, surface and ground water, habitats and other environmentally sensitive areas; (b) provide financial



funding for independent County review of applications; (c) limit public nuisances from restricting and impacting the use and enjoyment of surrounding lands; (d) prevent aggravation of global warming through release of heavy metals, carbon dioxide and methane gases from the drill holes and open air on-site storage ponds; and (e) assuring that adequate on and off-site facilities and services are provided to meet the needs generated by the oil and gas project with respect to availability of water, roads, fire and police protection, emergency medical response, medical and hospital facilities, affordable housing for oil and gas project employees, public schools, parks, recreation and open space.

## V. GOALS, OBJECTIVES, POLICIES AND STRATEGIES

A. Mora County, New Mexico, is a political subdivision of the State of New Mexico, and the Mora County Board of Commissioners (“Board”) is the governing body responsible for exercising the powers that the State of New Mexico has vested in Mora County.

B. On April 29, 2013, the Board voted to adopt the “Mora County Community Water Rights and Local Self–Government Ordinance” (Ordinance 2013–01) which permanently banned all oil, natural gas or other hydrocarbon extraction in the County and provided in part:

“BE IT ORDAINED BY THE GOVERNING BODY OF MORA COUNTY, NEW MEXICO. AN ORDINANCE PROTECTING THE RIGHT OF HUMAN COMMUNITIES, NATURE, AND NATURAL WATER, BY ESTABLISHING A LOCAL BILL OF RIGHTS FOR MORA COUNTY THAT PROTECTS THE NATURAL SOURCES OF WATER FROM DAMAGE RELATED TO THE EXTRACTION OF OIL, NATURAL GAS, OR OTHER HYDROCARBONS, BY AFFIRMING THE RIGHT TO LOCAL AUTONOMY AND SELF–GOVERNANCE, AND BY ELIMINATING LEGAL PRIVILEGES AND POWERS FROM CORPORATIONS VIOLATING THE ORDINANCE”

C. The Federal District Court of New Mexico in *Swepi, L.P. v. Mora County*, 81 F.Supp.3d 1075 (N.M. Dist. 2015) citing New Mexico case law, held that:

1. Mora County Ordinance 2013-01 is unconstitutional under the federal constitution’s Supremacy Clause because the Ordinance purports to deny corporations involved in Oil and Gas activity their rights under the First and Fifth Amendments; and

2. That Mora County Ordinance 2013-01 is unconstitutional under the New Mexico Constitution because the ordinance proscribes all extraction of oil, natural gas or other hydrocarbons within the County, and thus its provisions are preempted by conflict and antagonism with the Oil and Gas Act's state concerns by prohibiting hydrocarbon exploration and extraction activities, thus prohibiting that which the state permits at drill and well sites, citing *Stennis v. City of Santa Fe*, 143 N.M. 320, 176 P.3d 309, 315 (2008);

3. However, the opinion and judgment specifically held: that the New Mexico Oil and Gas Act, N.M. Stat. § 70-2-1-38 does not expressly nor impliedly preempt the entire oil-and-gas field, citing *San Pedro Mining Corp. v. Board of County Commissioners*, 121 N.M. 194, 909 P.2d. 754 (1996) and *Rancho Lobo, Ltd. v. Devargas and Rio Riba County*, 303 F.3d 1195 (10th Cir. 2002); and that there is "room for concurrent regulation" by Mora County, citing *Rancho Lobo, Ltd. v. Devargas and Rio Riba County*, 303 F.3d at 1200, and because there is room for concurrent regulation, state law does not preempt the entire oil-and-gas field at 1197, citing *Rancho Lobo, Ltd. v. Devargas and Rio Riba County*, 303 F.3d at 1204-05; and *San Pedro Mining Corp. v. Bd. of County Commissioners*, 121 N.M. 194, 909 P.2d 754 (1996); including but not limited to, off-site safety, compatibility with surrounding property uses and other matters left unaddressed by the Oil and Gas Act, and Oil and Gas Commission regulations (Swepi at 1195) and "traffic congestion, increased noise, possible nuisance created by blasting or fugitive dust, compatibility of the use with the use made of surrounding land, appropriate distribution of land use and development, danger of seismic activity arising from fracking, and the effect of the activity on surrounding property values" (*San Pedro*, 121 N.M. 194); that adoption of a County Oil and Gas Ordinance arises from a legitimate county interest; that such Ordinance does not violate either procedural or substantive due process or equal protection; that the Ordinance is concurrent and supplemental to the State Oil and Gas Act; and that such ordinance is rationally related to a legitimate state interest.

D. The Board has carefully considered the public health, emergency medical response and treatment, police and fire, transportation, safety, education, employee housing, danger of seismic activity arising from fracking, environmental degradation, parks, open space, public nuisance, water and planning needs of the County, since the January 19, 2015 opinion and judgment in Swepi, and based upon such concerns, has determined that public necessity compels the County to enact a new Oil and Gas Element to the Comprehensive Plan and a new Oil and Gas Ordinance that is not in conflict with, and concurrent and supplemental to the state

Oil and Gas Act, state Oil and Gas Commission and Oil Conservation Division (OCD) regulations; the concerns and activities of the state OCD which regulates oil, gas, and geothermal activity, gathers well production data; permits new wells; enforces the division's rules and the state's Oil and Gas statutes, makes certain, that abandoned wells are properly plugged and ensures the land is responsibly restored; and the New Mexico State Land Office, Oil, Gas and Minerals Division which manages non-renewable resources, issues and administers minerals, oil, natural gas, carbon dioxide, sand, gravel, caliche, coal, potash and salt leases.

E. The Board has previously adopted a series of interim development and moratoria ordinances, controlling Applications to drill an oil or natural gas well from October 13, 2015 to June 30, 2018, in order to have sufficient time to consult with its staff and outside consultants on nuisance, environmental, planning, financing of infrastructure, transportation, education, fire, police, employee housing and EMT impacts and needs for on and off-site adequate public facilities and services, and to engage legal and planning experts to prepare studies and analysis for a new Oil and Gas Element to the Comprehensive Plan, develop an appropriate ordinance to address Oil and Gas development in Mora County; and to enable full public, Oil and Gas industry and private property input and comments, upon drafts of such Ordinance, without the intervening threat or fear of Oil and Gas drilling, production and permitting. Subsequently the Board has retained: (1) the Suina Design and Architecture firm to prepare a 2018 Updated Mora County Comprehensive Land Use Plan including an Oil and Gas Element; and (2) the law firm of Freilich & Popowitz LLP to provide advice, develop and prepare this Oil and Gas ordinance, and make recommendations for inclusions to the Oil and Gas Element to the Comprehensive Plan update.

The Board has held public workshops on February 21, 2018 and April 19, 2018 and a first reading of the Ordinance on June 12, 2018 regarding the proposed adoption of this Ordinance and the 2018 Comprehensive Land Use Plan Update including an Oil and Gas Element setting parameters and guidelines for adoption of an Oil and Gas Ordinance regulating exploration, drilling, fracking, development and production. A meeting of the Planning and Zoning Committee was called for May 10, 2018 and June 12, 2018 for review of the proposed Ordinance and Comprehensive Plan Amendment but failed to meet the quorum requirements of state law. In the absence of any recommendation from the Planning and Zoning Committee, the Board held a first reading of the Oil and Gas Ordinance and Comprehensive Plan Amendment, including the Oil and Gas Element on June 12, 2018 and gave staff direction to publish the Ordinance and Comprehensive Plan

Amendment for a second reading and public hearing on June 29, 2018 for final adoption.

F. The Board has carefully based its purpose and determination to adopt the 2018 Updated Mora County Comprehensive Land Use Plan Amendment including an Oil and Gas Element and this Oil and Gas Ordinance pursuant to the authority of: (1) the Swepi, San Pedro, and Rancho Lobo judicial decisions set forth above; and (2) the New Mexico Oil and Gas Act, N.M. Stat. § 70-2-1-38, and has determined that the above judicial decisions and the Oil and Gas Act do not prohibit nor override county supplemental regulation to address specific county needs, concerns and issues; and, (3) this ordinance does not prohibit what the Oil and Gas Act and Oil and Gas Commission and OCD regulations permit including but not limited to: reports, site and development plans, studies, assessments, development agreements, transfers of development rights, and beneficial use and value determinations, plan consistency reports; adequate public facility and service assessments; environmental assessments of significant environmental impacts; fiscal impact assessments; a traffic impact assessment of on and off-site traffic and roadway destruction and impacts that oil-and-gas transportation creates; water availability assessments to determine the need for and assurance of vested legal water rights for additional adequate water availability for Oil and Gas drilling and production in light of the continuing countywide drought and presently inadequate aquifer water supplies for existing county needs, a geohydrologic report to assess the adverse impacts and effects of Oil and Gas drilling and production to protect the natural sources of ground and surface waters in the County and earthquake seismic activity resulting from damage related to the fracking and extraction of oil, natural gas, or other hydrocarbons; the spacing, location and number of drill sites and wells that can be co-located to reduce economic, aesthetic, smell, noise, light, smoke, vibration and drainage public nuisances causing injury and loss of value to adjoining communities, residences and persons; nuisance issues causing illness, injury and death from contact with dust, sand, contaminated water run-off and chemical and gas releases to the air that affects air and water pollution; fire, police and emergency service and preparedness reports to determine hospital and medical treatment (“EMT”) needed to deal with health and safety from added impacts arising from chemical fires, earthquake tremors and seismic activity; and explosions, criminal activity and work injuries; the felt need for adequate park, open space, employee housing and school facilities for employees and their children; beneficial use determinations and use of transfers of Oil and Gas development rights to calculate and relieve the financial impact of the Oil and Gas Ordinance upon owners, lessees and Applicants for Oil and Gas permits; to determine the impact of oil-and-gas drilling and production on the use and value of neighboring properties.

G. No oil or gas facility is permitted as of right in the County. Prior to authorizing any oil or gas facility, the County shall require the owner of the fee simple estate, a fee simple split estate or any life estate, lease or future interest, easement or profit between the surface and mineral estates, or Oil and Gas lessee from any estate, to have obtained:

1. an OCD permit to drill, reenter, deepen, plug back or abandon an oil or gas well; and subsequently; and
2. to apply for and obtain: a Floating Zone development approval; Building, Drilling and Grading Permits; and a Certificate of Completion.

To achieve these purposes this Ordinance establishes distinct processes for development approval of an Oil and Gas projects, following receipt of the required OCD state permit: (1) an Application for a Floating Zone development approval by the Board; and (2) ministerial grading, drilling and building permits and a certificate of completion from the County Manager or his duly appointed Administrator.

Development of Oil and Gas resources shall only be permitted where there is full mitigation by the Applicant, for development approval of an Oil and Gas Floating Zone of any present or future adverse environmental, public nuisance, infrastructure, services and/or land use effects or impacts, including any existing deficiencies as shown in the Application documents required by this Ordinance. Mitigation shall also consist of fulfillment of development agreement conditions requiring payments by the Oil and Gas Applicant to enable the County to hire expert consultants to review all submissions from the Applicant; to assure dedication of public facilities, provision of public services, development agreement fees, development impact fees, exactions or public improvement district assessments, sufficient to provide public facilities and public services for all the on and off-site needs generated by the Oil and Gas facility within the County.

Pursuant to the powers authorized in Sections 3-21-2, 3-21-3 and 3-21-4 NMSA 1978, Mora County and the incorporated Village of Wagon Mound may jointly or separately agree to enter into a municipal/county joint intergovernmental agreement authorizing the Village and the County, to locate public facilities and services with funds obtained from development approval conditions, paid to the County by Applicants for Oil and Gas projects to meet the needs generated by the Oil and Gas project within the County, to be located in the Village of Wagon Mound as shall be established in a three party development agreement executed between the

County of Mora, Village of Wagon Mound and the Oil and Gas Applicant, as a condition for development approval of an Oil and Gas Floating Zone.

#### H. Community Meeting

Prior to the submission of any Application for an Oil and Gas Floating Zone, the Applicant shall attend a meeting with residents, owners/lessees of non-residential structures, and all owners of subsurface mineral estates and oil and gas lessees within five miles of the perimeter of the oil and gas project area and with all County groups, foundations and associations that have previously registered with and been accepted by the Administrator for notifications of Applications for an Oil and Gas Floating Zone development approval within the County. The Applicant shall furnish an address list for the five-mile area to the 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 offices of the County Manager who shall preside over the meeting. 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 County Manager 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 within a reasonable time.

#### I. Notice of Pendency of Application for a Floating Zone Development Approval

1. In the Application, the Applicant shall provide all information required for the service of notice by the County 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.

2. In addition to any notice requirements set forth in the Development Guidance System, a written notice of the pendency of an Application for an Oil and Gas Floating Zone development approval shall be provided by the County to each surface owner, royalty owner, overriding interest owner, unit operator, working interest owner, or severed mineral owners whose property interests abut a private easement to be used to access the Oil or Gas Facility. 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 will be sited, surface

owner, royalty owner, overriding interest owner, unit operator, working interest owner, or severed mineral owner shall receive notice if the property boundary of the surface owner is within five (5) miles of the proposed drill site or well.

3. In addition to any notice requirements set forth in the Development Guidance System, the notice of the pending Application shall also contain the following:

(a) A description of the boundaries of the proposed Oil and Gas Floating Zoning including a legal description and a street address, if available. The notice must identify the operator and any designated agent for the Application; the current business address and telephone number for the Applicant, operator and its 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

(b) A statement that additional information concerning the Application may be obtained from the Administrator from the Site Plan and Development Plan and other documentation attached to the Application.

4. The notice shall be posted by the County in a conspicuous and visible location on a boundary of the proposed Oil and Gas site, containing the information set forth above.

5. After a public hearing is set, 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 Floating Zone development approval 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 Administrator.

6. The County shall also provide notice to any other person, agency or organization that has previously filed a request with the Administrator to receive notice of an Application for an Oil and Gas Floating Zone development approval.

7. 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 public the most effective notice and shall be printed in both English and Spanish.

**VI. REQUIRED APPLICATION AND DOCUMENTS FOR OBTAINING FLOATING ZONE DEVELOPMENT APPROVAL, BUILDING, DRILLING AND GRADING PERMITS AND A CERTIFICATE OF COMPLETENESS.**

A. The County shall require that the Applicant provide five (5) sets of reports, plans, surveys, assessments, proposed development agreement, and beneficial use and value determination (Application Documents), to be attached as Exhibits to the Application for the Floating Zone development approval. These Application documents shall be supplemented in greater detail, as the County shall require, in subsequent Applications for building, drilling and grading permits and a certificate of completion. Materials, including maps, should be submitted in four (4) printed copies and one (1) electronic digital format capable of being downloaded on the County's web site for public access.

B. If the beneficial use and value determination pursuant to this Section is based upon: (1) facts the owner or lessee or the owner's or lessee's Operator knew or should have known were not correct; or (2) assertions of law that were frivolous, the Administrator shall recommend to the Board that the Application for the beneficial use and value determination be denied.

C. Completeness and Verification of Applications for Floating Zone Development Approval, Building, Drilling, and Grading Permits and a Certificate of Completeness.

