BOARD OF COUNTY COMMISSIONERS
OF RIO ARRIBA COUNTY, NEW MEXICO

ORDINANCE NO. 2009-01

AN ORDINANCE INTENDED TO ADDRESS OIL AND GAS EXPLORATION, DRILLING, PRODUCTION, TRANSPORTATION, ABANDONMENT AND RECLAMATION WITHIN RIO ARRIBA COUNTY REQUIRING THE APPROVAL OF AN EXPLORATORY PERMIT FOR EXPLORATION ACTIVITIES RELATED TO OIL AND GAS AND PROVIDING FOR THE DIVISION OF THE COUNTY INTO TWO ENERGY RESOURCE DISTRICTS; THE ENERGY RESOURCES DEVELOPMENT DISTRICT, REQUIRING A DEVELOPMENT PERMIT FOR THE INSTALLATION, CONSTRUCTION, DEVELOPMENT AND OPERATION OF OIL AND GAS FACILITIES IN THAT DISTRICT, AND THE FRONTIER DISTRICT, REQUIRING THE APPROVAL OF A SPECIAL USE PERMIT AND SUBSEQUENT NOTICE TO PROCEED FOR THE INSTALLATION, CONSTRUCTION, DEVELOPMENT AND OPERATION OF OIL AND GAS FACILITIES WITHIN THAT DISTRICT, AND FURTHER PROVIDING FOR THE PROCESSES AND CRITERIA FOR REQUESTING AND OBTAINING SUCH APPROVALS AND FEES FOR THE SAME, STANDARDS FOR OIL AND GAS FACILITIES, VARIANCES, APPEALS, THE ENFORCEMENT OF THIS ORDINANCE AND OTHER RELATED MATTERS

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF RIO ARRIBA COUNTY, NEW MEXICO:

ARTICLE 1
GENERAL

1.1 SHORT TITLE

This Ordinance shall be officially cited as the "Rio Arriba County Oil and Gas Ordinance."

1.2 AUTHORITY, APPLICABILITY

This Ordinance is promulgated pursuant to the authority set forth in Art. X and XIII of the New Mexico Constitution (1912); N.M.S.A. 1978, § Section 4-37-1 (1975), N.M.S.A. 1978, §§ Sections 3-21-1 et seq., N.M.S.A. 1978, §§ Sections 3-19-1 et seq.; N.M.S.A. 1978, §§ Sections 3-18-1 et seq., and N.M.S.A. 1978, §§ 19-10-4.1, 4.2 and 4.3 (1985). This Ordinance constitutes an exercise of the County's independent and separate but related police, zoning, planning and public nuisance powers for the health, safety and general welfare of the County and applies to all areas within the exterior boundaries of the County that lie outside of (1) the incorporated boundaries of a municipality; (2) any tribal and tribal trust lands owned by Santa Clara Pueblo, Ohkay Owingeh Pueblo, or the Jicarilla Apache Nation; (3) lands owned by the state of New Mexico; and (4) lands owned by the United States, including, but not limited to lands that are managed by the Forest Service and the Bureau of Land Management. Additionally, this Ordinance does not apply to the construction and operation of Oil or Gas Facilities where the

mineral right(s) associated with such Facilities are owned partially or in their entirety by the United States government, the State of New Mexico, or a Tribe or Pueblo.

1.3 SCOPE

(A) This Ordinance is intended to address oil and gas exploration, drilling, production, transportation, abandonment and reclamation within the County.

(B) Nothing herein shall be deemed to waive the requirement of the Applicant to apply for, and receive, all other applicable permits and authorizations from other regulatory agencies. Where variations exist between this Ordinance and any other statute, regulation, or ordinance of another regulatory agency, the more stringent regulation shall apply.

1.4 PURPOSE

(C) This Ordinance is a zoning and public nuisance ordinance enacted to protect and promote the health, safety and general welfare of present and future residents of the County while at the same time providing for the responsible and economically viable extraction of oil and gas minerals. This Ordinance is a police power, public nuisance and land use regulation designed to establish separate land use, environmental, traffic, cultural, historical and archeological, emergency service and preparedness, health and safety, and other standards to protect from any possible adverse public nuisance effects and impacts resulting from oil and gas exploration, drilling, extraction or transportation in the County.

(D) No oil or gas development shall take place in the County without a permit or prior authorization in accordance with the provisions of this Ordinance. Prior to authorizing any oil or gas development operation, the County shall require the Operator, owner of the mineral estate, oil or gas Lessee of the mineral estate, to apply for, and obtain the approvals, permits, and/or authorizations required herein.

1.5 FINDINGS

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

The Board hereby finds, declares, and determines that this Ordinance:

(A) promotes the health, safety, and welfare of the County, its residents, and its environment by regulating adverse public nuisance impacts and effects resulting from the exploration, drilling, operation and transportation of oil and gas;

(B) protects traditional communities and traditional lifestyles, as defined in the Rio Arriba

Comprehensive Plan, within the County;

(C) prevents the occurrence of adverse public nuisance effects and impacts resulting from the abandonment of oil and gas activities within the County;

(D) Protects the rights of Surface Property Owners.

(E) protects the priceless, unique, and fragile ecosystem of the County, including the Headwaters, Riparian/Floodplain, and Irrigated Agricultural Lands Critical Management Area Zoning Overlay Districts, as identified and defined within the Rio Arriba Comprehensive Plan, the preservation of which is of significant value to the citizens of the County and State;

(F) allows for the responsible and economically feasible development of oil and gas mineral resources;

(G) protects the County's unique and irreplaceable historic, cultural and archaeological, water and other natural resources;

(H) implements the goals and objectives of, and is otherwise in accordance with, the County's Comprehensive Plan and the Rio Chama Regional Water Plan; and

(I) attains the foregoing objectives while also promoting the efficient and appropriate regulation of the oil and gas industry in the County.

1.6 STATE AND FEDERAL PREEMPTION

This Ordinance is supplementary to, does not replace, enhances and is consistent with the following Federal and State statutes:

(A) the Surface Owners Protection Act, N.M.S.A. 1978, §§ 70-12-1 et. seq.;

(B) the Oil and Gas Act, N.M.S.A. 1978, §§ 70-2-1 et seq.;

(C) the Water Quality Act, N.M.S.A. 1978, §§ 74-6-1 et seq.;

(D) the Solid Waste Act, N.M.S.A. 1978, §§ 74-9-1 et seq.;

(E) the Rangeland Protection Act, N.M.S.A. 1978, §§ 76-7B-1 et seq.;

(F) the Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§ 11001 et seq.;

(G) the New Mexico Public Health Act, N.M.S.A. 1978 §§ 24-1-1 et seq.;

(H) the Wildlife Conservation Act, N.M.S.A. 1978, §§ 17-2-37 et seq.;

(I) the Cultural Properties Act, N.M.S.A. 1978, §§ 18-6-1 et seq.;

(J) the National Historic Preservation Act, 16 U.S.C.A §§ 470 et seq.;

(K) the Uniform Trade Secret Act N.M.S.A. 1978, §§ 57-3A-1 et seq.;

(L) the Prehistoric and Historic Sites Act, N.M.S.A. 1978, §§18-8-1 et seq.;

(M) the Cultural Properties Protection Act, N.M.S.A. 1978, §§ 1 8-6A- 1 et seq.;

(N) the Archaeological Resources Protection Act, 16 U.S.C.A. § 470 aa et seq.; and

(O) the Energy Policy Act, 42 U.S.C.A. § 6201 et. seq.