1. The signature upon the Application by the owner or lessee and the owner's or lessee's representative shall constitute a verified certification that the owner's or lessee's representative have undertaken due diligence in the filing of the Application, that to the best of their joint and individual knowledge the Application is supported by good grounds under applicable laws, and that the Application has been filed in good faith, consistent with the purpose and intent of this Section.

2. The owner or lessee and owner's or lessee's representative 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 due to changed circumstances.

3. If an Application is based upon facts the owner or lessee or the owner's or lessee's representative knew or should have known were not correct or upon assertions of law that were frivolous, the Administrator or Planning and Zoning Commission shall recommend to the Board that the Application be denied.



4. Within fifteen (15) calendar days of the filing of the Application, the Administrator shall determine if the Application and the documents attached to the Application are complete.

5. If the Administrator determines that the Application is not complete, the 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 needed 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 the deficiencies within twenty (20) calendar days of receipt of the notice of incompleteness, the Administrator shall 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.

6. The owner or lessee shall have the right to a de novo appeal from the Administrator's development order to the Planning and Zoning Commission within fifteen (15) calendar days after receipt of the notice. A de novo appeal can also be filed by an aggrieved person or association, and by the Administrator to the Planning and Zoning Commission which shall place the appeal on its next meeting date as a public hearing. The Board may at its discretion accept a de novo appeal from the Planning and Zoning Commission development order within fifteen (15) days from the date of filing of the Planning and Zoning Commission development order with the County Clerk. The Board shall publish notice of a public hearing to determine the matter and shall prepare a development order within 30 days of the termination of the public hearing.

7. When the Application is determined to be complete, and there is no appeal, the Administrator shall notify the Applicant in writing and, within ten (10) calendar days, forward the Application to the Board to set a hearing date and shall prepare the item for consideration.

D. The Application for a Floating Zone development approval shall contain a:

1. State Background Report

A State Background Report containing a complete description of, and enclosure of: (a) all OCD and/or State Land Office issued permits, leases and licenses, including but not limited to the OCD permit to drill, reenter, deepen, plugback, or add an Oil and Gas Zone (together with all conditions and requirements), accompanied by copies of completed OCD Forms C-101 through to C-148 as revised on April 3 and May 19, 2017; and data submitted to the state about any existing experimental, testing or producing wells on any site in Mora County including formation tops, history, completions, acreage, casing, perfs, production, violations and orders; and (b) documentation from the Office of State Engineer: (c) approving the Applicant's purpose to use the source water for an oil and gas drilling site; (d) recognizing vested legal water rights to the source water; and (e) approving the changes to the oil and gas site point of diversion.

## 2. Site Plan

A Site Plan consisting of:

(a) a professional survey showing the metes and bounds description of the site boundaries and all surface and subsurface area possessory estates, leases, licenses, easements, profits, real covenants, equitable servitudes and incorporeal hereditaments and a description of the boundaries of the proposed Oil and Gas project, including a legal description and a street address, if available. The notice must identify the Operator and any designated agent for the Application; the current business address and telephone number for the operator and its agent, if one has been designated; and a brief description of the facilities and equipment proposed to be located at the project site when operational;

(b) a map of the area to be disturbed or used for access and haul roads, drilling equipment, wells, co-located wells on or off-site, buildings, structures, closed pits, ponds, stockpiles, processing, equipment, pipelines, and storage and loading areas;

(c) the area of the site to remain in open space including buffer yards, fencing and screening; and location and dimensions of on or off-site signage.

(d) a detailed description of the proposed Oil and Gas activities on the entirety of the owner's or Applicant's property in the same ownership.

(e) the planning objectives and the character of the development to be achieved through the floating zone, and the approximate phases in which the

exploration and drilling for and extraction of Oil and Gas from the property will occur.

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

(g) the number and type of wells to be drilled, and the approximate location, arrangement, size, floor area ratio of any buildings and structures and parking facilities related to the drilling or exploratory activities.

(h) a statement explaining how the proposed floating Zone complies with the vision, goals, objectives, policies and strategies of the County's 2018 Comprehensive Land Use Plan and its Oil and Gas Element and any Area Plan covering the property.

### 3. Development Plan

(a) A development plan shall constitute a detailed plan for an Oil and Gas project. The development plan shall include drawings, documents, maps, surveys, building, facility and structure plans, and a description of on and off-site capital facilities and services needed by the proposed Oil and Gas project meeting all the standards and requirements of this Ordinance, the 2018 Comprehensive Land Use Plan and Oil and Gas Element and applicable Development Guidance System performance standards.

(b). If the Applicant chooses to partially finance improvements through development fees, the development plan shall include: (1) a statement of land use assumptions describing the service area and changes in land uses, densities, intensities and population in the service area over at least a five-year period; and (2) a Capital Improvements Plan for the Oil and Gas Facility required by the Development Fees Act [5-8-2 E] for:

- (i) water supply, treatment and distribution facilities;
- (ii) wastewater collection and treatment facilities;
- (iii) storm water, drainage and flood control facilities;
- (iv) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals,

landscaping, local components of state and federal highways, and roads necessary to connect to I-40 or I-25;

(v) buildings for fire, police and rescue and essential equipment costing ten thousand dollars (\$10,000) or more and having a life expectancy of ten years or more; and

(vi) parks, recreational areas, open space trails and related areas and facilities.

#### 4. Title Report

A preliminary title report by a nationally accredited title company shall describe the nature and extent of all property interests held by the Applicant, and all concurrent estates, grantors, lessors and future interest holders of fee simple, fee simple determinable, fee simple on condition subsequent; life estate; lease; license, easement, profit, real covenant, equitable servitude or other incorporeal hereditament in the same ownership anywhere else in Eastern Mora County.

#### 5. Reclamation Plan

A detailed reclamation plan, including a revegetation plan, that will return the area disturbed by the Oil or Gas project to its natural condition, after a major spill, explosion, fire, or abandonment of the site for any cause. The plan must include a provision requiring monitoring on at least a semi-annual basis for a period of ten (10) years. The reclamation plan shall be consistent and only supplementary with requirements imposed by the OCD. The Operator and Owner of the site shall convey an easement to the County for recording to permit the County to have ingress and egress from all parts of the site.

#### 6. Plan Consistency Report

Approvals of an Oil and Gas Floating Zone and subsequent Building, Drilling and Grading Permits and Certificates of Completion shall be consistent with the following:

(a) the 2018 Comprehensive Land Use Plan; including, but not limited to its Oil and Gas Element, this Ordinance, the Development Guidance System and the County Code of Mora County;

(b) any area or community plan for Eastern Mora County designated for Oil and Gas drilling in the Oil and Gas Element of the 2018 Comprehensive Land Use Plan;

(c) any public improvement or assessment district plan; and

(d) any State of New Mexico departmental plans, regulations, and statutes including but not limited to plans from the 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, the New Mexico Interstate Stream Commission, and Gubernatorial Executive Orders.

## 7. Environmental Impact Report

An environmental impact report analyzing Oil and Gas on and off site adverse effects and impacts to: wildlife and vegetation natural habitats and corridors; danger of seismic activity; flood plains, floodways, stream corridors, acequias and wetlands; steep slopes and hillsides; fifty (50) year vested supply of water availability above and beyond existing county surface and ground water aquifer supplies; air and water pollution; global warming; traffic safety and congestion; excessive energy consumption from vehicle miles traveled and numbers of trips; priceless archeological, historical and cultural artifacts and resources reflecting Hispanic, Anglo and tribal communities, 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.

### (a) General Requirements

(i) The draft Environmental Impact Report (“draft EIR”) shall contain the information outlined in this Section. 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.

(ii) The draft EIR shall be prepared as a separate document by the consultants engaged by the County and paid for by the Applicant for a Floating Zone development approval.

(iii) No document prepared pursuant to this article that is available for public examination shall require the disclosure of a trade secret, except where the use of any trade secret involves a significant threat to health and safety. However, only specifically identified chemicals shall be used for any Facility, including, but

not limited to drilling and excavation. The Administrator shall supply a list to each Applicant of the approved chemicals, certified by a licensed petroleum engineer, which the Applicant must certify as exhaustive of all chemicals that will be used in the project site. No specific location of archaeological, historical or cultural sites and/or sacred lands shall be released to the public, but a draft EIR must thoroughly discuss all environmental issues relating to a proposed Facility and affecting any such sites.

(iv) The Applicant shall make a cash deposit, furnish a certified bank check, a performance bond, or a letter of credit to the County Treasurer to cover the County's expenses in preparing the draft EIR, by the County's expert consultants. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The Applicant shall make additional deposits if the initial deposit is determined by the Administrator to be inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

(b) Informational Document.

(i) The draft EIR is an informational document which will inform the County, the public and the Applicant of any significant adverse environmental effects and impacts of an Oil and Gas project, identify possible ways to minimize any significant adverse effects or impacts, and describe reasonable alternatives to the project. The County shall consider the information in the draft EIR along with other information which may be presented to the County by the Applicant or interested parties in determining whether to approve, conditionally approve or deny the Application for a Floating Zone.

(ii) While the information in the draft EIR does not control the County's ultimate discretion on project approval, the County shall respond to each significant effect and impacts identified in the EIR by making findings.

(iii) The information in a draft EIR shall constitute substantial evidence in the record to support the County's action on the project if its development order is subsequently challenged in court.

(iv) The draft EIR shall contain a table of contents and index to assist readers in finding the analysis of different subjects and issues.

(v) A draft EIR shall contain a summary of proposed actions and consequences. The language of the summary should be as clear and simple as reasonably practical.

(vi) The summary shall not exceed 15 pages and shall identify:

(1) Each significant adverse effect and impact with proposed mitigation measures and alternatives that would reduce or avoid that effect or impact;

(2) Areas of controversy known to the County including issues raised by agencies and the public; and

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

(c) 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:

(i) 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;

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

(iii) 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;

(iv) A brief statement describing the intended uses of the draft and final EIRs;

(v) This statement shall include:

(1) A list of the state, regional and federal agencies that may be expected to use the EIR in their decision-making;

(2) A list of permits and other state and federal governmental approvals required to implement the Facility; and

(3) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies.

(4) All the development approvals required for the Oil and Gas Facility shall be listed in the order in which they will occur.

(d) Environmental Setting.

(i) A draft EIR must include a description of the physical environmental conditions near 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 an Eastern Mora County, regional, state and federal perspective. This environmental setting will normally constitute the baseline physical conditions by which the County determines whether an adverse effect or impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed Oil and Gas project and its alternatives.

(ii) 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 draft EIR 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.

(iii) The draft EIR shall discuss any inconsistencies between the proposed oil or gas facility and the 2018 Comprehensive Land Use Plan, including but not limited to the Oil and Gas Element in the Comprehensive Plan, and any applicable Regional Plans, or Eastern Mora County 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, water availability plans, regional transportation-land use plans, habitat conservation plans, natural community conservation plans, historic, cultural and archaeological site and preservation plans.



(iv) Where a proposed oil or gas project is compared with the Comprehensive Land Use Plan, Oil and Gas element the analysis shall examine the existing physical conditions, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

(e) Consideration and Discussion of Environmental Impacts.

All phases of an Oil and Gas Facility must be considered when evaluating its effect and impact on the environment: planning, acquisition, development, transportation and operation. The subjects listed below shall be discussed. The draft EIR shall include a table showing where each of the following subjects is discussed:

(i) Significant Environmental Effects of the Proposed Project.

(ii) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(iii) Significant Irreversible Environmental Changes Which Shall be Involved in the Proposed Project Should It be Implemented.

(iv) Growth-Inducing Adverse Effects or Impacts of the Proposed Project.

(v) The Mitigation Measures Needed to Minimize or Eliminate the Significant Effects or Impacts.

(vi) Alternatives to the Proposed Project, Including No Oil or Gas Drilling.

(f) Consideration and Discussion of Significant Environmental Impacts.

(i) The draft EIR 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 County shall limit its examination to changes in the existing physical conditions in the affected area as they exist 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 draft EIR shall also analyze any significant environmental effects the project might cause by bringing development, and/or subsurface drilling into the area affected. A draft EIR on an Oil and Gas project astride an active fault line or other geological condition threatening to degrade ground water resources should identify as a significant effect the seismic and geo-hydrological hazard.

(ii) Describe significant adverse effects and impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are effects and impacts that cannot be mitigated without imposing an alternative design, their implications and the reasons why the Oil and Gas project is being proposed.

(iii) Describe significant irreversible environmental changes which would be caused by the proposed Oil and Gas project. Uses of nonrenewable resources during the initial and continued phases of the Oil and Gas project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary effects and impacts and, particularly, secondary effects and impacts (such as highway improvements required to provide access to a previously inaccessible area) generally commit future generations to similar uses. Irreversible damage can result from environmental accidents, spills, explosions or fires associated with the Oil and Gas project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified. Any 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 statutes and regulations regarding global warming. In addition, Applicant must use the best available technology to analyze, report and mitigate any global warming effect associated with the Oil or Gas project.

(iv) Describe 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 drilling which may decrease the area's suitability for other uses such as residential, commercial, historical, cultural, archaeological, environmental, eco-tourism or scenic uses.

(g) Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

(i) Mitigation Measures in General.

(1) The draft EIR shall describe feasible measures which could minimize significant adverse effects and impacts, including inefficient and unnecessary consumption of energy and irreversible pollution attributable to the project that contributes to global warming.

(2) The discussion of mitigation measures shall distinguish between the measures which are proposed by the Oil and Gas applicant and other measures proposed by the County or other interested persons which are not included but the County determines could reasonably be expected to reduce adverse effects and impacts if required as conditions of approval. This discussion shall identify mitigation measures for each significant environmental effect identified in the draft EIR.

(3) Where several measures are available to mitigate an effect or impact, each shall be discussed and the basis for selecting such measures shall be identified. Formulation of mitigation measures shall not be deferred until the building or grading permit approval stage. Measures shall specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(4) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.

(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.

(6) Mitigation measures must be fully enforceable through the development order conditions, a development agreement, or other legally-binding instruments.

(7) Mitigation measures are not required for effects or impacts which are not found to be significant.

(8) Mitigation measures must be consistent with all applicable constitutional requirements.

(ii) Mitigation Measures Related to Effects and Impacts on Historical, Cultural and Archaeological Resources.

(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.

(2) The County shall 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 draft EIR for an Oil and Gas project involving such a cultural, historic or archaeological site:

(I) 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.

(II) Preservation in place may be accomplished by, but is not limited to, the following:

(A) Planning construction to avoid all historical, cultural or archaeological sites;

(B) Incorporation of sites within parks, greenspace, or open space;

(3) 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 Facility excavation or testing, curation may be an appropriate mitigation.

(4) Data recovery shall not be required for an historical, cultural or archaeological resource if the County determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the draft EIR.

(h) Consideration and Discussion of Alternatives to the Proposed Project.

(i) The draft EIR shall describe a range of reasonable alternatives to the project, or to the location, number of wells or co-location of wells of the Facility, which would feasibly attain some of the basic project objectives 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 draft EIR is not required to consider alternatives which are infeasible. The Applicant shall advise which alternative it prefers. The County shall select the range of project alternatives for examination and shall publicly disclose its reasoning for selecting those alternatives.