ARTICLE 2
DEFINITIONS

2.1 RULES OF INTERPRETATION

(A) 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.

(B) The text shall control captions, titles, and maps.

(C) The word "shall" is mandatory and not permissive; the word "may" is permissive and not mandatory.

(D) Words used in the singular include the plural; words used in the plural include the singular.

(E) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(F) Within this Ordinance, sections prefaced "purpose" and "findings" may be included. Each purpose statement is intended as an official statement of legislative purpose or findings. The "purpose" and "findings" statements are legislatively adopted, together with the formal text of the Ordinance. They are intended as a legal guide to the administration and interpretation of the Ordinance and shall be treated in the same manner as other aspects of legislative history. Additionally, such purposes and findings shall be considered part of the County's Comprehensive Plan.

(G) In their interpretation and application, the provisions of this Ordinance are considered minimal in nature.

(H) In computing any period of time prescribed or allowed by this Ordinance, the day of the notice or final application, after which the designated period of time begins to run, is not to be included. Further, the last day is to be included unless it is a Saturday, Sunday or holiday

recognized by the State of New Mexico or the federal government, in which event the period runs until the next day that is not a Saturday, Sunday or such holiday.

2.2 DEFINITIONS

Words with specific defined meanings are as follows:

Abandoned. The permanent abandonment of an Oil or Gas Facility, as established by filings of the Operator with the NMOCD, from production records maintained by the NMOCD, and from information gathered by the Director. The County may presume abandonment of an Oil or Gas Facility based upon: (i) plugging and abandonment of an Oil or Gas Well pursuant to NMOCD Rule 19.15.25.1 N.M.A.C. et. seq.; (ii) any other evidence that the Oil or Gas Facility has been abandoned or plugged and abandoned as established by filings of the Operator with the NMOCD or other records maintained by the NMOCD; or (iii) non-use or lack of production for one year plus ninety (90) days, unless NMOCD records indicate the Oil or Gas Facility has not been abandoned. An Oil or Gas Facility which has been temporarily abandoned as approved by the NMOCD or the BLM is not considered permanently abandoned for purposes of this Ordinance.

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

Applicant. The owner of a mineral estate, oil and gas lessee, or duly designated representative who shall have express written authority to act on behalf of the owner or oil and gas Lessee. Consent shall be required from the legal owner of the mineral estate and any person, corporation, partnership, trust, business entity in the same ownership.

Best Management Practices. Practices that provide for mitigation of specific impacts that result from surface disturbances. In the case of an application, the proposed use of Best Management Practices may facilitate reduced processing times and limit the number of conditions of approval.

Board. The Board of County Commissioners of Rio Arriba County, State of New Mexico.

Co-location. The placement of two or more well bores on a single well pad as described on a plat prepared by a licensed land surveyor.

Comprehensive Plan. The Rio Arriba County Comprehensive Plan adopted by the Board, as amended from time to time.

County. Rio Arriba County, New Mexico.

Critical Management Area Zoning Overlay Districts. Areas of the County, mapped and

defined in the Comprehensive Plan, which contain unique and essential resources and habitat, and which require higher standards for development and impact mitigation.

Cumulative Impact. The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what group or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Decibel (dB). A unit of measurement used to measure the intensity of sound/noise and is equal to ten (10) times the logarithm to the base ten (10) of the ratio of the measured sound pressure squared to a reference pressure of twenty (20) micropascals.

Derrick. Any portable framework, tower, mast, and/or structure which is required or used in connection with drilling or re-working an Oil or Gas Well for the production of oil or gas.

Design and Performance Standards. The design and performance standards set forth in Article 5 and Article 11 of this Ordinance.

Development. Any man-made physical change in improved or unimproved sub-surface mineral and surface estates, including, but not limited to: buildings or other structures; oil and gas drilling, dredging, filling, extraction or transportation of oil and gas, grading, paving, diking, berming, excavation, exploration, or storage of equipment or materials, whether in structures, ponds, containers, land fills or other detention facilities.

Director. The Director of the Rio Arriba Planning and Zoning Department or any person or persons assigned or delegated to perform some portion of the functions exercised by the Director.

Drilling. Digging or boring a new Oil or Gas Well for the purpose of exploring for, developing or producing oil, gas, or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth.

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

Endangered Species. Plant or animal species defined and identified as endangered by the United States pursuant to the Endangered Species Act, 16 U.S.C. § 1531 *et. seq.*, and by the New Mexico Department of Game and Fish pursuant to the New Mexico Wildlife Conservation Act, N.M.S.A. 1978, § 17-2-37 *et. seq.*, at the time an application is submitted.

Erosion. The process by which land surface materials, such as rock or soil, are worn away or removed.

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

Exploratory Activities. All activities for which an exploratory permit is required, including, but not limited to, geophysical surveys, seismic surveys, core testing, gravity surveys, magnetic surveys, and any other exploratory activity that may cause surface disturbance. An exploratory permit will not be required for aerial surveys, mapping activities, and any other exploratory activities that do not result in surface disturbance. Exploratory drilling will require approval of a development permit within the Energy Resource Development District, and a special use permit within the Frontier District.

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 *Flood or Flooding* and *100-year floodplain.*

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

Fresh Water. Surface and ground waters to be protected including: the water in lakes and playas, regardless of quality, unless the water exceeds 10,000 mg/lTDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water; the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing by the OCD, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

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, or any gaseous derivatives of those extraction processes, such as carbon dioxide; whenever "gas" is used in this Ordinance it includes "natural gas" and/or "methane."

Habitat. The natural place or environment of a species of plant or animal

Habitat Degradation. The condition where the natural, pre-development conditions necessary for the survival of plants and animals are degraded in quality or function due to the impacts associated with a development.

Habitat Fragmentation. The condition where the introduction of new development causes formerly contiguous landscapes to become fragmented and isolated. Habitat fragmentation causes increased isolation of populations or species, which leads to decreased genetic diversity and increased potential for extirpation of localized populations or even extinction. Habitat fragmentation alters vegetative composition and cover and the type and quality of the food base. Further, habitat fragmentation changes microclimates by altering temperature and moisture regimes and changing nutrient and energy flows.

Habitat Loss. The condition where a development or action degrades existing environmental conditions necessary for the survival of plants and animals to the point where that environment is no longer hospitable to the plant and animal life existing there prior to development.

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 Historic Preservation Division, or cultural and historical resources as identified with in the Rio Arriba County. A list, called the Official Register of Cultural Properties, and the list of the National Register for Historic Places, are on file with the Director.

Injection Well. A NMOCD permitted well through which fluids or gasses are injected into a subsurface formation to increase reservoir pressure and to displace oil (e.g., during oil enhancement or water flooding operations), for disposal of produced water, for storage purposes, or any other NMOCD permitted purpose.

Interim Reclamation. The activity of reclaiming surface disturbed within the Well Site during previous phases of development which will no longer be utilized for future phases of development.

In the County, within the County. Areas within the boundaries of the County, but not within the limits of any incorporated municipality, any tribal or tribal trust lands, lands owned by the state of New Mexico, and lands owned by the United States or lands where the mineral rights associated with such surface property are owned partially, or in their entirety, by the United States.

Irrigated Agricultural Land. Lands which are either listed as "Irrigated Agricultural Land" by the Rio Arriba County Assessor by the effective date of Rio Arriba County Land Subdivision Regulations Ordinance, or lands identified by hydrographic survey which will describe if the said land has been historically used for irrigated agriculture, or, those lands which are shown to be irrigated in the records of the acequia.

Lessee. A person, corporation or other legal entity that has been granted an oil or gas lease from the Owner of a mineral estate or who has received an assignment of all or a portion of a previously granted oil or gas lease. For the purposes of this Ordinance the Lessee is used interchangeably with mineral lease owner.

Level of Service. As defined by the American Association of State Highway Transportation Officials (AASHTO) Regulations.

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.

Lot Line. The boundary of a recorded lot.

Mineral Rights Owner. The record owner of the fee sub-surface mineral estate, a contract purchaser holding equitable title, an oil and gas Lessee, or a vendee in possession, including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in an Oil or Gas Lease.

New Mexico Oil Conservation Division (NMOCD). The Oil Conservation Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico.

Nuisance. As defined in the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

Oil. A produced simple or complex mixture of hydrocarbons, in a liquid state at standard pressure and temperature, which can be refined to yield gasoline, kerosene, diesel fuel, and various other products.

Oil or Gas Facility or Facilities. A new well or wells and the surrounding Well Site and well pad, constructed and operated to explore for or produce crude oil and/or gas and includes auxiliary and associated equipment and facilities, such as derricks, separators; dehydrators; pumping units; tank batteries; tanks; metering stations and equipment; any equipment for the re-working of an existing well bore; workover rigs; compressor stations and associated engines, motors, facilities and equipment; water or fluid injection stations and associated facilities and equipment; storage or construction staging yards; gathering systems and associated facilities and equipment, collection lines, drip stations, vent stations, pigging facilities, chemical injection station, transfer pump stations and valve boxes; any other structure, building or facility, temporary or permanent, mobile or stationary, associated with or used in connection a new Oil or Gas Well or the installation, construction or operation of the Oil or Gas well; and the roads used for ingress and egress to and from a new Oil or Gas Well or surrounding Well Site.

Oil or Gas Well. Any hole or holes, bore or bores, to any sand, formation, strata or depth for the purpose of exploring for, producing, and recovering any oil, gas, liquid, hydrocarbon, or any combination thereof.

100-year Floodplain. The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year, and the area designated as a Federal Emergency Management Agency Zone A, AE, All, or AO on the Flood Insurance Rate Maps.

Onsite Visit. The meeting conducted at the proposed Oil or Gas Well Site before consideration of a decision on a development permit, exploratory permit, or special use permit. The purpose of the Onsite Visit for the County is to verify information presented on an application, and to work with the Surface Property Owner and the Applicant to identify site specific concerns and potential environmental impacts associated with the proposed development, and to discuss possible conditions of approval and Best Management Practices to be used in mitigating the identified impacts. The Onsite Visit shall be arranged by the Applicant

and shall include the County, Surface Property Owner(s), and the Applicant.

Operator. Any person or entity including but not limited to the Lessee or operating rights owner, who has stated in writing to the Director that it is responsible under the terms and conditions of a lease for the operations conducted on the leased lands or a portion thereof.

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 NMOCD permitted surface or subsurface impoundment, man-made or natural depression or diked area on the surface that is constructed with the conditions and for the duration provided in its permit. This does not include berms constructed around tanks or other facilities for the purpose of safety, secondary containment, and storm water or run on control.

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.

Produced Water. Water produced in conjunction with the production of oil or gas, the collection and disposal of which is regulated and permitted by the NMOCD.

Projected Traffic. The traffic that is projected to develop in the future on an existing or proposed road.

Public Hearing. A proceeding preceded by published notice and actual notice to certain persons and at which certain persons, including the Applicant, may present oral comments or documentation. In a quasi-judicial or administrative hearing, witnesses are sworn in and are subject to cross-examination.

Reclamation. The employment during and after an oil or gas operation of procedures reasonably designed to minimize or reverse, as much as practicable, the surface disturbance from the Oil or Gas Facility and to provide for the rehabilitation of affected land through the use of any number of the following techniques: re-contouring of the land, reseeding, stabilization of the soil, and any other measures deemed, by the Director, appropriate to the subsequent beneficial use of such reclaimed lands.

Sensitive Species. Plant or animal species defined and identified as sensitive by the

United States pursuant to the Endangered Species Act, 16 U.S.C. § 1531 *et. seq.*, and by the New Mexico Department of Game and Fish pursuant to the New Mexico Wildlife Conservation Act, N.M.S.A. 1978, § 17-2-37 *et. seq.*, at the time an application is submitted.

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

Substantial Modification. Any modification to an Oil or Gas Well Site or to an Oil or Gas Facility beyond normal operation, reworking, recompleting, monitoring and maintaining that results in an increase in the size or area of the surface disturbance for which approval was granted under this Ordinance.

Storage Tank (or Tank). Any tank, excluding sumps and pressurized pipeline drip traps, used for the storage of condensate and crude oil or other liquids produced by and/or used in conjunction with any oil or gas productions. There are below-grade tanks where a portion of the tank's sidewalls is below the surrounding ground surface's elevation, and above ground storage tanks where the tank is located above or at the surrounding ground surface's elevation and is surrounded by berms.

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.

Surface Disturbance. Any activity that disturbs the surface of the land (a) as a result of exploration for, drilling for, and production of oil or gas or (b) as a result of the construction, development, operation, or abandonment and plugging of an Oil or Gas Facility.