(ii) The draft EIR shall identify strategies 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, even if these alternatives would impede the attainment of the objectives or would be costlier.

(iii) The range of potential alternatives 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 draft EIR shall briefly describe the rationale for selecting the alternatives to be discussed. The draft EIR shall identify any alternatives that were considered by the County but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the County's determination.

(iv) The draft EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant or adverse environmental effects and impacts of each alternative shall 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.

(v) "No Project" Alternative.

(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 County to compare the adverse effects and impacts of

approving the proposed project with such effects and impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental effects or impacts may be significant or adverse, unless it is identical to the existing environmental setting analysis which does establish that baseline.

(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 draft EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) 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 Facility 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" such that the existing environmental setting is maintained. Where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval.

(4) 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 facilitating 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.

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

(6) 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.

(i) Alternative locations.

(i) 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, co-locate the wells, or transfer the Oil and Gas development rights to another owner or lessee. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the draft EIR.

(ii) 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 draft EIR.

(iii) The draft EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

(j) Notice.

The draft EIR shall identify all federal, state, or local agencies, environmental groups in New Mexico, tribal communities, other incorporated cities or villages, adjoining counties, interested persons within five miles of the Oil and Gas site, and other associations, groups or persons that have registered with the County Clerk to receive all notices required to be given in the approval/disapproval process.

(k) Discussion of Cumulative Impacts.

(i) The draft EIR shall discuss cumulative effects and impacts of a project when the project's incremental effect and impact is cumulatively considerable. A cumulative effect and impact is created as a result of the combination of the project evaluated in the draft EIR together with other Oil and Gas projects causing related

effects and impacts. A draft EIR should not discuss other project effects and impacts which do not result in part from the Oil and Gas project evaluated in the draft EIR.

(ii) 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. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) A list of past, present, and probable future Oil and Gas projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the County; or

(2) A summary of impacts of other residential, commercial, industrial, agricultural or mining development contained in the 2018 Comprehensive Land Use Plan Oil and Gas element, or in the LESA analysis and any conditions contributing to the cumulative impact.

(iii) 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 specific air pollutant or mode of traffic.

(iv) The County 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.

(v) A summary of the expected environmental effects to be produced by those projects with the specific reference to additional information stating where that information is available.

(vi) A reasonable analysis of the cumulative impacts of the relevant projects. A draft EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects or impacts.

(vii) Approved land use documents including the 2018 Comprehensive Land Use Plan, and the Plan's Oil and Gas Element, Area Plans, including but not limited to, an Eastern Mora County Area Plan, 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.

8. Procedures for Adopting the Draft EIR.

Two public hearings shall be held by the Administrator prior to submission of the draft EIR to the Board for consideration and adoption of a Final EIR. The first public hearing shall be held early in the process of gathering data and information, so that the public can input into the EIR process. The second public hearing shall be held upon the county consultants' completion of the draft EIR. Upon receiving public comments, testimony and evidentiary exhibits at the first public hearing, the Administrator shall forward such information to the consultants for inclusion in the draft EIR that will be forwarded to the Board for consideration in adopting the Final EIR.

9. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

- (a) The draft EIR or a revision of the draft.
- (b) Comments and recommendations received on the draft EIR either verbatim or in summary by the Applicant.
- (c) The responses and recommendations of interested persons, organizations, Indian communities, an incorporated village, adjoining counties, and State, Federal, or other public agencies and utilities commenting on the draft EIR.
- (d) The responses of the County to significant environmental points raised in the review and consultation process.
- (e) Any other information added by the County.
- (f) The final EIR shall be adopted by the Board at the public hearing held concurrently for development approval of the Application for an Oil and Gas Floating Zone.

10. Adequate Public Facilities and Services Assessment.

- (a) Purpose and Findings.

(i) An adequate public facilities and services assessment (“APFA”) ties a development approval of an Application for an Oil and Gas Floating Zone to the availability of infrastructure and public service capacity measured by adopted levels of service (LOS) as determined in the APFA and the 2018 Comprehensive Land Use Plan, including but not limited to the plan’s Oil and Gas Element.

(ii) The APFA shall determine whether current and future public facilities and services related to roads, stormwater detention, fire, police, parks, open space and emergency response services, as required to be shown in the Capital Improvement Plan prepared by the Applicant are adequate to service proposed Oil and Gas project needs. If adequate public facilities are not available, the County shall deny the Facility.

(iii) The APFA shall be used to deny a floating zone development approval, or to time and phase the Oil and Gas project based on non-availability of adequate public facilities or services. If the APFA is approved and the project receives floating zone development approval, then on and off-site infrastructure and public services shall be financed by any one or all of the methods set out below:

- (1) advancement of public facilities and services identified in the APFA by the developer; or,
- (2) the developer shall request the County to establish public improvement district(s) to raise the required funds by assessment, rates, taxes or charges; or
- (3) payment of Development Fees; or,
- (4) other financing alternatives set forth in the Development Agreement

(iv) The Applicant shall make a cash deposit, furnish a certified bank check, a performance bond, or a letter of credit to the County Treasurer to cover the County’s expenses in engaging consultants, to either review the APFA prepared by the Applicant, or to prepare the APFA, at the County’s discretion. The County will provide an estimate of such costs which shall provide the basis for the initial deposit. The Applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for any additional costs related to the preparation or review of the APFA, and the County shall refund any unexpended funds on deposit after the APFA is completed.

(v) An APFA is required prior to consideration by the Board of an Application for an Oil and Gas floating zone development approval as follows:

(1) Adequate public facilities and services include water, stormwater and liquid material management and detention, police, emergency response services, fire protection, solid waste, parks, open space, employee housing, schools, libraries and roads;

(2) Levels of service shall be based on land use assumptions prepared by the Applicant;

(3) When determining whether adequate capacity exists, both existing facilities and service capabilities shall be ascertained;

(4) When an Oil and Gas project is reviewed, the amount of pipeline capacity it utilizes must be debited against available capacity for future projects; and

(5) If the LOS is not met, development approval can either be denied or the development may be timed and phased 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 development approval.

(b) Adequacy of Public Facilities and Services.

The APFA shall determine that:

(i) The Application meets APF standards where public facilities and services are available at the adopted LOS in the APFA;

(ii) The current LOS for fire, police and roads is shown in Table 8-1. Other facilities and service LOS shall be determined in the APFA.

(iii) The Application shall be denied where adequate public facilities and services are not available at the adopted LOS in the APFA at the time of floating zone development approval.

(iv) 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 that each phase of the Oil and Gas project commences drilling, production and transportation;

(v) An Oil and Gas floating zone development approval may create a range of potential adverse effects and impacts 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 shall compare the capacity of public facilities and services to the maximum demand that may result from the proposed floating zone based upon the maximum density and intensity 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 80,000 pounds that trucks and tankers need to carry water and equipment to and from the Oil and Gas site and refineries.

(c) Scope of Adequate Public Facilities and Services Assessment

A determination of adequacy of public facilities and services for an Oil and Gas project shall find that:

i. Public facilities and services are available at the time of issuance of a development order approving the Oil and Gas floating zone; and

ii. Public facilities and services are deemed to be available at all subsequent stages of the development approval process through approval of Building, Grading and Drilling Permits and a Certificate of Completion. Availability of facilities and services, present and future, shall be assured through a development agreement between the Applicant and the County, establishing that the public facilities will be available for the duration of the development agreement.

(d) Duration

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

- i. The expiration of the development order or development agreement; or
- ii. 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 within two years after approval, requiring at least 25 percent of the Oil and Gas wells approved within three years after approval.

(e) Advancement of Public Facilities and Services Capacity.

i. In order to avoid denial or phasing of the oil or gas facility under the APF standards 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 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 when appropriate from other approved projects that utilize the facilities and services advanced by the Applicant.

ii. 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 appropriate conditions have been included to ensure that the Applicant will obtain any necessary approvals for construction of the public facilities from the County or any agency other than the County.

iii. The commitment for construction or advancement of public facilities and services prior to the Oil and Gas floating zone development approval shall be included as a condition of the development approval. The commitment shall contain, at a minimum, the following:

(a) For planned capital improvements or services, either a finding that the planned capital improvement or service is included within the APFA for the year in which construction of the Facility is scheduled, or the Applicant commits to advancing the facilities and services;

(b) 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;

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

(d) A statement that the planned capital improvement and service is consistent with the 2018 Comprehensive Land Use Plan, the Oil and Gas Element to the Comprehensive Plan and any Area Plan;

(e) A statement that the planned capital improvement and service is consistent with the Development Guidance System and ordinances relating to the construction and design of the public facility and service; and

(f) 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 Facility, 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 from funds paid by subsequent Oil and Gas development projects.

(f) Partial Construction or Funding.

The construction or funding of only a portion of a public facility or service needed to meet the adopted LOS in the APFA shall be approved only where:

i. The public facility will be able to provide the capacity needed to meet the adopted LOS, and will be fully usable and operational, due to the characteristics of the facility; and

ii. The construction or funding of the balance of the public facility that is needed to meet the adopted LOS is presently available from other revenue sources.

(g) Financing of Adequate Public Services and Facilities Maintenance

The Applicant for an Oil and Gas Floating Zone development approval shall provide for annual funding of all fire, police and emergency response services and county road maintenance and repair, the need for which is generated by the Oil and Gas Facility, to the extent that the property tax revenues from the Facility are inadequate to cover such annual funding. Such annual funding shall be provided for in the development agreement between the County and the Applicant as a condition of development approval of the Oil and Gas Floating Zone. If additional Oil or Gas projects are approved, the annual funding contribution shall be apportioned among all projects so approved.

H. Fiscal Impact Assessment

1. A fiscal impact assessment shall be prepared by a County consultant, whose cost shall be paid for by the Applicant. The fiscal impact assessment shall describe any effects and impacts upon County revenue and costs necessitated by

additional public facility and service costs the need for which is generated by Oil and Gas project and the feasibility for financing such facility and service costs.

2. The fiscal impact assessment involves a study of the fiscal implications of Oil and Gas drilling in Eastern Mora County. Due to the limitations of the County budget for the County's small population of 5,000 people and an extremely limited commercial, office and industrial base, Oil and Gas projects will be approved only after a Board determination of the adequacy and financial provision for roads, highways, surface water runoff and detention facilities, emergency response service, fire and police substations, operational costs for additional police, fire and emergency response service requiring full time employees and technicians, that will be paid for by the Oil and Gas project through a development agreement.

I. Water Availability Assessment

1. Findings Pursuant to the 2016 Mora-San Miguel-Guadalupe Regional Water Plan

To effectively plan for meeting future water resource needs, the County shall consider current use trends as well as anticipated future changes. The water availability assessment shall present current water use by category, an evaluation of population and economic trends and facilitation of future population, see Tables 9.1 and 9.2; a discussion of the approach used to incorporate water conservation in facilitating future demand. Four terms frequently used when discussing water throughout this plan have specific definitions:

(a) Water use is the withdrawal of water from a surface or groundwater source for a specific use. In New Mexico, water use falls into nine categories of use in the New Mexico Water Use by Categories report prepared by the 2010 New Mexico Office of the State Engineer and the 2016 Mora-San Miguel-Guadalupe Regional Water Plan.

(b) Administrative water supply consists of the amount of water withdrawals in 2010 as outlined in the New Mexico Water Use by Categories 2010 report.

(c) Water demand is the amount of water needed at a specified time.

2. Drought in Eastern Mora County currently has the most profound effect on the agricultural sector, it also affects retailers such as agricultural equipment and

supply merchants who sell to farmers and ranchers, and the County’s low population reflects the ripple effect of long-term drought in Eastern Mora County.

3. Present Uses The most recent assessment of water use in the region was compiled by NMOSE for 2010. The New Mexico Water Use by Categories 2010 report (Longworth et al., 2013) provides information on total withdrawals for nine categories of water use:

- (a) Public water supply
- (b) Domestic (self-supplied)
- (c) Irrigated agriculture
- (d) Livestock (self-supplied)
- (e) Commercial (self-supplied)
- (f) Industrial (self-supplied)
- (g) Mining (self-supplied)
- (h) Power (self-supplied)
- (i) Reservoir evaporation

Table 9.1 Actual 2010 Population

County	High	Low	Actual Population/ 2010 U.S. Census
Mora	6,203	5,609	4,881

Table 9.2 Mora Population July 1, 2010 to July 1, 2060

a. Annual Growth Rate

County		201 6-2020	202 0-2030	203 0-2040	204 0-2050	205 0-2060
Mora	High	- 0.21	- 0.34	- 0.53	- 0.050	- 0.29
	Low	- 0.86	- 0.71	- 0.58	- 0.46	- 0.28

b. Population

County	Code	2010	2020	2030	2040	2050	2060
Mora	High	4,881	4,778	4,618	4,379	4,167	4,047



	L	4,	4,	4,	3,	3,	
ow	881	475	163	921	727		

Water Supply data for Eastern Mora County can be obtained by examining Section 5 of the 2016 Regional Water Plan on page 50

- J. The Water Availability Assessment shall include:
1. An evaluation of a 50-year water supply for the Oil and Gas project;
  2. An assessment of water supplies which addresses whether the total water supplies available during normal, single-dry and multiple-dry water years during a 50-year period will meet the water demand in drought years associated with the proposed project, in addition to existing and planned use.
  3. The Assessment must identify any public water system or water company that may supply water for the project and request an assessment from each. The governing body of the water supplier shall approve the assessment at a regular or special meeting. The public water system is to provide the assessment not later than 90 days after receiving a request from the Applicant.
  4. If there is no public water system, then the County 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.
  5. The Assessment must 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 providing information related to:
    - (a) written contracts or other proof of entitlement to an identified water supply;
    - (b) copies of a capital outlay program for financing the delivery of a water supply that has been adopted by a public water system;
    - (c) federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply; and

(d) any necessary regulatory approvals from the Office of the State Engineer approval of changes in point of diversion and purpose of use that are required to be able to convey or deliver the water supply.

6. 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.

7. If the public water system's total water supplies available during a 50-year period, including periods of drought are insufficient, then the Applicant must identify plans to acquire additional supplies that may include, but are not limited to:

(a) The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies for the oil or gas project;

(b) All federal, state, and local permits, approvals, or entitlements that are anticipated to be required to acquire and develop the additional water supplies;

(c) The estimated timeframes within which the public water system or water company expects to be able to acquire additional water supplies;

(d) If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:

(i) A review of any information contained in a water management plan relevant to the identified water supply for the proposed project;

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

efforts being undertaken in the basin or basins to eliminate the long-term overdraft condition.

(e) A detailed description and analysis of the amount and location of groundwater pumped 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.

(f) A detailed description and analysis of the amount and location of groundwater that is 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.

(g) An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the water demand associated with the proposed project.

8. The County shall include an evaluation of the assessment in the EIR including the County's ability to override public water agency's determination.

9. The County shall determine, based on the entire record, whether water supplies will be sufficient to satisfy the demands of the project, in addition to all other 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 Report.

10. If the project has been the subject of an assessment that complies with the requirements of this Section, then no additional water supply assessment shall be required for subsequent development approvals. Exceptions are:

(a) Changes in the Oil and Gas project that will substantially increase water demand;

(b) Changes in circumstances that substantially affect the ability to provide a sufficient water supply, and

(c) Significant new information as it becomes known.