Surface Property Owner. A person that hold legal or equitable title, as shown in the records of the County Clerk to the surface of the real property on which oil and gas operations are to take place.

Surface Use Agreement. An agreement between an Operator and Surface Property Owner specifying the rights and obligations of the Surface Property Owner and the Operator concerning oil or gas operations.

Surface Water Features. Any geographic surface feature which contains water at least seasonally, including but not limited to, perennial, seasonal, or ephemeral watercourses, streams, rivers, springs, wetlands, ponds, lakes, playas, creeks, arroyos, acequias, irrigation ditches, stock ponds and any other surface water impoundments.

Tenant. As defined in the the Surface Owners Protection Act, N.M.S.A. 1978, §§ 70-12-1 et. Seq; a person who occupies land or premises belonging to another in subordination to the owner's title and with the owner's assent, express or implied.

Threatened Species. Plant or animal species defined and identified as threatened by the

United States pursuant to the Endangered Species Act, 16 U.S.C. § 1531 *et. seq.*, and by the New Mexico Department of Game and Fish pursuant to the New Mexico Wildlife Conservation Act, N.M.S.A. 1978, § 17-2-37 *et. seq.*, at the time an application is submitted.

Watercourse. A river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

Well Site. That portion of the surface of land used for the drilling, development, production, operation, abandonment, and plugging of an Oil or Gas Well or co-located oil and gas wells, including, but not limited to, the area of land in which all equipment, excavations, and facilities used for oil and gas operations are located. A Well Site shall include, at a minimum, the area of surface disturbance associated with such uses but excluding the area of surface disturbance necessitated for the construction and use of roads.

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. Wetlands include, but are not limited to, all wetlands as defined and mapped by the United States Army Corps of Engineers.

Workover. An operation on a producing Oil or Gas Well or a Well capable of commercial production to restore or increase production. A workover is typically performed for routine maintenance or repair of downhole equipment.

ARTICLE 3
ENERGY RESOURCE DEVELOPMENT DISTRICT: CREATION OF DISTRICT AND GENERAL APPROVAL REQUIREMENTS

3.1 FINDINGS

The Board hereby finds, declares and determines as follows:

(A) The County includes portions of the San Juan Basin, a geologic basin with uniform and explored geology that contains oil reserves, and large natural gas reserves which have been in development for more than fifty years.

(B) More than one third of the San Juan Basin lies within the County, and there are currently more than 11,000 Oil and Gas Wells in the County's portion of the San Juan Basin.

(C) The presence of oil and gas development within that portion of the San Juan Basin that lies within the County pre-dates the County's land-use regulations.

(D) The County recognizes the state and national interest in the San Juan Basin as a major energy producing region, one which has the potential to benefit the local economies of the County's rural communities.

(E) Within that portion of the San Juan Basin that lies within the County, there is a need to balance the regulation of oil and gas development, so that it allows for the protection of the County's unique and invaluable cultural and natural resources, while still promoting the responsible and economically feasible development of oil and gas resources which significantly contribute to the rural economies of the County, as further explained in the Comprehensive Plan. In order to attain such balance, there is created by this Ordinance the Energy Resource Development District overlay zone, the boundaries for which are described in Exhibit A attached hereto. Exploratory oil or gas activities within the Energy Resource Development District, which do not involve drilling, shall be subject to an exploratory permit approval process and subsequent notice to proceed, as set forth in this Ordinance and subject to those regulations also set forth in this Ordinance. Oil and gas development within the Energy Resource Development District, which include drilling activities or the construction of Oil or Gas Faciltiies shall be subject to an administratively approved development permit process, as set forth in this Ordinance and subject to those regulations also set forth in this Ordinance.

3.2 CREATION OF DISTRICT

There is hereby created the Energy Resources Development District, the boundaries for which are shown on Exhibit A attached hereto.

3.3 AREA AND BOUNDARY OF DISTRICT

(A) The area of the County included within the Energy Resource Development District overlay zone is fully described on Exhibit A attached hereto, which exhibit is incorporated by this reference. The Official Zoning Map of the County is hereby amended to include and reflect the designation and boundary of the Energy Resource Development District overlay zone.

(B) Where the Energy Resource Development District boundary line intersects fee surface property, the entire fee surface property shall be considered within the Energy Resource Development District.

3.4 DEVELOPMENT PERMITTED WITHIN THE ENERGY RESOURCE DEVELOPMENT DISTRICT

(A) No Oil or Gas Facility shall be constructed or operated anywhere in the County, within the Energy Resource Development District, unless a development permit for such Oil or Gas Facility has been approved by the Director in accordance with this Ordinance.

(B) No exploratory activities related to oil or gas development shall be permitted anywhere within County unless an exploratory permit for such activities has been approved by the Director in accordance with this Ordinance.

3.5 ONSITE VISIT

(A) The County retains the right to request or participate in an Onsite Visit prior to the consideration of a development permit application. Upon submission of the application, the Director shall determine whether or not an Onsite Visit is necessary based on the site specific

information presented in the application.

(B) The County retains the right to request and participate in an Onsite Visit prior to the consideration of an application for an exploratory permit. Upon submission of the application, the Director shall determine whether or not an Onsite Visit is necessary based on the site specific information presented in the application.

(C) Where an Onsite Visit shall be required, the Director shall provide the Applicant with a written request for an Onsite Visit.

(D) Prior to the Onsite Visit for a development permit application, the Operator shall flag all proposed access roads along the center line, and stake, with wooden staking, the proposed Oil or Gas Well Site, two (2), two-hundred (200) foot directional reference stakes from the Well Site, the exterior dimensions of the proposed drill pad, proposed cuts and fills, and the outer limits of the area proposed to be disturbed.

3.6 REVIEW FOR ADMINISTRATIVE COMPLETENESS OF APPLICATION

(A) The County shall review submitted applications for completeness within:

(1) ten (10) days of receipt for a development permit application; and

(2) ten (10) days of receipt for exploratory permits.

(B) If an application for a permit is deemed incomplete the County shall provide a written determination to the Applicant explaining why the application is incomplete and the manner in which the application can be made complete.

(C) Applicants have thirty (30) days to submit the additional required materials unless the County agrees in writing to a longer time period.

(D) If the required materials are not submitted within the given time period, the application shall be deemed withdrawn and the Applicant will not be entitled to a refund of their application fees.

(E) Upon submission of the required submittals, the application shall be reviewed again for completeness according to appropriate review schedule and the Applicant shall have another opportunity to complete the application according to subsections A through D of this section.

(F) After an application is complete, the County may nevertheless request additional information or studies if the Director determines that new or additional information is required in order to assess the application for compliance with this Ordinance or if there is a substantial change in the proposed development that is the subject of a pending application.