11. The Applicant shall make a cash deposit, furnish a certified bank check, a performance bond, or a letter of credit to the County Treasurer to cover the County's expenses in preparing the Water Availability Assessment, engaging consultants. The County will provide an estimate of the cost of preparing the assessment, which shall provide the basis for the initial deposit. The Applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of preparing the assessment, and the County shall refund any unexpended funds on deposit after the assessment is completed.

12. Water Quality

(a) The Applicant shall provide:

(i) an analysis of all single or multiple units or aquifers within a 5-mile radius of the project site;

(ii) an analysis of all contaminant pathways leading from the project site and other oil and gas project sites to the aquifers in (a)(1) above, including saturated sandy units within aquifers and unsaturated or vadose zone map;

(iii) an unsaturated or vadose zone map;

(iv) an analysis of baseline water quality relating to up gradient and down-gradient monitoring wells and existing wells; and

(v) recommendations for the location and type of groundwater monitoring stations.

J. Emergency Preparedness and Response Plan.

1. An Applicant for the Oil and Gas Floating Zone development approval shall provide funds to the County to engage a professional consultant to provide an Emergency Preparedness and Response Plan ("ERP Plan"). The ERP Plan shall include a provision for inserting a provision in the development agreement requiring the Oil and Gas operator to reimburse the appropriate emergency response service providers for costs incurred in connection with emergencies as they arise. This plan shall be filed with the County at the time of Application for the Oil and Gas Floating Zone and shall be updated at the time of filing for a building, drilling and grading permits and the final Certificate of Completion and thereafter on an annual basis or

more frequently as conditions change (e.g. turnover in responsible field personnel, change in substances used to frack).

2. The Applicant shall make a cash deposit, furnish a certified bank check, a performance bond, or a letter of credit to the County Treasurer to cover the County's expenses in engaging an expert consultant for preparing the EPR Plan and participating in public meetings and hearings. The County will provide an estimate of the cost of preparing the ERR Plan which shall provide the basis for the initial deposit. The Applicant shall make additional deposits if the initial deposits become inadequate to reimburse the County for the costs of preparing the ERR Plan. The County shall refund any unexpended funds on deposit after the ERR Plan is completed.

3. The Applicant shall also propose that it will build an EMT facility, with requisite LOS to handle all Oil and Gas sites to be operative in Eastern Mora County, within the Village of Wagon Mound to reduce the costs and time of travel from the current County of Mora EMT facility. The cost of construction of the Wagon Mound facility shall be borne by the Applicant, with reimbursement of the excess of the Applicant's roughly proportional costs from future Oil and Gas projects.

4. The ERP Plan shall consist of the following information at a minimum:

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

(b) 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;

(c) The map shall be prepared digitally for future installment on County Geographic Information System parcel maps. The as-built facilities map that includes the information regarding the location of isolation valves shall be held confidentially by the County Manager 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, NMSA1978, Sections 57-3A and 57-3A-D;

(d) A written response plan for the potential emergencies that may be associated with the operation of the facilities. This may include any 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;

(e) A fire prevention, response and health and safety plan;

(f) 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 expert consultant. This plan shall be coordinated with and approved by the County's manager or designee who shall serve as the County Emergency Management Officer prior to the beginning of field operations after receiving a Certificate of Completion.

(g) The Emergency Preparedness Plan shall identify 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 Plan, 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 pipelines, wells and isolation valves, and providing that the ERP Plan shall have procedures 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.

K. Traffic Impact Assessment.

1. General

(a) 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 and roadway deterioration by heavily laden vehicles going to and from the project site; and the proposed traffic circulation plan, including number of daily and peak hour trips to and from the site and the proposed traffic routes to the nearest intersection with the I-25 and I-40 interstates.

(b) 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 Oil and Gas vehicle 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 project.

(c) The Applicant shall make a cash deposit, furnish a certified bank check, a performance bond, or a letter of credit to the County Treasurer to cover the County's expenses in engaging an experienced traffic consultant to review the Traffic Impact Assessment. The County will provide an estimate of the cost of reviewing the assessment, which shall provide the basis for the initial deposit. The Applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the consultant review of the assessment and the County shall refund any unexpended funds on deposit after the review is completed.

## 2. Purposes

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 generated by the proposed Oil and Gas project. The traffic impact assessment shall identify the improvements needed to:

- (a) Ensure safe ingress to and egress from the site;
- (b) Maintain adequate road capacity on the County and State road system to accommodate all traffic to and from the site generated by the project;
- (c) Ensure safe and reasonable traffic operating conditions on roads and at intersections through which traffic to and from the site passes;
- (d) Avoid creation of or mitigate unsafe and hazardous traffic conditions from heavy weights of oil trucks, tankers and equipment travelling to and from the site;
- (e) Minimize the impact of nonresidential traffic on residential neighborhoods in the County;
- (f) Protect the substantial public investment in the existing road system;

(g) Provide a basis for approving, modifying, or denying an Application for an Oil and Gas Floating Zone based upon the adequacy or deficiency of the County and State road systems to handle the needs generated by the project;

(h) Provide a basis for Applicant financing of all County and State road improvements as shown on the CIP through use of development agreements, development fees and/or Improvement District Assessments for capacity needs.

(i) To evaluate whether adequate traffic capacity exists or will be available at the time a development order is granted for the Application for the Oil and Gas Floating Zone to safely and conveniently accommodate the traffic generated by the project on the County and State road system;

(j) To evaluate traffic operations and impacts at site access points under based on maximum traffic loads;

(k) To evaluate the impact of site-generated traffic on affected intersections in the County;

(l) To evaluate the impact of site-generated traffic on the safety, capacity and quality of traffic flow on public and private roads within the County;

(m) To evaluate the impact on residential roads from the traffic to and from the site;

(n) To ensure that site access and other improvements needed to mitigate the traffic impact of the development utilize County and State accepted engineering design standards and access management criteria;

(o) To establish the monetary contribution that the Applicant will be required to provide to the County through development fees, development agreement fees or to any established area improvement district for the provision of all roads and highways shown on the CIP, the need for which is generated by the Oil and Gas project;

(p) To ensure that the proposed road layout is consistent with the public roadway design standards;

(q) To ensure the proper design and spacing of site access points and identify where limitations on access should be established;



(r) To ensure that potential safety problems on all roads to be used within the County have been properly evaluated and addressed;

(s) To ensure that internal circulation patterns will not interfere with traffic flow on the existing County and State road system;

### 3. Traffic Service Standards

The standards for traffic service that shall be used to evaluate the findings of traffic impact assessment are as follows:

(a) Capacity: A volume-to-capacity (V/C) ratio of 0.80 shall not be consistently exceeded on any designated road 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;

(b) Level of service: For corridors, including mainline, merging areas, and ramp junctions, an LOS B shall be maintained on any highway, collector, 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 report shall identify those improvements or transportation demand management techniques needed to maintain the existing LOS, and what additional improvements would be needed to raise the LOS to the standards indicated for the Application for a Floating Zone to be approved.

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

(d) Residential road impact: Average daily traffic impinging on residential roads shall be within the ranges spelled out in the transportation plan for the class of road involved. No Oil and Gas project traffic shall increase the traffic on a residential road with at least 30 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.

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

(f) Vehicle storage: 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.

(g) Internal circulation: 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.

(h) 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.

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

(j) Private Roads: All private roads must meet the same standards as provided for public roads in the 2018 Mora County Comprehensive Land Use Plan Oil and Gas Element. Private roads will only be permitted if the Applicant enters into a development agreement for which construction, operation, maintenance standards and financial terms will be provided in the development agreement.

#### 4. Contents

A traffic impact assessment shall contain the following information:

(a) Site description: 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 and I-40. 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.

(b) Study area: 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 I-25 or I-40 interchanges.

(c) Existing traffic conditions: The traffic impact assessment shall contain a summary of the data utilized in the study and an analysis of existing traffic conditions, including:

(i) Traffic count and turning movement information, including the source of and date when traffic count information was collected;

(ii) Correction factors that were used to convert collected traffic data into representative design-hour traffic volumes;

(iii) 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 near the site. All roadways between the project site and the nearest interchange on I-25 or I-40 shall be constructed with a concrete surface sufficient to withstand trucks and tractor-trailers with a minimum weight of 80,000 pounds for a period of 20 years.

(iv) 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.

(d) Horizon year(s) and background traffic growth: 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 approved and 10 years after the development is completed.

(e) Time periods to be analyzed: For each defined horizon year, specific time periods are to be analyzed. For Oil and Gas operations, this time period will be the weekday peak hours.

(f) Trip generation, reduction, and distribution: The traffic impact assessment shall summarize the peak hour and average daily trip generation for the proposed project and illustrate the distribution of trips to and from the site to the nearest interchange on I-25 or I-40 and should identify the basis of the trip generation, reduction, and distribution factors used in the study.

(g) Traffic assignment: The traffic impact assessment shall identify 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.

(h) Impact analysis: The traffic impact assessment shall address the impact of traffic volumes of the horizon year(s) relative to each of the applicable traffic service standards and shall identify the methodology utilized to evaluate the impact. The weekday peak-hour impact shall be evaluated as well as the Saturday peak hour for those uses exhibiting high levels of weekend traffic generation.

(i) At a minimum, the Applicant shall be required at time of development approval of the Oil and Gas Floating Zone to construct or provide financial payment sufficient for the Applicant and County, state and federal government to acquire and construct the roadway segments, critical intersections, and access points for concrete roads capable of carrying capacity of truckloads of 80,000 pounds or more from the site to the nearest I-25 or S-285 interchanges, sufficient to pay for Applicant's roughly proportional share of the cost for construction and operation and maintenance of all the concrete roads in the Capital Improvement Program 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 agree in the Development Agreement to advance the cost of additional roadway system improvements and shall be reimbursed when additional Oil and Gas projects are approved.

(j) Mitigation/alternatives: In situations where the traffic LOS standards are exceeded, the traffic impact assessment shall evaluate each of the following alternatives for achieving the traffic service standards by:

(i) Identifying where additional rights-of-way are needed to implement mitigation strategies;

(ii) Identifying suggested phasing of improvements where needed to maintain compliance with traffic service standards;

(iii) Identifying the anticipated cost of recommended improvements; and

(iv) Replacing road surfaces with concrete pavement and shoulders.

(k) If the Applicant fails to advance improvements required above, the Application for the Oil and Gas Floating Zone development approval shall be denied for lack of adequate transportation system capacity, safety, and design.

5. Information: A traffic impact assessment shall contain the following information:

(a) Site description: 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 or I-40. 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.

(b) Study area: 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 I-25 or S-285 interchanges.

(c) Existing traffic conditions: The traffic impact assessment shall contain a summary of the data utilized in the study and an analysis of existing traffic conditions, including:

(i) Traffic count and turning movement information, including the source of and date when traffic count information was collected;

(ii) Correction factors that were used to convert collected traffic data into representative design-hour traffic volumes;

(iii) Roadway characteristics, including the design configuration of existing or proposed roadways, 80,000-pound weight bearing capacity, existing traffic control measures (e.g., speed limits and traffic signals), and existing driveways and turning movement conflicts near the site; and

(iv) Identification of the existing LOS for roadways and intersections without Facility 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.

6. Horizon Year(s) and Background Traffic Growth: 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 each year up to 10 years after the project is completed.

7. Time periods to be analyzed: For each defined horizon year, specific time periods are to be analyzed. For Oil and Gas operations, this period will be the weekday peak hours.

8. Trip generation, reduction, and distribution: The traffic impact assessment shall summarize the peak hour and average daily trip generation for the proposed project and illustrate the distribution of trips to and from the site to the nearest interchange on I-25 or I-40, and should identify the basis of the trip generation, reduction, and distribution factors used in the study.

9. Traffic assignment: The traffic impact assessment shall identify 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.

10. Impact analysis: The traffic impact assessment shall address the impact of traffic volumes of the horizon year(s) relative to each of the applicable traffic service standards and shall identify the methodology utilized to evaluate the impact. The weekday peak- hour impact shall be evaluated as well as the Saturday peak hour for those uses exhibiting high levels of weekend traffic generation.

11. At a minimum, the Applicant shall be required, at time of development approval of the Oil and Gas Floating Zone, to pay for Applicant's roughly proportional share of the cost for construction and operation and maintenance of all roads 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.

12 Mitigation/Alternatives: In situations where the traffic LOS standards and requirements of this Ordinance are not fully met, the traffic impact assessment shall evaluate each of the following alternatives for achieving the traffic service standards by:

(a) Identifying where additional rights-of-way are needed to implement mitigation strategies;

(b) Identifying suggested phasing of improvements where needed to maintain compliance with traffic service standards;

(c) Identifying the anticipated cost of recommended improvements, including replacement of road surfaces to concrete pavements and shoulders to support trucks and trailers carrying weights of 80,000 pounds;

(d) Identify the payment for all concrete roadway segments, critical intersections, and access points to be analyzed for all concrete highways from the site to the nearest I-25 or S-285 interchanges.

(e) If the Applicant fails to advance improvements required in (i) above, the Application for the Oil and Gas Floating Zone shall be denied for lack of adequate transportation system capacity, safety, and design.

13. Process for the Review and Preparation of a Traffic Impact Assessment: This section provides an outline of the steps to be included in the preparation and review of a traffic impact assessment.

(a) For Eastern Mora County, the traffic impact assessment shall consider the road system improvements needed for state and county roads.

(b) The traffic consultant shall meet with the Applicant and the public to 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.

(c) Following initial completion of a traffic impact assessment, it shall be submitted to the Administrator for distribution to the County, federal and State highway staffs involved in the construction and maintenance of public roadways serving the Facility.

(d) Within 15 working days, County, federal and State staff shall complete initial reviews to determine the completeness of the assessment and shall provide a written summary to the traffic consultant outlining the need for any supplemental analysis to adequately address the traffic service standards.

(e) Following a determination that the technical analysis is complete, the traffic consultant shall prepare the assessment outlining recommendations that have been developed to address the findings and conclusions included in the assessment regarding the proposed development's needs and impacts on the transportation system.

(f) The traffic consultant's recommendations will be presented to the Board as part of the proceedings for approval of the Oil and Gas Floating Zone Application for development.

(g) Mitigation based on the conclusions and findings resulting from the traffic impact assessment shall be required of the Applicant. A development agreement, detailing the Applicant's responsibilities and the County's responsibilities for implementing identified mitigation measures, shall be prepared following receipt of the traffic impact assessment.

#### 14. Traffic Impact Assessment Findings

If the traffic consultant finds that the proposed project will not meet applicable service-level standards, the traffic consultant shall recommend one or more of the following actions by the County or the Applicant:



- (a) Reduce the size, scale, scope, or number of well sites of the development to reduce traffic generation;
- (b) Divide the project into phases and authorize only one phase at a time until traffic capacity is adequate for the next phase of development;
- (c) Dedicate a right-of-way for street improvements;
- (d) Construct new concrete roads or replace existing roads with concrete pavements;
- (e) Expand the capacity of existing roads;
- (f) Redesign ingress and egress to the site to reduce traffic conflicts;
- (g) Reduce background (existing) traffic;
- (h) Incorporate into the Applicant's capital roadway improvement plan measures to accommodate additional traffic generation from undeveloped Oil and Gas properties in the vicinity of the proposed development;
- (i) Integrate design components to reduce vehicular trip generation;
- (j) Implement traffic demand management strategies (e.g., carpool or vanpool programs, flex time, and staggered work hours), to reduce vehicular trip generation; or
- (k) Recommend approval, denial or conditional approval of the Application for a Floating Zone.