3.7 REVIEW PROCESS AND CRITERIA FOR EXPLORATORY PERMITS

(A) Completed applications for exploratory permits shall be reviewed by the Director, within thirty (30) days, for compliance with the design and performance

standards of this Ordinance, compatibility with existing land use, suitability of the land to contain the proposed development, and the proposed Best Management Practices and mitigation measures. In making a decision, the Director may also consider the needs or preferences of the Surface Property Owner.

(B) Any decision by the Director denying an application for an exploratory permit shall be in writing, and the Applicant shall be given the opportunity to cure or correct, if possible, those grounds given as the basis for denial. In the event that the Applicant cannot cure or correct the grounds of denial within the time frame established by the Director in the initial letter of denial, a final decision indicating denial shall be provided to the Applicant upon the expiration of that period.

3.8 REVIEW PROCESS AND CRITERIA FOR DEVELOPMENT PERMITS

(A) Completed applications for development permits for Oil or Gas Facilities located within the Energy Resources Development District shall be reviewed by the Director within thirty (30) days for compatibility with existing land use and compliance with the design and performance standards of this Ordinance, suitability of the land to contain the proposed development, and whether the proposed Best Management Practices and mitigation measures are adequate.

(B) Any decision by the Director denying an application for a development permit shall be in writing, and the Applicant shall be given the opportunity to cure or correct, if possible, those grounds given as the basis for denial. In the event that the Applicant cannot cure or correct the grounds of denial within the time frame established by the Director in the initial letter of denial, a final decision indicating denial shall be provided to the Applicant upon the expiration of that length of time.

3.9 CONSULTANTS

If the Director determines that the application for a development permit may present a negative impact on archeological resources, ground or surface water quality, or the environment, the Director may, at the expense of the Applicant, hire experts to review an application or to evaluate specific technical issues related to archeological resources, surface or ground water quality or the environment. If the Director determines that the County should retain such experts, the Director shall notify the Applicant and the Applicant shall have the opportunity to to provide recommendations of experts to the County. The Applicant shall make a company check, cash, certified or bank check, or letter of credit, deposit in an amount to be determined by the Director for each application submitted, to cover all of the County's expenses incurred to engage such consultants and experts as the Director considers necessary and appropriate.

3.10 REFERRALS

The Director may refer an application to other government agencies, cities, counties or entities having a statutory or regulatory interest in the matter, or otherwise affected by the application, for review and comment. The application review process shall not be delayed pending review or commentary from a referral agency(ies).

3.11 OTHER AUTHORIZATIONS

The Applicant may proceed with other necessary regulatory approvals with the NMOCD and other applicable regulatory agencies concurrently with the filing of an application for a development permit with the County.

3.12 AUTHORITY

(A) The Director is granted the authority to approve and grant an exploratory permit and notice to proceed in accordance with the requirements and standards of this Ordinance.

(B) The Director is granted the authority to impose any conditions in the approval and granting of an exploratory permit as necessary to carry out the intent and purpose, and to implement the requirements and standards, of this Ordinance, to protect the public health and welfare, and to ensure that any exploratory permit, when implemented, complies with the criteria for the granting of an exploratory permit.

(C) The Director is granted the authority to approve and grant a development permit in accordance with the requirements and standards of this Ordinance.

(D) The Director is granted the authority to impose any conditions in the granting of any development permit as necessary to carry out the intent and purpose, and to implement the requirements and standards of this Ordinance, to protect the public health and welfare, to ensure that any development permit, when implemented, complies with the criteria for the granting of a development permit and any mitigation measure required or approved with a development permit.

3.13 EFFECT OF APPROVALS

(A) When an exploratory permit has been granted for oil or gas exploration activities that do not include drilling, within the County, in accordance with this Ordinance, such exploratory permit, along with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for the commencement of the approved exploratory activity.

(B) When a development permit has been granted for an Oil or Gas Facility or Facilities, within the Energy Resource Development District and in accordance with this Ordinance, such development permit, along with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for the commencement of the approved development.

3.14 APPLICATION FEES

Each application shall be accompanied by a nonrefundable application fee in the amount set forth. The application fee shall be paid by company check, cashier's check, wire transfer or certified funds. The Board shall have authority to adjust from time to time with fees set forth in this Section:

(A) Exploratory Permit – Fifty dollars ($50.00)

(B) Development Permit – Fifty dollars ($50.00)

3.15 APPEAL

(A) The decision by the Director to approve or deny an exploratory permit is subject to appeal in the same manner and in accordance with the procedures outlined in the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

(B) The decision by the Director to approve or deny a development permit is subject to appeal in the same manner, and in accordance with the procedures outlined in the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

3.16 EXPIRATION OF EXPLORATORY PERMIT AND DEVELOPMENT PERMIT

(A) An exploratory permit issued pursuant to this Ordinance shall expire if exploratory activities have not commenced within two (2) years of the date on which the development permit was issued. This two (2) year period shall be tolled pending the exhaustion of any administrative and judicial appeals.

(B) A development permit issued pursuant to this Ordinance shall expire if construction of the Oil or Gas Facility is not commenced within two (2) years of the date on which the development permit was issued. This two (2) year period shall be tolled pending the exhaustion of any administrative and judicial appeals.

3.17 ACTIVITIES FOR WHICH APPROVAL IS NOT REQUIRED WITHIN THE ENERGY RESOURCE DEVELOPMENT DISTRICT

The following activities do not require the issuance of an exploratory permit or a development permit under this Ordinance:

(A) Mapping or surveying activities that do not cause or result in any disturbance of the land.

(B) Any planning activities that do not disturb the land or adjacent properties.

ARTICLE 4
EXPLORATORY PERMIT APPLICATION CONTENTS AND SUBMITTALS

4.1 GENERAL SUBMITTALS

Applications for an exploratory permit shall be made by completing an application form(s) that will be prepared and approved by the Director and will also include the following required submittals:

(A) Proof of compliance with the Surface Owners' Protection Act ("SOPA"), N.M.S.A. 1978, § 70-12-1 (2007). Proof of compliance may be satisfied by submitting a copy of the Surface Use Agreement or a letter signed by the applicant statement, the Surface Property Owner

stating the Operator has complied with SOPA or proof of bonding as required by SOPA.

(B) A vicinity map of the project area, drawn at a scale 1:2000 feet and depicting the following features:

(1) section, township, range;

(2) north arrow and scale;

(3) major geographic features such as, slopes, drainage areas, and floodplains;

(4) major surface water features;

(5) topographic features;

(6) all state, county and private roads, existing and proposed access, and existing proposed pipeline routes, including gathering lines and transmission lines;

(7) the location of all fire, police, and emergency response service facilities. If these facilities are not located on the vicinity map, the Applicant shall provide the contact information, address, direction, and mileage to the nearest emergency response service facility.

(C) A copy of the Operator's County Business License, where applicable.

(D) A narrative of proposed exploration activities including a description of how those activities might disturb the surface and an estimation of the number of acres to be disturbed.

(E) A narrative of proposed reclamation activities and methods including a description and source of any materials to be used such as topsoils or reseeding mixtures.

(F) Additional information as determined by the Director.

ARTICLE 5
DEVELOPMENT PERMIT APPLICATION CONTENTS AND SUBMITTALS

5.1 GENERAL SUBMITTALS

Applications for a development permit shall be made by completing an application form(s) that will be prepared and approved by the Director and will also include the following required submittals:

(A) Proof of compliance with the Surface Owners' Protection Act ("SOPA"), N.M.S.A. 1978, § 70-12-1 (2007). Proof of compliance may be satisfied by the applicant statement, submitting copy of the Surface Use Agreement or a letter signed by the Surface Property Owner stating the Operator has complied with SOPA or proof of bonding as required by SOPA.

(B) A vicinity map of the Well or Facility Site, drawn at a scale 1:2000 feet and depicting the following features:

(1) section, township, range;

(2) Well or Facility Site boundary;

(3) north arrow and scale;

(4) major geographic features such as, slope, drainage areas, and floodplains;

(5) major surface water features;

(6) topographic features;

(7) all state, county and private roads, existing and proposed access, and existing proposed pipeline routes, including gathering lines and transmission lines;

(8) the location of all fire, police, and emergency response service facilities. If these facilities are not located on the vicinity map, the Applicant shall provide the contact information, address, direction, and mileage to the nearest emergency response service facility.

(C) A copy of the Operator's County Business License, where applicable.

(D) A site plan of the Well or Facility Site with the following information, if not already required by a permitting agency:

(1) north arrow and scale;

(2) the location, size, and orientation of existing and proposed structures and facilities;

(3) recorded utility and access easements;

(4) existing water wells;

(5) all surface water features.

(E) A photograph of the Well or Facility Site which clearly depicts the physical condition of the Well Site from all four coordinate directions.

(F) A Surface Disturbance Plan submitted in accordance with Section 5.2 of this Ordinance.

(G) A Visual Mitigation Plan submitted in accordance with Section 5.3 of this Ordinance.

(H) Emergency Response Information submitted in accordance with Section 5.4 of this Ordinance.

(I) A description of the source and access route for all water anticipated for use during development and operation of the oil or gas development, and the disposal location and transportation method for produced water.

(J) A solid waste management plan including a description of anticipated solid wastes to be created during development and operation of the oil or gas development and the proposed disposal location and method of transportation.

(K) The following information regarding the Applicant and the Operator of the proposed Oil or Gas Facility:

(1) name, business address and telephone numbers of the Applicant and Operator responsible for proposed Oil or Gas facilities;

(2) the name, title, address and telephone numbers of those persons appointed by the Applicant to serve as the contact persons with the County for purposes pertaining to the submission and processing of the Applicant, including, if applicable, a description of the areas or issues for which each such person is responsible.

(L) Copies of all applicable NMOCD documents to be filed in conjunction with the proposed Oil or Gas Facility, provided upon the Director's request.

(M) Proof of insurance as required in Section 6.20 of this Ordinance.

(N) Such additional information as is required by the Director to determine the application's and the proposed development's compliance with this Ordinance.

5.2 SURFACE DISTURBANCE PLAN

The Surface Disturbance Plan shall provide for safe operations and adequate protection of surface resources, groundwater, and other environmental concerns. The Surface Disturbance Plan shall contain a narrative or depiction, where appropriate, of the following elements and should disclose any Best Management Practices to be used by the Operator:

(A) Number of acres disturbed during each phase of development and a description of current land use and reasonably foreseeable future land use on the property. The description of current land use should, at a minimum, list the current land use designation of the property as designated by the County Planning and Zoning Department.

(B) A description of roads including:

(1) existing access roads and their current level of service;

(2) anticipated traffic related to the development including types of vehicles and estimated trips per day;

(3) any improvements or scheduled maintenance of existing roads, including a list of materials to be used, demonstrating that the Operator will improve or maintain existing roads in a condition the same as or better than before development began;

(4) a schedule of any surface disturbance activity that may cause dust, and the proposed dust mitigation or remediation techniques, including, but not limited to, watering, surfacing, and speed control; and

(5) new roads to be constructed, including, where appropriate, the following information:

(a) description of road width, maximum grade, and crown design;

(b) description of horizontal and vertical radii for all curves needed to accommodate intended traffic;

(c) location of turnouts;

(d) description and location of major cuts and fills;

(e) description and location of all fence cuts and cattle guards;

(f) description and location of topsoil excavation and topsoil storage sites;

(g) description of surface materials used if any;

(h) plans for soil and topographic dependent drainage including location and sizes of ditches, culverts, bridges, and any other drainage methods employed; and

(i) a description and schedule of maintenance and upkeep plans for proposed roads.

(C) A description of the noxious and invasive plant species of concern within the vicinity of the Well Site and the proposed mitigation techniques to prevent the appearance or spread of these species. The Applicant should consult the local agricultural extension office and the local Natural Resource Conservation Service office for information about noxious and invasive plant species that exist in the area and the best methods available to contain or eliminate them.

(D) A description of soil characteristics, a discussion of the limitations those characteristics may pose to the proposed development, and a description of any erosion mitigation techniques to be used including, but not limited to, the following where appropriate:

(1) silt fencing;

(2) berms;

(3) seeding and vegetation;

(4) vegetative buffers;

(5) water bars; and

(6) seasonal road closures and speed limits.

(E) A drainage map identifying natural drainage and how storm water will be managed within the project area to prevent the travel of runoff. Where appropriate, the drainage map shall include a watershed map showing all the upper watershed area draining into or through the site.

(F) A Reclamation Plan shall include a narrative describing clear goals for reclamation and how those goals are to be achieved. A Reclamation Plan should address the reclamation of roads, the pad site, and all other areas of the development where the surface was disturbed. A NMOCD Closure Plan may be submitted as part of the Reclamation Plan. The Reclamation Plan should include, but not be limited to, the following information:

(1) schedule and description of interim reclamation activities to be conducted following the completion of each phase of development within the Well Site; and

(2) schedule and description of proposed final reclamation activities to be completed upon the final plugging and abandonment of the Oil or Gas Well and a discussion of how those reclamation activities will impact the anticipated future uses of the property.

(3) Reclamation activities described in the Reclamation Plan may include the following, but not limited to, where appropriate;

(a) configuration of the reshaped topography and restored drainage;

(b) soil treatments;

(c) reseeding materials and revegetation methods;

(d) backfill or grading requirements;

(e) soil stabilization techniques; and

(f) pit reclamation.