#### L. Geohydrologic Report

1. The Eastern Mora County Natural Gas Potential Survey, (Ronald Broadhead, Natural Gas Potential of North Central New Mexico: Colfax, Mora and Taos Counties, New Mexico State Lands Office, May 2008) determines that natural gas may be found in the Wagon Mound field and on the eastern flank of the Las Vegas basin in Mora County. This corresponds with the Eastern Mora County area

designated for potential Oil and Gas production in this Ordinance. A map of the survey area, including Mora County, is shown as Table II below.

2. 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 sufficient 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 minerals and pollutants to degrade the ground or subsurface water resources, or allow ground or subsurface water resources to be reduced, polluted and unavailable for public or private water supplies; or reasonably likely to produce geological faults and earthquakes on and off the site for a radius of five (5) miles from the site.

3. A geo-hydrologic report shall be prepared to assess all geo-hydrologic information pertinent to the Oil and Gas project area including information from existing geology, hydrology or hydrogeology reports in the region of the Oil and Gas project area.

Table II. The Eastern Mora County Natural Gas Potential Survey.



4. The Applicant shall make a cash deposit, furnish a certified bank check, a performance bond, or a letter of credit to the County Treasurer to cover the County's expenses in preparing the Geohydrologic Report, engaging consultants. The County will provide an estimate of the cost of preparing the Report, which shall provide the basis for the initial deposit. The Applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

5. The Applicant shall drill sufficient exploratory wells 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.

(a) Borehole Geophysics Requirement

Electric Logs

Long and Short Resistivity

Spontaneous Potential

Neutron Porosity

Gamma-Gamma

Caliper

Temperature

Fluid Movement (Spinner)

(b) Pump Test Requirements: 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.

(c) All tests should monitor the recovery of the water levels in all wells for the time necessary for the water levels to return to the original level.

(d) Standard values for storage or specific yield shall be utilized unless sufficient data is presented to justify an alternate storage or specific yield.

6. 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.

7. Preparation of a 20-foot water table or potentiometric surface contour map covering a five (5) mile radius from the project site showing depth to water and direction of groundwater flow.

8. 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.

9. Closed Loop Systems: The plan for a closed-loop system shall use appropriate engineering principles and practices and follow applicable manufacturers' requirements. The plan shall include operating and maintenance procedures and a closure plan. The plan for a closed-loop system may incorporate by reference a standard design that the operator files with the application or has previously filed with the appropriate OCD division district office. If the operator proposes to bury the contents of a drying pad associated with a closed-loop system in an on-site trench, the operator shall provide sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate the actual and potential effects on soils, surface water and ground water and compliance with the siting criteria of 19.15.17.10 NMAC.

10. Below-grade tanks: The plan for a below-grade tank shall use appropriate engineering principles and practices and follow applicable manufacturers' requirements. The plan shall include operating and maintenance procedures, a closure plan and a hydrogeologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate the actual and potential effects on soils, surface water and ground water and compliance with the siting criteria of 19.15.17.10 NMAC. The plan for a below-grade tank may incorporate by reference a standard design for multiple below-grade tanks that the operator files with the application or has previously filed with the appropriate OCD division district office.

#### M. Beneficial Use and Value Determination

1. 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 enable extraction and development of 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, 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.

2. Taking into account these rights and privileges and in order to evaluate whether, and if so, the extent to which this Ordinance creates an as applied federal or state regulatory taking, without just compensation, of subsurface fee simple, leasehold or other possessory or non-possessory interests, each Applicant for an Oil and Gas Floating Zone development approval, shall prepare a beneficial use and value determination which shall describe the financial and economic loss to the Applicant, Owner or Lessee of the property as a consequence of any potential denial of the Application for a Floating Zone development approval as follows:

(a) 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;

(b) the distinct investment backed expectations of the owner, lessee, or Applicant and predecessors in interest, in the same ownership, within the County;

(c) any written lease document applicable to Oil and Gas drilling

(d) 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;

(e) the availability of waiver relief of any part of the terms of this Ordinance; any variance, mitigation or other relief from any unnecessary hardship, that is not self-imposed, that would be created by an as applied regulatory taking; and

(f) all the property interests in the same ownership in Eastern Mora County, other than the Oil and Gas project site that the Applicant, Owner or Lessee possesses in whole or in part on the same or separate mineral estates, leases, parcels, tracts, or lots, whether contiguous or not, by any person, corporation, partnership, trust, business, entity, association, fund, joint venture or any individual owning any stock or a legal or equitable interest in such common ownership, person, corporation, partnership, trust, business, entity, association, fund, joint venture or individually, as of the date of enactment of the first Moratorium/ Interim Development Ordinance

adopted on February 13, 2015. Same ownership shall include common operation or control under an Oil and Gas unit consisting of multiple leases with varied ownership.

N. Land and Environmental Suitability Analysis (“LESA”)

1. LESA Approval and Map.

Floating Zone development approval shall not be granted until the Oil and Gas site meets LESA approval. The Applicant shall prepare, or provide funds for a County consultant to prepare, a LESA Map which shall be a composite overlay map consisting of Maps 1 through 14 in the Oil and Gas Element of the 2018 Comprehensive Land Use Plan. The LESA Map shall also contain a composite overlay of the maps in Tables I, II and III, and other maps showing all the areas of existing public facilities, unique historical, cultural, and archaeological artifacts and sites; protected wildlife and vegetation habitats and habitat corridors; streams, floodways, floodplains, groundwater aquifers, acequias and basins; mountainous slopes and hillsides; highly unusual, fragmented, and fractured sub-surface geological soils, rock, liquids and minerals susceptible to seismic activity; known pollution of underground water reservoirs and aquifers; and traditional and historical Indian and community settlements, farms, and ranches.

2. Land and Environmental Suitability Analysis.

(a) The Applicant shall prepare a Land and Environmental Analysis based upon the factors set forth in Table III below, which shall describe all owned or leased land in the same ownership of the Applicant, owner or lessee.

(b) The LESA process is consistent and in compliance with the OCD and OGC proposed and existing regulations relating to well spacing. This Ordinance does not regulate well spacing. LESA shall be used to determine the number of drill or pad sites permitted per square mile based on the sensitivity classification of surface lands, and supplements and complements the OCD regulations.

Oil/Gas Unsuitability Factors: Table III	
Factor	Farms/Ranches to Be Protected
1	
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 greater than 100 acres

2	Factor	Lands suitable for protecting native plant and animal species
	2.1	Lands with high amphibian species richness
	2.2	Lands with high reptilian species richness
	2.3	Lands with high bird species richness
	2.4	Lands with high mammal species richness
	2.5	Lands with undisturbed natural grasslands
	2.6	Lands with undisturbed Pinon-Juniper Woodlands
	2.7	Lands with undisturbed forested areas
3	Factor	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
4	Factor	Lands with Important Physical Characteristics
	4.1	Lands within the 100-year floodplain
	4.2	Steep slopes (greater than 30%)
5	Factor	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)
	<b>Factor 6</b>	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

<b>Factor 7</b>	Lands unsuitable for oil/gas
7.1	Lands proximal to a community/public water system
7.2	Lands proximal to a paved highway
7.3	Lands proximal to a paved roadway
7.4	Lands proximal to a fire station
7.5	Lands proximal to health care facilities
<b>Factor 8</b>	Land use compatibility
8.1	Identify lands proximal to designated conservation areas

3. Sensitivity Areas: Based upon the LESA analysis of the Table III factors as applied to the Oil and Gas potential floating zone areas, the Applicant shall classify the different areas of the Applicant's lands in the same ownership as: High Sensitivity Areas; Moderate Sensitivity Areas or Low Sensitivity Areas.

(a) High Sensitivity Areas

(i) High Sensitivity Areas with Oil and Gas activity will create severe public nuisance and environmental effects and impacts upon lands designated for Oil and Gas floating zones. Oil and Gas activity will be regulated so that the area of land utilized for an Oil and Gas 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 considering 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 1.4 drill sites per square mile. The final number of oil or gas drill sites Facility-wide will be rounded off to the next highest integer.

(ii) The number of drill sites permitted under the LESA analysis is a maximum number. Analysis of the Application documents 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.



(iii) Proposed oil or gas projects within High Sensitivity Areas will be permitted to purchase development rights pursuant to 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”), pursuant to Section VIII, the High Sensitivity Area receiving the TDR will be permitted to add an additional 0.4 Oil and Gas drill sites.

(iv) For each well, the surface area shall not exceed one half (½) of an acre. Total surface acreage for all drill sites in High Sensitivity Areas shall not exceed three (3) acres per square mile. The Board may, in its discretion, increase such acreage on a case by case basis if there is an affirmative recommendation from a petroleum Engineer consultant employed by the County, the Planning and Zoning Committee, the County Manager, or the Board certifying reasonable accommodation of a density of six acres per square mile, if the Oil and Gas site is the recipient of a transfer of development rights not to exceed one (1) acre per square mile. The maximum total acreage per square mile shall not exceed six (6) acres per square mile. The drill site pad shall be the least amount of land necessary to operate the drill site.

(b) Moderate Sensitivity Areas

(i) Moderate Sensitivity Area Oil and Gas activity will create moderate public nuisance and environmental effects and impacts upon the lands of Oil and Gas floating zone areas. Oil and Gas activity will be regulated so that the Oil and Gas site does not authorize Oil and Gas drill sites to be 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 considering 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 2.8 drill sites per square mile. The final number of oil or gas drill sites Facility-wide will be rounded off to the next highest integer.

(ii) The number of drill sites permitted under the LESA analysis is a maximum number. Analysis of the Application documents 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 environmental 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 Oil and Gas project on the site.

(iii) For each well, the surface area shall not exceed one half (½) 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 petroleum Engineer consultant employed by the County, or from the Planning and Zoning Commission certifying reasonable accommodation of greater density in the light of the LESA analysis and Application documents, 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 eight (8) acres per square mile. The drill site pad shall be the least amount of land necessary Proposed oil or gas projects 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”), pursuant to Section VIII, the Moderate Sensitivity Area receiving the TDR will be permitted to add an additional 0.8 Oil and Gas drill sites.

(iv) Proposed oil or gas projects within Moderate 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 Moderate Sensitivity Area receiving the TDR will be permitted to add an additional 0.8 Oil and Gas drill sites.

(c) Low Sensitivity Areas

(i) 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 considering 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 5.6 drill sites per square mile. The final number of oil or gas drill sites Facility-wide will be rounded off to the next highest integer.

(ii) Proposed oil or gas projects within Low Sensitivity Areas will be permitted to purchase development rights pursuant to Section VIII from 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 Low Sensitivity Area receiving the TDR will be permitted to add an additional 2.0 Oil and Gas wells per square mile.

(iii) 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 drilling, fracking, production and transportation of Oil and Gas.

(iv) 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 eight (8) acres per square mile. The Board may increase such acreage on case by case basis if there is an affirmative recommendation from the petroleum Engineer expert consultant employed by the County, the Board or from the Planning and Zoning Commission, to accommodate a transfer of development rights not to exceed (2) acres in total size.

#### O. Development Agreement

1. The Applicant shall provide a draft development agreement between the County and the Applicant for an Oil and Gas floating zone development approval. The development agreement shall contain sections regarding the development and use of the property, and all implementation actions required to be performed by the Applicant including, but not limited to impact fees, exactions, dedication, establishment of improvement districts or provision of other funds needed to obtain land, construct public facilities or provide services by the Applicant to meet the adequate public facilities, environmental, public nuisance and other standards of the Ordinance.

2. The County may agree, where appropriate, in consideration of such implementation, to vest development use, density or intensity during the entire approval process up to the granting of a Certificate of Completion, vary a provision of the Development Design Guidelines or refrain from adopting new regulations affecting the initial or subsequent phases of the development.

3. The purpose of this Section is to:

(a) provide a mechanism for the County and owners or lessees of oil and gas projects to form agreements, binding on all parties, regarding vesting, development, financing and land use of the Oil and Gas project;

(b) promote land development regulation by allowing the County to adopt development agreements that include terms, conditions, and other provisions that may not otherwise be able to be mitigated or implemented without the use of a development agreement;

(c) promote stability and certainty in Oil and Gas regulation by providing for the vesting of rights in the approved project and for the mutual enforceability of development agreements by all parties;

(d) provide a procedure for the adoption of such agreements that ensures the participation and comment of the public and elected officials;

(e) provide a partial mechanism for the financing of all capital facilities and public services as provided for in this Ordinance; and

(f) provide a mechanism for assuring that the operation and maintenance costs of all facilities required by the County's development approvals are proportionally assessed to each Applicant on an annual basis.

4. 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 or development approval.

(a) 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.

(b) Where the development agreement does not include any term, condition, or other provision concerning a matter that is regulated by one or more development density guidelines or other County Code regulations as amended, then

those development density guidelines or other County Code regulations as amended shall apply.

(c) 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.

5. A development agreement shall:

(a) Be consistent with the County 2018 Comprehensive Land Use Plan including its Oil and Gas Element, and any applicable Area or Community Plan of Eastern Mora County, the Oil and Gas Act and the regulations of the OGC and OGD.

(b) Adopted by an ordinance of the Board after notice and hearing as required for the adoption of County Code regulations.

(c) Be enforceable by the County and other governmental units that are party to the development agreement in the same manner as a land development code regulation;

(d) Be 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 County, other local government or other parties to the Development Agreement 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, all enforcement disputes shall be determined in the enforcement action;

(e) Be in writing and include the following terms:

(i) the names of all parties to the development agreement;

(ii) a description of the Oil and Gas project which is the subject of the Development Agreement;

(iii) the effective date of the Development Agreement;

(iv) 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;

(v) a reiteration in full of the provisions and agreed terms concerning enforcement, including any agreement to submit disputes to mediation before resorting to commencement of an enforcement action or civil action;

6. Development Agreement May be Cancelled at any Time:

(a) by the mutual written consent of all parties thereto, with the consent of the Board by ordinance after a public hearing; or

(b) by 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 or safety if development were to commence or proceed pursuant to the development agreement.

(c) A Development Agreement, upon consent of all parties, may contain a procedure by which disputes concerning the Development agreement may be mediated. The decisions reached under such procedure shall not be considered administrative land-use decisions.