5.3 VISUAL MITIGATION PLAN

(A) A Visual Mitigation Plan may be required when a proposed development is located within immediate view of a scenic byway or BLM or USDA Forest Service identified visual resource, if determined necessary by the Director at the Onsite Visit.

(B) The Visual Mitigation Plan shall be developed by the Operator with opportunity for the Surface Property Owner to provide feedback. The Director shall assess the Visual Mitigation Plan based on the proposed visual mitigation techniques, considering the site specific natural and visual

resources, and the existence of any surface use agreement.

(C) The Visual Mitigation Plan shall contain a narrative describing one or more of the following visual mitigation techniques which should be used on a site specific basis and considering the site's available natural resources:

(1) establishment of berms, ground covers, shrubs and trees;

(2) shaping slopes (cuts and fills) to appear as natural forms;

(3) designing the facility to utilize natural screens or fencing;

(4) vegetation and vegetative screening;

(5) low-profile pumping units and tanks; and

(6) any other visual mitigation techniques approved by the County.

5.4 EMERGENCY RESPONSE INFORMATION

(A) Emergency Response Information submitted to the County should include, but not be limited to the following requirements, and will be kept on file with the County Fire Marshall, reviewed annually, and updated as necessary:

(1) Name, address and phone number, including a twenty-four (24) hour manned emergency number of person(s) or facility responsible for emergency field operations.

(2) A list of the Operator's Oil or Gas Facilities in the County identified by corresponding longitude and latitude.

ARTICLE 6
DESIGN AND OPERATIONAL STANDARDS FOR OIL AND GAS DEVELOPMENT

6.1 GENERAL REQUIREMENT

All drilling and other operations conducted at an Oil or Gas Facility or construction of structures associated with, or serving an Oil or Gas Facility, for which an exploratory permit or a development permit is required, shall strictly comply with the requirements of this Ordinance applicable to such Oil or Gas Facility or Facilities, including, but not limited to those set forth in this Article, and shall be conducted at all times in accordance with the Best Management Practices of a reasonable and prudent Operator.

6.2 SETBACKS

(A) No Oil or Gas Facility shall be permitted within a floodplain as mapped and designated by the Federal Emergency Management Agency (FEMA).

(B) Setbacks shall not apply to roads used solely for the purpose of accessing Oil or Gas Facilities.

(C) Setbacks shall be measured from the center of roads and from the seasonal high water mark of watercourses, or the outer boundary of the affected Surface Water Feature.

(D) No Oil or Gas Facility shall be permitted within the following distances of the following geographic features and structures:

(1) inhabited dwelling - 650 feet;

(2) structure used as a place of assembly, school or institution - 1000 feet;

(3) non-residential structure - 200 feet;

(4) any state, federal or county publicly dedicated road or highway - 200 feet;

(5) surface water features - 300 feet;

(6) existing water well permitted by the State Engineer and used by less than five (5) households - 200 feet;

(7) existing water well permitted by the State Engineer used by five (5) or more people -1000 feet;

(8) within a designated cultural, historic or archeological resource as recommended according to the applicable surface management agency [e.g. SHPO].

(E) The Director has the discretion to permit deviation from the prescribed setbacks based on the Operator's demonstrated ability to protect and/or mitigate the impacts on the foregoing features, and with the written agreement of the Surface Property Owner or tenant, or, where applicable, the Adjacent Surface Property Owner or tenant, and/or the appropriate surface management agency. The Director shall provide written justification for any case requiring a deviation from the prescribed setbacks.

6.3 STORAGE TANKS

Except as otherwise mandated by the NMOCD, tanks used for the storage of condensate, crude oil, or other liquid hydrocarbons produced by and/or used in conjunction with any Oil or Gas Facility shall conform to the American Petroleum Institute (A.P.I.) standards for such tanks. All above ground storage tanks shall be equipped with a secondary containment system, constructed and maintained according to applicable current Best Management Practices. All below-grade tanks shall be constructed and maintained according to NMOCD regulation.

6.4 WELL SITES AND FACILITIES

(A) The Well Site shall not be used for the storage of pipe or other equipment or materials except during the drilling, operating, or servicing of Oil or Gas Wells. Where not already required by another permitting agency, the Operator may seek a written exception/permission for staging of pipe or other equipment from the Director which shall be approved upon a demonstration of need, for a length of time to be determined by the Director and the Surface

Property Owner. Where storage permitting is authorized by another permitting agency, a copy of the storage permit or authorization may be required at the request of the Director.

(B) Site dimensions for an Oil or Gas Facility or Facilities, shall be the size necessary to provide a safe work area and minimize surface disturbance.

(C) Following the completion of an Oil or Gas Well, the pad shall be reduced to the minimal size required to operate the site, and the surrounding disturbed surface shall be reclaimed.

6.5 CO-LOCATION OF OIL OR GAS WELLS

The County strongly encourages multiple wells be co-located on a single well pad. Well pad size may be increased where there are multiple wells co-located on a single pad but only to the extent required to accommodate safe operation of the multiple Oil or Gas Wells.

6.6 PLUGGING AND ABANDONMENT

The Operator shall comply with all NMOCD regulations and any other relevant Federal and State regulations applicable to the plugging and abandonment of an Oil or Gas Well.

6.7 FIRE PREVENTION AND EMERGENCY RESPONSE

(A) The Operator shall insure that firefighting apparatus and supplies are provided, as required by any applicable Federal, State, or County law.

(B) The Operator shall conform to all red flag days as designated by the New Mexico State Forestry Division.

(C) The Operator shall place a sign at the Well Site, constructed and displayed pursuant to NMOCD regulation 19.15.17.11 N.M.A.C.

6.8 LIGHTING

All permanent lighting fixtures shall comply with the Rio Arriba County Night Sky Protection Ordinance 2009-02.

6.9 CULTURAL, HISTORICAL, OR ARCHEOLOGICAL SITES

In the event that a cultural, historical, or archeological site is discovered or identified during any phase of development within the Well Site, or the construction of roads, the Operator shall comply with all applicable local, state and federal regulations.

6.10 AIR QUALITY

All Oil and Gas Facilities shall comply with the New Mexico Environment Department's Air Quality Bureau standards pursuant to N.M.A.C. 20.2.1.

6.11 WASTE

(A) All solid and sewage waste shall be securely contained on the site and properly disposed of according to all applicable Federal, State, and County regulations.

(B) All drilling wastes and produced water shall be disposed of according to NMOCD regulations.

(C) An Operator shall not inject produced water or any other fluid into a reservoir or formation to maintain reservoir pressure, for secondary or other enhanced recovery, or for storage or disposal except pursuant to an approved NMOCD permit.

6.12 SURFACE DISTURBANCE AND RECLAMATION

(A) Soils and terrain management:

(1) Soils having severe limitations, or which are shown as unsuitable for the intended purposes shall not be used for those purposes unless the Operator has clearly demonstrated in the Surface Disturbance Plan how the soil limitations are to be overcome or mitigated.