VII. TRANSFER OF DEVELOPMENT RIGHTS (“TDRs”).

A. The purpose of this Section is to authorize the owner or lessee of Oil and Gas estates and interests (sending parcel) that require relief pursuant to a beneficial use and value determination, to transfer one or more rights to develop oil or gas drill sites to a receiving parcel for the following purposes:

1. To conserve agriculture, ranch, and forestry uses of land;
2. To protect lands and structures of cultural, architectural, and historic significance;
3. To 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 mineral estate owners, or Oil and Gas lessees that can make use of it;

4. To provide a mechanism whereby drill site development rights may be reliably transferred;

5. To ensure that development rights are transferred from the owners or lessees of Oil and Gas estates and interests that have received development approvals for an Oil and Gas floating zone development approval;

6. To authorize the County to create a TDR Bank, whereby Oil and Gas development rights may be purchased and conveyed by the County, to stabilize the market in development rights and to regulate or control the development property that the County intends to protect under subparagraphs (1) through (6) above;

7. To authorize donations of Oil and Gas development rights to the County or the TDR Bank, in lieu of a transfer of development rights to another Oil and Gas site that has received development approval.

B. The Board may administratively approve a transfer of development rights after a public hearing has been held on the proposed approval, with the same requirements for the Application for the floating zone development approval and such development approval shall be consistent with:

1. The 2018 Mora County Comprehensive Land Use Plan and the Plan's Oil and Gas Element; and

2. An Area Plan or Community Plan within Eastern Mora County

C. The TDR shall:

1. Describe in detail the sending and receiving properties, and the development rights to be transferred;

2. Quantify the number of Oil and Gas drill sites permitted to be transferred and the number of Oil and Gas drill sites permitted to be located on the receiving property with the location of such Oil and Gas drill sites on the receiving property described in detail;

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

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

D. No property shall be designated as a receiving property under a TDR until the Board has granted to such property an Oil and Gas Overlay Floating Zone development approval.

E. The County shall notify the County Assessor of the transfer of development rights within thirty (30) days of:

1. Development approval of the TDRs;
2. Issuance of a certificate for the TDRs;
3. Purchase of development rights by the County for its TDR Bank;
4. Receipt by the County or the TDR Bank of a donation of development rights; and
5. The sale or conveyance of development rights by the TDR Bank; and the Assessor shall adjust the valuations for purposes of the real property tax of the sending parcel and of the receiving parcel or parcels appropriately for the development rights extinguished or received.

F. The County may, by separate ordinance, establish a transfer of development rights bank, otherwise referred to as a "TDR Bank." The TDR Bank shall be operated by the County Manager.

1. The TDR Bank shall have the power to purchase development rights, subject to the approval of the Board.

2. The TDR Bank shall have the power to sell or convey any development rights it may possess, subject to approval of the Board to an Oil and Gas site that has received a Floating Zone development approval.



3. The TDR Bank may, for conservation or other purposes permanently hold any development rights it possesses.

4. The TDR Bank may receive donations of Oil and Gas development rights from any person or organization, public or private, subject to the approval of the Board.

5. The TDR Bank may be funded from:

- (a) the general fund of the County;
- (b) the proceeds of the sale of development rights by the TDR Bank; or
- (c) grants or donations from any source.

6. A separate interest-bearing trust fund shall be established for the TDR Bank, supervised by the County Manager, into which fund all receipts shall be deposited and from which payments shall be made.

## VIII. BUILDING, DRILLING AND GRADING PERMITS AND CERTIFICATE OF COMPLETION.

### A. General

This Ordinance requires ministerial Applications for building, drilling, and grading permits and a certificate of completion to be submitted to the Administrator after the Applicant has obtained a Floating Zone development approval. Application for these permits and a certificate of completion shall not be accepted, nor deemed complete, until the Applicant receives a permit to drill "APD" on Form C-101 from the OCD. Any additional material in response to meeting the standards of Section IX supplementing the Development Plan submitted for an Oil and Gas Floating Zone shall be attached to the Building Permit Application. Prior to any drilling or grading permit, the Applicant shall obtain a building permit development approval issued in accordance with the Standards of this Section.

### B. 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.

### C. Subdivision Approval

Applicants are not required to apply for subdivision approval for Oil and Gas projects located on a single parcel of land unless the activity constitutes a subdivision or platting of two or more lots or parcels, with the intent to sell or lease the subdivided lots or parcels in the future.

### D. Additional Permits

1. Once a Floating Zone development approval has been issued for an Oil or Gas project, the Applicant shall apply for a building permit development approval, before obtaining drilling or grading permits or a Certificate of Completion. Drilling, operation, production, workover, maintenance, repair and testing and all other usual and customary activities associated with the exploration for, and the development, operation, production and transportation of oil and/or gas shall commence within the scope of the terms of the floating zone development order.

2. If construction has not commenced on any Oil or Gas project authorized by the terms of the floating zone development approval within 18 months of its issuance, the floating zone development approval shall expire, and the Applicant shall be required to file a new Application for a floating zone development approval before taking steps leading to the construction of an oil or gas project.

3. An Applicant seeking a building permit for an Oil or Gas project shall furnish financial assurances acceptable to the County:

(a) Acceptable financial assurances shall include:

(i) A bond in the principal sum of such amount as may be determined by the Board, but not less than the greater of an amount representing the actual cost to remediate the site of the Oil or Gas Facility or \$1,000,000, less the amount of any agreement entered between the Operator and a surface owner pursuant to the Surface Owners' Protection Act. The 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 with standing to claim legal or equitable relief, under the condition that the Operator shall

comply with the terms and conditions of this Section IX in the drilling and operation of the well;

(ii) An irrevocable letter of credit issued by a federally-insured financial institution located within the State of New Mexico, backed by cash on deposit, or collateral, 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 not less than the greater of an amount representing the actual cost to remediate the site of the Oil or Gas Facility or \$1,000,000, less the amount of any agreement entered between the Operator and a surface owner pursuant to the Surface Owners' Protection Act. A letter of credit or bond shall be for a term of not less than five (5) years and shall be automatically renewed on like terms unless the issuer notifies the County in writing of non-renewal at least one hundred eighty (180) days prior to the end of the five (5) year period.

(b) All financial assurances pursuant to this Section shall become effective on the date that a building, drilling or grading permit is obtained.

(c) 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 with the approval of the OCD and the location restored and/or remediated pursuant to this Ordinance.

#### 4. Comprehensive General Liability Insurance

In addition to the required financial assurance, the Operator shall submit with the Application for building permit development approval, a policy or policies of commercial general liability insurance, including contractual liability, covering bodily injuries and property damage that names the Operator as the insured and the County as an additional insured, issued by an insurance company licensed to do business in the State of New Mexico. The insurance policy 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 thirty (30) days prior to the effective date of such cancellation.

#### 5. Pollution Liability Insurance

The Operator shall submit with the Application for a building permit 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 Operator as insured. Such insurance policy shall be maintained in full force and effect from the date an Application for a building, drilling or grading permit is submitted and continuing in force until the well is plugged and abandoned in accordance with the applicable Oil and Gas Act, OCC and OCD regulations, and this Ordinance. A separate policy is not required if pollution coverage is included as a part of the comprehensive general liability insurance policy. The insurance policy or policies shall provide that they may not be cancelled without written notice to the County at least one hundred (180) days prior to the effective date of such cancellation.

## 6. Self-Insurance

An Operator offering a plan of self- insurance may provide a certificate of insurance as required by this section issued pursuant to such plan provided that such plan has been approved by the Public Regulation Commission of the State of New Mexico, the OCC, or the County's Risk Manager.

### E. Required Standards for an Oil and Gas Projects Applying for a Building Permit Development Approval

#### General.

All activity conducted at an Oil or Gas project 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.

#### Emergency Response and Preparedness Plan (ERPP)

Each operator of an Oil or Gas project is required to provide, with the Application for a building permit, an updated ERPP complying with the development order and development agreement granting approval of the Application for the Oil and Gas Floating Zone development approval. The ERPP shall be filed with the Fire Chief and the Administrator. The updated ERPP shall consist of the following:

(a) Name, address and phone number, including a 24-hour emergency number of at least two persons responsible for the emergency field;

(b) 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 explosion, earthquake, fire or other disaster at the site. Copies of the Material Safety Data Sheet (MSDS) for each chemical or substance present at the Oil and Gas Facility shall be furnished;

(c) A written response plan for the potential emergencies that may be associated with the operation of the project. This may include any of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills; and

(d) Specific emergency preparedness plans are required for any project that involves drilling or penetrating through known zones of hydrogen sulfite gas; as determined by the OCD or the County. This plan shall be coordinated with and approved by the County prior to beginning field operations.

#### Fire Prevention

(a) Each Oil or Gas project shall comply with all fire prevention requirements set forth in this Ordinance and all other applicable County ordinances relating to fire prevention, including the County Fire Code and the Urban-Wildland Interface Code. Firefighting apparatus and supplies, as approved by the Fire Chief, and required by 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 during drilling, production and transportation. These 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 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.

(b) 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, production and transportation, including, but not limited to, the following:

(i) 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");

(ii) 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;

(iii) All hazardous materials and/or special hazards at the facility shall be protected as set forth in applicable NFPA standards;

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

(v) Crude oil and water tanks shall be installed with a vent system approved by the OCD and the County. A flame arrestor approved by the County shall be installed on the vent line; and

(vi) Copies of the Material Safety Data Sheet (MSDS) for each chemical or substance present at the Oil or Gas project shall be posted in a conspicuous entry place;

(c) Hazard Identification and Label Protection:

(i) Safety paint shall be used to highlight and mitigate potential hazards of the Oil and Gas project such as tripping hazards or protruding mechanical edges that could harm an employee or the public;

(ii) Hazard labels shall be protected from weathering and maintained in a manner so that they will be legible and eye-catching to employees and the public;

(iii) On-site security; and

(iv) When traffic or safety is a concern, on-site security must be provided during active drilling phases.

(d) Appearance and Maintenance of the Site

(i) The premises upon which an Oil or Gas project is located shall be kept in a clean and orderly condition.

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

(iii) No mud, wastewater, oil, slush or other waste shall be permitted to flow off the drill site.

(iv) Suitable and adequate toilet facilities shall be made available and kept in a clean and sanitary condition during drilling;

(v) The premises on which the drill site is located shall be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material;

(vi) An Oil or Gas project shall not be used for the storage of pipe or other equipment or materials except during the drilling or servicing of wells;

(vii) All above-ground production equipment shall be painted a uniform flat tan color;

(viii) All topsoil removed from the surface and retained on the site shall be carefully removed and stockpiled in a covered manner to prevent erosion and to facilitate its re-Application to the disturbed areas during site reclamation; and

(ix) An Oil or Gas project 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.

(e) Storage Tanks

Except as otherwise required 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 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.

(f) Closed Loop Systems

(i). Each site containing a producing oil or gas well shall have a fluid-containment system using a series of enclosed above ground tanks to control the escape of methane, dissolved-gas concentrations 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 during the process of operating any Well. Open pits and reserve pits are prohibited under all circumstances.

(ii) The Operator shall prepare baseline measurements of surface water, groundwater and water quality through a testing program prior to constructing or operating an Oil or Gas project. At least three monitoring wells shall be constructed according to guidelines prepared by the County consultant hydrologist. The location of the monitoring wells shall be specified by the County consultant hydrologist. At least one of the wells shall be on the Oil or Gas project site, or, if directional drilling or horizontal drilling is utilized, at least one monitoring well shall be located at the surface location corresponding to the bottom hole location.

(iii) 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 County consultant hydrologist, or Administrator.

(iv) 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 possible, the Operator shall secure the signature of the property owner confirming that property owner's decision. 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.

(v) 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 result from the operation of the Oil or Gas project, as compared to the baseline established during initial testing. Such results shall be provided to the Administrator.

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

(vii) 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.

## 5. Noise

All construction, maintenance and of any Oil or Gas project shall be conducted in a manner to minimize the noise created to the greatest extent possible.

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.

Production equipment shall be powered by electric motors if located within 1,320 feet of distribution voltage capable of powering production equipment. Production equipment may be powered by engines prior to the time that the project has access to electric power but subject to the restrictions contained in this Subsection.

Drilling, fracking, compressor stations and production shall not create a sound level greater than 70 dB(a) when measured from 300 feet from the source of the

sound. When an inhabited building is within 750 feet of any project facility, drilling, fracking, compressor stations and production shall not create a sound level greater than 60 dB(a) when measured from 300 feet from the source of the sound. A lower sound level shall be required where the E.I.R. determines that the sound levels for a specific site requires further mitigation.

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 regarding 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 PSL. In unique situations where a comprehensive sound survey is not practical, the County may approve a noise management plan. If a project facility is found to be noncompliant, the Operator shall be given a reasonable time to undertake corrective action. This includes time for sound monitoring, analysis, evaluation, and equipment procurement and installation. The Operator shall be in communication with the County through all phases of corrective action.

## 6. Light

(a) All Oil or Gas projects shall comply with the Code and the Night Sky Protection Act, NMSA 1978, Sections 74-12-1 et seq. (as amended), except as provided for in this Section. 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. To the extent practicable, site lighting shall be directed downward and inward and shielded to avoid glare on public roads and building units within five hundred (500) feet.

(b) The Operator shall log all lighting levels and shall provide night ambient light levels prior to commencing work on the Oil or Gas project. Lighting levels shall be provided during the development and operation of the project on a daily basis.

(c) 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.

Lighting that does not comply with the Code shall not be permitted.

## 7. Fracking and Acidizing

(a) 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 fractured. Fracking may be monitored by the Administrator to ensure compliance with these standards.

(b) Oil or gas production and operation, including fracking and drilling for exploratory wells, shall be conducted only during the hours of 8:00AM to 5:00PM. Upon an Applicant's request, fracking and exploratory well drilling may be permitted outside these hours if approved by the Planning & Zoning Committee on a case-by-case basis. The Planning & Zoning Committee shall consider whether the specific land use or environmental conditions warrant such an allowance. An extended hour Application shall not be granted if there are residences within ½ mile of the drill site. If approved for extended exploratory drilling or fracking hours, Applicants shall abide by all performance standards established in this Ordinance and the Development.

(c) Fracking shall only use fresh water as the fluid component of the fracking 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. Fresh water that meets or exceeds drinking water standards shall be used and such water shall be obtained from the County or a municipal system that supplies drinking water, or a private source, and shall comply with the Water Availability Assessment. If the County petroleum engineer consultant agrees, subject to clear and convincing evidence, that use of fresh water during fracking 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 OCD, a ground water monitoring program is established, and the need for the use of the specific constituents are verified by the County petroleum engineer consultant 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 petroleum engineer consultant.

(d) After fracking is completed, all fluids used in the operation shall, to the extent technologically possible, be removed from the well.

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

## 8. Setbacks

(a) An Oil or Gas project shall be located no closer than the setbacks permitted in the Board's development order approving the floating zone or the distances from the following types of land uses; whichever is greater.

- (i) Inhabited Dwelling - 750 feet
- (ii) Building Used as a Place of Assembly, School or Institution - 750 feet
- (iii) Non-residential Use or Building - 400 feet
- (iv) Public Road or Highway - 200 feet
- (v) Lot Line for a Lot Designated for Residential Use on Approved Plat - 600 feet
- (vi) Groundwater Re-charge Area, Alluvial Aquifer, Acequia, Perennial, Seasonal or Ephemeral Water Course, Creek, Arroyo, Playa Lake or Wetland as Defined by the United States Corps of Engineers- 1000 feet
- (vii) 100 Year Floodplain Line as Designated by the Federal Emergency Management Agency - 500 feet
- (viii) Existing Water Well Permitted by the State Engineer -750 feet
- (ix) Cultural, Historic or Archeological Resource - 750 feet
- (x) County Trail or Designated Open Space - 500 feet
- (xi) Parks, trails, and recreation areas - 500 feet

(b) The setbacks listed above are intended to be “minimum” protections for the listed structures and resources. Individual circumstances requiring greater setback will be considered throughout the Floating Zone application processes. The Board is ultimately responsible for deciding where drill sites may be located on an individual property.

### (c) Setback Exceptions

When an Applicant cannot locate an Oil or Gas project 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.

## 9. Hours of Operation

All oil or gas drilling, production or transportation shall be conducted only between 8:00 AM and 5:00 PM. Upon Applicant's request, drilling (but no other activity) may be permitted up to twenty-four (24) hours per day if approved by the Planning & Zoning Committee on a case-by-case basis. The Planning & Zoning Committee shall take into account whether the specific land use or environmental conditions warrant such an allowance. An extended hour Application shall not be granted if there are residences within ½ mile of the drill site. If approved for extended exploratory drilling or fracking hours, Applicants shall abide by all performance standards 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.

## 10. Visual Impacts

The Oil or Gas project shall use structures and equipment of the minimum size necessary to satisfy the functional requirement of the constructed facility. The Operator shall use low profile pumps and equipment to mitigate the adverse visual impacts caused by a facility or facilities.

## 11. Drill Sites

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

## 12. Flaring of Gas

Gas shall not be flared except as necessary during drilling and workover, and then only as permitted by OCD regulations.

### 13. Landscaping and Screening

An Oil or Gas Facility or Facilities 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 Planning & Zoning Committee, 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 Planning & Zoning Committee shall consider the existence of any surface use agreement between the surface owner and the mineral owner, and shall comply with the landscaping requirements approved by the Board in the floating zone development order.

### 13. Fencing

Security fencing and a locked gate for an Oil or Gas project shall be required where:

- (a) There are four (4) or more existing residences within 2500 feet of the facility or facilities;
- (b) There is a public or private school within 1000 feet of any facility;
- (c) There is an existing structure used for commercial purposes within 600 feet of any facility;
- (d) There is an existing recreational facility located within 1000 feet of any facility; and
- (e) There is a determination by the Planning & Zoning Committee that public safety so requires.

### 14. Water Quality

(a) The Oil or Gas project shall not cause significant degradation in the quality and quantity of surface waters from the addition of non-point source pollution; as determined by the Board in the development order for the floating zone.

(b) The Oil or Gas project shall not cause degradation in the water quality of any public or private well so that any regulated groundwater standard is exceeded or cause a reduction in water pressure of any public or private water wells.

(c) The Oil or Gas project shall not pose any significant risk, nor cause any significant degradation to subsurface water resources.

(d) The Operator shall maintain all safety and pollution monitoring equipment deemed necessary by the Planning & Zoning Committee and shall inspect the equipment quarterly. The results of the monitoring and inspections shall be submitted to the Administrator.

#### 15. Disposal of Salt Water or Other Deleterious Substances

(a) There shall be no disposal of saltwater, produced water or water containing salts or other minerals in quantities that exceed applicable ground water standards established by the Water Quality Control Commission, at the site of the Oil or Gas project.

(b) 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.

(c) Each Operator shall make sufficient provisions for the safe disposal of water containing salts or other minerals in quantities that exceed applicable ground water standards established by the Water Quality Control Commission, hydrocarbons, or other deleterious substances which may be brought to the surface. Any such disposal shall be at an OCD-approved disposal well or site. No disposal of such substances shall be permitted at the project site. When a disposal well is to be used, the location of the proposed well shall be identified, the Operator shall identify the disposal well by operator, lease, well name and number, and location.

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

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

(f) Surface disposal of wastes of any kind is prohibited.

No person shall deposit, drain or divert into or upon any public highway, street, alley, drainage ditch, acequia, 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.

X. Other Provisions: Service of Process, Monitoring and Inspection, Violations, Enforcement and Penalties

A. Service of Process

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 final development approval of all ministerial permits, 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.

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.

B. Monitoring and Inspection

Each Operator of an Oil and Gas project shall pay a semi-annual fee of five thousand dollars (\$5,000.00) for each well site being operated, to enable the County to use the funds to obtain an oil and Gas engineer to perform unannounced post-permit inspections of the well site to assure that all of the terms of this Ordinance, and all conditions and terms required to be performed, or complied with, in the development agreement and the final development orders of floating zone approval and subsequent ministerial drilling, grading and building permits and certificates of completion.



### C. Violations

(1) It shall be unlawful to construct, install, or cause to be constructed or installed, any Oil or Gas Facility or Facilities, or to drill, produce, store or transport any oil or gas without the issuance of final development orders approving applications for both an Oil and Gas Floating Zone and requisite drilling, grading and building permits and certificates of completion.

(2) It shall be a violation of this Ordinance to construct, install or cause to be constructed or installed, any portion of an Oil or Gas project in violation of any provision of this Ordinance or contrary to the conditions or mitigation measures attached to the development agreement, final development orders for the floating zone or subsequent development approvals for drilling, building and grading permits and certificates of completion.

### D. Remedies for Violations

(1) Any operator, person, firm, corporation or legal entity that violates any provision of this Ordinance, or any conditions of the Development Agreement or final development orders approving a Floating Zone or subsequent ministerial development approvals, or a valid directive or order of the 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 injunction and declaratory judgment relief. The designated operator, 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 shall be held liable for any violations of this Ordinance.

(2) The violation of each separate provision in this Ordinance shall be considered a separate offense, and each day the violation continues 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.

(3) Notwithstanding any other penalty or remedy provided for in this section, the County may, on finding a an unremediated, repeated or egregious

violations of provisions of this section, revoke or suspend any Oil and Gas Floating Zone development approval 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 this Ordinance upon the same notice and public hearing requirements applicable to the application for the Floating Zone development approval. 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 Floating Zone development approval, or subsequent ministerial development approvals.

(4) Any default specified in this Ordinance shall also constitute a default of the development agreement entered upon the issuance of the Floating Zone development approval. In such event, cumulative remedies are available both under this Ordinance and under the development agreement.

## XI. RULES OF INTERPRETATION AND DEFINITIONS

### A. RULES OF INTERPRETATION:

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

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. They are intended as a controlling guide to the administration and interpretation of the Development Guidance System and shall be treated in the same manner as other aspects of legislative history.

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

In computing any mandatory time prescribed or allowed, the date of filing of an Application, notice, development approval or development order, upon which the designated time begins to run, is not to be included. The last day is to be included unless it is not a federal or state recognized holiday or working day, in which event the period runs until the next working day.

Words used in this Ordinance shall supersede any word usage in the Development Guidance System with respect to any Oil and Gas Application, development order and approval.

#### B. DEFINITIONS (Words with specific defined meanings)

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

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

**Adequate Public Facility or Public Service Requirement:** Tying development approval for a Floating Zone to the concurrent availability, within the area designated by this Ordinance for Applications for development of Oil and Gas facilities, of on or off-site public facilities or public services to be furnished at the time the Application is filed with the County Clerk, including but not limited to:

roads, fire, police, open space, parks, stormwater and related substance retention, and emergency service and preparedness that has sufficient available facility capacity, personnel and equipment to service the oil or gas facility at adopted specified levels of service in the Capital Improvements Plan and adopted land use assumptions .

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

**Administrator:** The Administrator is the County Manager, or any staff person delegated by, or private consultant assigned by, the Manager, and approved by the Board.

**Adopted Level of Service (LOS):** The LOS standards adopted for Adequate Public Facilities and Services. All Applications are evaluated for the purposes set forth in this Ordinance in accordance with these adopted LOS standards.

**Adverse Effect or Impact:** A negative change in the quality of the environment, acequias, floodplains, floodways, streams, wetlands, hillsides and steep slopes, wildlife or vegetation habitats, air and water quality, global warming, public facilities and services, transportation capacity, health and safety, historical, architectural, archaeological, or cultural significance of a resource.

**Agricultural:** Property currently used for farming or ranching purposes, including pasture, which is eligible for property tax relief or abatement, and earns over \$3,000 of income prior to expenses incurred. It does not include residential gardens or flower beds or commercial agricultural uses on the site,

**Appeal:** (1) An appeal to the Board where it is alleged that there is an error in any discretionary development approval or order, requirement, decision, or determination made by the Planning and Zoning Committee; or, (2) to the Planning and Zoning Committee from any ministerial development approval or order, requirement, decision, or determination made by the Administrator.

**Applicant:** The owner of a mineral estate or Oil and Gas lease, or a production right owner or lessee of lands, leases, easements, profits, equitable servitudes, covenants at law or other Oil and Gas estates proposed to be developed or a duly designated representative who shall have express written authority to act on behalf of the owner. Consent shall be required from the legal owner of the premises and

any lands of the same person, corporation, partnership, trust, business entity or association, in the same ownership. Applicant shall also be a unit operator who is appointed, pursuant to state law, under a unit agreement or pooling arrangement, including working interest, royalty interest, and overriding interest owners or lessees.

**Application:** Any Application for a development order or a development approval of an Oil or Gas Facility, including, but not limited to: a Floating Zone; ministerial building, grading or drilling permits; certificate of completion; beneficial use determination, development agreement; use and area variance; and other authorized mitigation or waiver relief from any unnecessary hardship, that is not self-imposed, that would constitute an as applied regulatory taking.

**Area Plan:** A specific plan for a geographic area, community, village, town, or tribe of the County, which is prepared for specifically implementing the 2018 County Comprehensive Land Use Plan by refining the policies of the Comprehensive Plan to a specific geographic area or containing specific recommendation as to the detailed policies and regulations applicable to a focused development scheme. An Area Plan shall consist of goals, objectives, policies, and implementing strategies for capital improvements, permitted densities and uses, and the level of service required for public facilities and services; physical and environmental conditions; cultural, historic and archeological resources, and land-use characteristics of the area; and maps, diagrams, and other appropriate materials showing existing and future conditions.

**Base Zoning:** Any existing permitted use, density, family transfer or subdivision, approved pursuant to the Development Guidance System which underlies an Oil and Gas Floating Zone development approval.

**Board:** The Board of County Commissioners of Mora County, State of New Mexico.

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

**Bond:** See security.

**Buffer Yard:** The required side, rear and front area setbacks, with appropriate installation of landscaping and screening materials, for Oil or Gas Facilities.

**Buildable Area:** That portion of an Oil or Gas project upon which buildings, structures, wells, ponds or equipment may be placed, limited by floodplain, slope or other terrain constraints, required buffer zones and minimum setbacks, and the maximum number of wells and co-location of wells or other design and development standards set forth in this Ordinance.

**Building:** A structure designed, built, or occupied for an Oil or Gas project.

**Building Permit:** See also, development approval; A ministerial permit required after a Floating Zone development approval for an Oil or Gas project has been approved.

**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 ability of any road, within or without the site, to withstand an 80,000-pound weight of a vehicle on a concrete based connecting road from the site to an interchange on the I-25 or I-40 interstate highways.

**Capital Improvement:** means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of the County:

- (1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;
- (2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;
- (3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars (\$10,000) or more and having a life expectancy of ten years or more; and
- (4) parks, recreational areas, open space trails and related areas and facilities;

**Capital Improvements Plan:** means a plan required by the Development Fees Act, [Section 5-8-1 NMSA 1978], prepared by the Applicant or developer of Oil and Gas facilities at the Floating Zone development approval stage, that identifies capital improvements or facility expansion for which impact fees may be assessed, pursuant to land use assumptions in the Capital Improvement Plan describing the facilities and service area required for the Oil and Gas development.

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

**Certificate of Completion:** The additional permit required by this Ordinance for an Oil and Gas project to commence drilling, fracking, production or transportation of water, equipment, and Oil and Gas.

**Certify:** Whenever this Ordinance requires that an agency or official certify the existence of some fact or circumstance such certification shall be made in a writing, which provides reasonable assurance of the substance and accuracy of the certification.

**Closed Loop System:** A system for Oil and Gas drilling that utilizes a series of completely enclosed above ground tanks instead of a Reserve Pit that are used for the storage of drilling, workover, or resurfaced fluids.

**Cluster:** A group of Oil and Gas wells and pads co-located on a single integrated commonly designed site.

**Code:** means the Mora County Code, Development Guidance System, Public Nuisance Ordinance, this Ordinance, the 2018 Comprehensive Land Use Plan and any successor amendments.

**Collector street/road:** See road, collector.

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

**Commission:** The New Mexico Oil Conservation Commission.

**Common ownership:** See Same Ownership.

**Compatible:** A situation where Oil or Gas projects can co-locate together, or can exist individually with surrounding communities harmoniously, considering 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 excessive noise levels, odors, glare, potential fire hazards, explosions, visual impacts, impacts on the quality and or pollution of surface water and groundwater quality and availability, adequacy of the road and highway system, stormwater detention, affordable housing, public schools, fire, police and emergency response services, air quality and surrounding land uses.

**Compatible Oil and Gas Use:** An Oil and Gas project which has received development approval for: (1) an Oil and Gas Floating Zone; (2) Grading, Drilling and Building Permits; and (3) a Certificate of Completion.

**Comprehensive Plan:** The 2018 Mora County Comprehensive Land Use Plan and Oil and Gas Element, the statutorily defined long-range plan 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, objectives, policies and strategies contained within the Plan.

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

**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 values of real property or assure its availability for agricultural, forest, recreational, or open space use; protect natural resources; maintain or enhance air or water quality; or preserve the historical, architectural, archeological, or cultural aspects of real property.

**Contiguous:** Lots are contiguous when at least one boundary line of one lot touches a boundary line or lines of another lot. Lots are not contiguous if they abut or connect only at a single point.

**County:** Mora County, New Mexico.

**County Assessor:** The elected County Assessor of Mora 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 this Ordinance.

County Clerk: The elected County Clerk of Mora County, New Mexico.

County Manager: The County Manager of Mora County, New Mexico.

Dedication: The transfer of fee simple title to, or grant of an easement over, lands and improvements to the County subject to the conditions of a development order requiring or accepting such transfer.

Degradation: Pollution of ground or surface water that unreasonably reduces the quality of such water below standards required by the EPA acting pursuant to the Clean Water Act, 33 U.S.C.A. §§ 1251 to 1387 and Regulations, 40 C.F.R. Part 130, and the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 et seq., whichever is greater. The quality of a representative sample of water is unreasonably reduced when such water is below the standards established by the Clean Water or Water Quality Acts, or is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose. The quality of a representative sample of water is unreasonably reduced when such water is below the standards established by the Water Quality Act, NMSA 1978, §§ 74-6-1 et seq. or is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or the public health, safety, or welfare, or impairs the usefulness or the public 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.

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

Development: Any man-made change or significant land disturbance involving improved and unimproved sub-surface mineral and surface estates, including, but not limited to: buildings or other structures; Oil and Gas drilling,

dredging, filling, fracking, extraction or transportation or Oil and Gas, grading, paving, diking, berming, excavation, exploration, or storage of equipment or materials, whether in pits, closed loop systems, structures, ponds, containers, landfills, or any other detention facility.

**Development Agreement:** An agreement between the County and an Applicant for an Oil and Gas Floating Zone, regarding the development and use of the property through which the County agrees to vest Oil and Gas development, use, density or intensity, vary any other provision of the Development Guidance System or refrain from adopting new regulations affecting subsequent phases of Oil and Gas development, in exchange for the dedication or provision of public facilities or services by the Applicant or requiring satisfaction of conditions incorporated into a development order granting an Oil and Gas Floating Zone.

**Development Approval:** Any authorized action by the Board, Planning and Zoning Committee, Manager or Administrator, or other officer or agency of the County that approves, approves with conditions, or denies Applications for development of a parcel, tract, building, or structure, including any of the following: Oil and Gas floating zone site plan and detailed development plans; beneficial use or value determinations; transfers of development rights; grading, drilling or building permits; or certificates of completion.

**Development Order:** The official ordinance, regulation, resolution, or decision of the Board, Planning and Zoning Committee, or Administrator with respect to the granting, granting with conditions, or denial of an Application for an Oil and Gas Facility including: an Oil and Gas Floating Zone; building, drilling and grading permits and a certificate of completion.

**Development Plan:** A detailed plan for an Oil and Gas project accompanying development approval of a floating zone application, including such drawings, documents, and other information necessary to illustrate completely the proposed development.

**Development Rights:** The rights of a subsurface or surface 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 oil or gas fee or leasehold interests thus permitting the recipient to develop more intensely than otherwise permitted; see Transfer of Development Rights (defined below).

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

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

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

**Drilling:** Digging or boring a new oil or gas well or reentering an existing well for exploration, testing, developing or producing oil, gas, or other hydrocarbons, or injecting gas, water, chemicals or any other sand, fluids or substances into the earth.

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

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

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

**Eastern Mora County:** As located on the Map shown in the 2018 Comprehensive Land-Use Plan Water Element Section.

**Effect:** See adverse effect or impact.

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

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

**Erosion:** Soil movement due to wind or water.

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

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

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

**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.

**Expenses:** Those expenses that shall include consultant and engineering costs, exactions, Application fees, costs of obtaining a bond, trust agreement, or irrevocable letter of credit posted with the County to assure compliance with conditions of approval of an Oil and Gas Floating Zone, Grading, Drilling and

Building Permit Applications, Certificates of Completion and necessary development costs.

Exploration: Geologic or geophysical activities related to the search for oil, gas, or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying.

Exploratory Well: A well drilled for discovering oil and gas reserves.

Facilitated traffic: The traffic that is enabled to develop in the future on an existing or proposed road.

Facility: Permanent, semi-permanent, or temporary commercial or industrial property such as a building, plant, or structure, built, established, or installed for the performance of one or more specific activities or functions.

Fire Department: The Mora County Fire Department

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

Floating Zone: An Oil and Gas Overlay Zoning approval that is superimposed over permitted and conditional uses under the Development Guidance System, that imposes specified procedures and requirements for Oil and Gas Facilities.

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

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

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

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

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

**Gas:** Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas; whenever “gas” is used in this Ordinance it includes “natural gas” and/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) exceeding 100,000 cubic feet of gas per barrel of oil.

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

**Geohydrologic Report:** A report, including baseline studies, on potential adverse effects and impacts of an Oil and Gas Facility on subsurface and ground water resources and identifying fractured geological formations that would permit degradation of the water resources.

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

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

**Height, Building:** The vertical dimension measured from the average elevation of an Oil and Gas building or structure.

**Historical, Cultural or Archaeological Resource:** Historic Sites, Cultural Sites, 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 County Clerk.

**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 Fee:** An Oil and Gas project, pursuant to N.M. Stat 5-8-5 (2016), shall be responsible for the payment of Impact Fees pursuant to the land use assumptions and capital improvements plan adopted by the County

**Improvement District:** A special district formed by the Board for levying assessments, rates, or charges on public facilities and services the need for which is generated by Oil and Gas projects.

**In the County, within the County:** Areas within the boundaries of the County, but not within the limits of any incorporated municipality or state and federal lands

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

**Intensity:** The number of Oil and Gas wells permitted per square mile or section.

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

**Joint Authority:** Pursuant to the powers authorized in Sections 3-21-2 , 3-21-3 and 3-21-4 NMSA 1978, Mora County and the incorporated village of Wagon Mount may jointly or separately agree to enter into a joint municipal-county zoning agreement authorizing the cities, or either of them, and the County, to locate public facilities and services arising from development approval conditions, impact fees or exactions paid to the County by Applicants for Oil and Gas facilities for the needs generated by the Oil and Gas project within the County, as shall be established in a development agreement executed between the County and the Oil and Gas Applicant, as conditions for development approval of an Oil and Gas Floating Zone.

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

**Land Use Assumptions:** a description in the Capital Improvements Plan required for development fees for a service area and to enable facilitation of changes in the development fees for increased land uses, densities, intensities and employee population over the life of the Oil and Gas project, not less than 5 years.

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

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

**Lot:** A tract, parcel, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership, or possession, or for development.

**Methane:** See Gas.

**Mineral:** An inanimate constituent of the earth, in solid, liquid, or gaseous state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form of metal or metallic compound, a non-metal, a non-metallic compound, a chemical, an energy source, or a raw material for



manufacturing road building or construction material or oil, oil shale, natural gas, geothermal resources, but shall not include surface or subsurface water.

**Mitigation:** A system by which an Oil and Gas project 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 infrastructure, reduction in the number and location of wells, collocation of wells or purchase of Oil and Gas development rights under the transfer of development rights program.

**Municipality:** the incorporated village of Wagon Mound.

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

**Natural Gas:** See Gas.

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

**OCC:** The New Mexico Oil Conservation Commission.

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

**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 Development Density Guidelines.

**Off-Site:** Any premises in the Eastern Area of Mora County not located within the area of the Oil and Gas project property subject to development approval, in the same or common ownership of the Applicant.

**Oil and Gas Lease:** A conveyance of a fee simple determinable estate in the minerals whereby the lessee is granted the power to explore for, produce and market the Oil and Gas pursuant to its terms.

**Oil Conservation Division:** See OCD

**Oil or Gas Project:** includes, but is not limited to, the following:

(i) A new well and the surrounding well site, built and operated to produce crude oil and/or gas, including auxiliary equipment required for production (separators, dehydrators, pumping units, tank batteries, tanks, metering stations, and other equipment located within the perimeter of the well site);

(ii) Any equipment involved in the re-working of an existing well bore, including, but not limited to, a workover rig;

(iii) A compressor station, including associated facilities that serve one or more wells employing engines and/or motors;

(iv) A water or fluid injection station or open or closed pits or ponds or storage facilities for water, sand, chemicals, carbon dioxide and methane gasses that are brought from the well for discharge into treatment facilities.

(v) A storage or construction staging yard associated with an Oil or Gas Facility;

(vi) A facility related to the production of crude oil and/or gas;

(vii) A gathering system consisting of crude oil or gas gathering lines or water lines;

(viii) Any facility associated with a gathering system or water collection line, such as a drip station, vent station, pigging facility, open or closed pits or ponds, chemical injection station, transfer pump station and valve box;

(ix) A gas treating facility that serves multiple wells or gathering systems;

(x) Any other structure, building or facility used in the exploration, drilling or production phase of oil or gas development, and;

(x) A pipeline for transportation of oil, gas or water with the sole exception of facilities used for the transportation of natural gas under a tariff regulated by the New Mexico Public Regulation Commission (“NMPRC”) or the Federal Energy Regulatory Commission (“FERC”).

**100-year Floodplain:** The land in the floodplain within a community subject to a 1 percent 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, construction, installation of infrastructure, or any other activity that occurs on the site that is the subject of an Application for an Oil and Gas project.

**Operator:** The owner of a sub-surface oil and gas estate or an oil and gas lessee, and any other person, corporation or legal entity who, duly authorized, is in charge of the development or operation of a producing property, or who is in charge

of operation or management of an oil or gas project. The designated operator, 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 shall be held liable for any violations of this Ordinance.

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 this or any ordinance, Comprehensive Plan, Development Guidance System, or any Area Plan.

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.

Overlay zoning: see Floating Zone.

Owner: The record legal or equitable owner of the fee or a lease, of both a surface or subsurface possessory estate, or of a subsurface estate including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in an oil or gas project. The term owner as used in this Ordinance shall refer to an owner of a subsurface estate or both the subsurface and surface estate. Owner shall not apply to a fee interest or lease of only a surface possessory estate.

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 subdivision lots.

Performance standards: Regulation of Oil and Gas development is based on the standards of the environmental, historic, cultural or archaeological, health, safety, adequate public facilities or services, fiscal impact, emergency preparedness, consistency with the 2018 Comprehensive Land Use Plan, including but not limited to the Oil and Gas Element, water availability, traffic impact and other criteria in this Ordinance.

Permit: development approval or development order; Conditional Use and Permit, Building Permit, Drilling Permit, Grading Permit or Certificate of Completion for an approved Oil and Gas project.

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

Pit: 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 substances associated with the drilling or operation of Oil and Gas wells.

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

Planning and Zoning Committee: The prior name for the Planning and Zoning Commission as required by this Ordinance and state law.

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

Pollution: The contamination or other degradation of the physical, chemical or biological properties of land, water or air, including a change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance onto the land or into the water or air that will, or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wildlife, birds, fish or other aquatic life.

Pooling: A term frequently used interchangeably with unitization but more properly used to denominate the bringing together of small tracts sufficient for the granting of a 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. Pooling is important in the prevention of drilling of unnecessary and uneconomic wells, which result in physical and economic waste.

The term pooling is also used occasionally to describe cross-conveyances of mineral or royalty interests by separate owners or conveyances of such interests to a trustee for the purpose of sharing the income from production of wells drilled anywhere on the consolidated tract. The former usage of the term related to the working interest alone or to the working and non-operating interests; the latter usage typically relates to the non-operating interests only.

**Producing:** 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, produce and develop oil, gas or mineral resources within a given area or Zone.

**Professional, Qualified:** a professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education or experience.

**Project:** See Oil and Gas project.

**Proposed Project:** The uses, structures, facilities and buildings contained in an Application for an Oil and Gas Project development approval.

**Provider:** A person, business, corporation, partnership, trust, association, joint venture or other entity licensed by the OCD.

**Public hearing:** A legislative, quasi-judicial or administrative proceeding preceded by published notice and actual notice to certain persons and at which certain persons, including the Applicant, may present oral comments or documentation. In a quasi-judicial or administrative hearing, witnesses are sworn and are subject to cross-examination in the manner chosen by the Chair of the body conducting the hearing.

**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, upon which receipt the receiving parcel may increase the number of Oil and Gas drill sites.

**Reclamation:** The employment during and after an Oil and Gas operation of procedures reasonably designed to minimize, as much as practicable, the disruption

from the Oil and Gas facility and to provide for the rehabilitation of affected land through plant covers and soil, soil stability, water resources, or other measures appropriate to the subsequent beneficial use of such reclaimed lands. Any land or Oil or Gas project not required for production shall be reclaimed within one year after drilling ceases.

**Regional Water Plan:** The 2016 Water Plan for the Mora-San Miguel-Guadalupe Region prepared by the State of New Mexico's Office of the State Engineer, and the Interstate Stream Commission

**Reservation:** The designation of a portion of real property for a proposed right-of-way, easement, profit or incorporeal hereditament with or without dedication.

**Reserve pit:** A capped pit that is created at the drilling site of an oil or gas well for drilling fluid and mud and other materials brought back to the surface as a consequence of drilling or fracking.

**Resource:** A source or collection of buildings, objects, sites, structures, or areas that exemplify the historical, cultural or archaeological history of Mora County.

**Retention Facility:** A capped facility, pool or structure used for storage of peak discharge rates of stormwater runoff which provides storage for pollutants, chemicals, minerals, oil, gas, rocks, mud, sand, sediments, gray water, methane, carbon dioxide, and other toxic particles and materials.

**Road, private:** Any road not dedicated to the public and to be maintained by a private entity. All private roads must meet the same construction standards as provided for public roads in Mora County. Private roads for an Oil and Gas project will only be permitted pursuant to a development agreement for which construction, operation, maintenance standards and financial terms will be provided 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, or other transfer of an interest in the surface or subsurface, whether by metes and bounds or lot and block description.

**Same ownership:** Ownership in whole or in part on the same or separate estates, leases, parcels, tracts, or lots, whether contiguous or not, by any person,

corporation, partnership, trust, business, entity, association, fund, joint venture or any individual owning any stock or a legal or equitable interest in such common ownership, person, corporation, partnership, trust, business, entity, association, fund, joint venture or individually, as of the date of enactment of the first Moratorium/ Interim Development Ordinance adopted on February 13, 2015. Same ownership shall include common operation or control under an Oil and Gas unit consisting of multiple leases with varied ownership.

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

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

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

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

Site: The location of an Oil or Gas project.

Site-generated traffic: Vehicular trips attracted to, or produced, by an Oil and Gas Project on or off the site.

Site Plan: The plan required to be submitted with an Application for an Oil and Gas Floating Zone.

Slope: The ratio of elevation change to horizontal distance, expressed as a percentage. Computed by dividing the vertical distance by the horizontal distance and multiplying the ratio by 100. For purposes of this appendix, a "slope" shall include only those areas with a horizontal distance of at least 50 feet.

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

**Solid waste:** Any garbage; refuse; sludge from an oil or gas site; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from Oil and Gas activities.

**Spacing:** The subsurface volume, as administratively calculated by OCD. This Ordinance does not determine subsurface spacing or drainage-radius. This Ordinance uses OCD-determined subsurface spacings calculations for purposes of these regulations.

**State:** The State of New Mexico and includes all state departments, agencies under the executive branch.

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

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

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

**Subject property:** The property subject to an Application for a Floating Zone development approval or other permit.

**Subsurface estate:** See mineral estate or subsurface Oil and Gas lease.

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

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

**Transfer of Oil and Gas development rights:** The conveyance of oil or gas development rights to a receiving parcel by deed, easement, or other legal instrument executed by a subsurface Oil and Gas estate owner or lessee.

**Unit:**



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

(2) The acreage allocated to a specific well.

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

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

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

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

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

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

Well: Any hole or holes, bore or bores, to any sand, formation, strata or depth for exploring, producing and recovering any oil, gas, liquid, hydrocarbon, 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: An operation on a producing well to restore or increase production. A workover is typically performed for routine maintenance or repair of downhole equipment.

## XII. Application Fees

Application for Floating Zone Development Approval: \$20,000

### Permit Fees

Building Permit - \$10,000

Grading Permit- \$10,000

Drilling/Fracking Permit - \$10,000

Certificate of Completion - \$10,000

Courtesy Inspection - \$1,000

## XIII. 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.

## XIV. EFFECTIVE DATE.

This Ordinance shall become effective thirty (30) days following its recordation in the Office of the County Clerk.

PASSED, APPROVED AND ENACTED this \_\_\_ day of , 2018, by the Board  
Of County Commissioners of Mora County, New Mexico

\_\_\_\_\_  
By: Paula Garcia

Chair, Board of County Commissioners

Attest:

\_\_\_\_\_  
By: Carlos Arellano

County Clerk

Approved as to form:

\_\_\_\_\_  
County Attorney