(2) All topsoil stripped from the surface and retained on the site shall be carefully stockpiled in a manner to prevent erosion and to facilitate its re-application to the disturbed areas during reclamation.

(3) Any necessary grading or clearing should, to the extent possible, follow, preserve, match, or blend with the natural contours and vegetation of the land and should not increase the possibility for erosion.

(4) The Operator shall take sufficient measures to prevent dust arising from any area where the surface is disturbed.

(5) All changes made to the existing soil composition and arrangement should be compatible with the soil stability and erodability as demonstrated in the soil survey, if a soil survey was required in the application.

(B) Drainage and Erosion:

(1) To the extent possible, the Operator shall preserve natural drainage existing on the site prior to development.

(2) Water that drains from the Well Site shall not contain pollutants or sedimentary materials at a greater concentration than would occur without the presence of the development.

(3) Drainage from the Well Site shall not cause erosion outside of the site to a greater degree than would occur without the presence of the development.

(C) Roads and Traffic:

(1) Chains on heavy equipment shall not be permitted on paved County roads. All damage to County roads directly attributable to the installation, construction and operation of Oil

or Gas Facilities shall be promptly repaired at the Applicant's expense.

(2) Heavy equipment shall not be used on roads with ruts measuring six (6) inches or more in depth.

(3) Speed limits shall be set at a minimum level possible to prevent the creation of dust and erosion.

(4) The amount of traffic generated by the proposed development shall not cause public roads to operate at a level less than what can be met by current capacity and structural conditions.

(5) In the event that traffic generated by the development increase the burden on or cause a deterioration of County Roads, the Operator shall be required to pay a pro-rata share of the costs incurred to improve the County Road. The pro-rata share shall be determined by the County's Public Works Director and the Applicant.

(D) Vegetation:

(1) During development and operation, the Operator shall minimize damage to existing vegetation.

(2) There shall be no introduction of or increase in the prevalence of invasive or noxious plant species within the Well Site as a result of oil or gas activity.

(3) Operators should consult the local agricultural extension office or the local Natural Resources Conservation Service to determine the appropriate materials needed to prevent or contain the spread of noxious and invasive plant species. Any materials used should be listed in the Surface Disturbance Plan.

(E) Reclamation:

(1) The Operator shall begin interim and final reclamation activities as soon as practicable upon completion of each phase of development.

(2) The operator shall reseed by drilling on the contour, or another method as approved by the Director.

(3) The Operator shall obtain vegetative cover that equals seventy (70%) percent of the native perennial vegetative cover, which has not been impacted by overgrazing, fire, or some other damaging intrusion, and shall maintain that vegetative cover for at least two (2) successive growing seasons.

(4) The Operator shall notify the County at least ten (10) days in advance of the date that final reclamation activities are to begin and the Operator shall also notify the County as soon as final reclamation activities have been completed.

6.13 VISUAL IMPACTS

(A) To the extent possible, facilities shall not be located within immediate view of a scenic byway or visual resource, as identified and mapped by the County or in the BLM Resource Management Plan or the USDA Forest Service Plan.

(B) Oil or Gas Facilities shall be painted or otherwise made to be harmonious with the surrounding environment as follows:

(1) uniform or camouflaging, noncontrasting, nonreflective color tones, similar to BLM Standard Environmental and Supplemental Colors coding system;

(2) color matched to land, not sky, slightly darker than adjacent landscape;

(3) any other color scheme as agreed upon by the Operator and Surface Property Owner.

6.14 FENCING

(A) Perimeter fencing and a locked gate for an Oil or Gas Facility or Facilities shall be required where:

(1) there is a structure used as a place of assembly, school, or institution within one-thousand (1000) feet of the facility or facilities;

(2) there are four (4) or more existing residences within one-thousand (1000) feet of the facility or facilities;

(3) there is an existing non-residential or commercial structure within six hundred (600) feet of the facility or facilities; or

(4) there is a determination by the Director that public safety so requires.

(B) The design and construction of the required fencing shall be a chain link fence to a minimum height of six (6) feet and should be topped by a minimum of two strands of barbed wire, or any other design approved by the Director.

(C) The Operator shall, at a minimum, comply with NMOCD requirements for fencing to protect livestock and wildlife for Oil and Gas Facilities that include a pit.

6.15 NOISE

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

(B) Noise will be measured on the "A" scale, using an industry approved protocol. Sound measurement instruments will be either a Type I or Type II, SPL instrument that meet or exceed established ANSI standards.

(C) Oil and gas operations at any Well Site, production facility, or gas facility shall

comply with the following maximum permissible noise levels measures at six hundred and fifty (650) feet from the source or at the receptor, unless another standard has been established in a surface use agreement.

(D) Noise standards for continuous operations shall apply to all oil or gas operations that operate on a continual (>8 hours/day), long-term basis (>3 weeks) in duration. In the hours between 7:00 a.m. and the next 7:00 p.m. the noise levels permitted below may be increased ten (10) db(A) for a period not to exceed fifteen (15) minutes in any one (1) hour period.

(E) Noise standards for temporary operations shall apply to all operations involving pipeline or gas facility installation or maintenance, the use of a drilling rig, completion rig, workover rig, or stimulation.

Duration	7:00 am to next 7:00 pm	7:00 pm to next 7:00 am
Continuous Operations	60 db(A)	55 db(A)
Temporary Operations	90 db(A)	85 db(A)

(F) 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.

6.16 CHANGE OF OPERATOR

(A) If a permitted facility undergoes a change of Operator or a change of Operator name, the new Operator shall submit a copy of the applicable NMOCD permits to the County within ten (10) business days of the permit being approved by the NMOCD.

(B) The new Operator must also present proof of adequate insurance as required by Section 6.20 of this Ordinance, if applicable.

6.17 WATER QUALITY AND QUANTITY

(A) No oil or gas development shall degrade the quality or quantity of ground water or surface water, from the addition of point or non-point source pollution, beyond any and all standards enforced by the New Mexico Water Quality Control Commission pursuant to 20.6 N.M.A.C. et. seq.

(B) No oil or gas development shall cause significant degradation in the water quality, quantity, or pressure of any water wells in accordance with the New Mexico Office of the State Engineer.

(C) No oil or gas development shall interfere with the operation of infrastructure associated with existing water rights such as water wells, stock ponds, and acequias, and any other associated infrastructure.

6.18 GROUND WATER MONITORING REQUIREMENTS

(A) For all Oil or Gas Wells permitted, by this Ordinance, within a Critical Management Area Overlay Zone District any where in the County, the Operator shall be required to drill and maintain a ground water monitoring well prior to initiating construction of the Oil or Gas Facility or Facilities.

(B) The Director, in the case of development permits applications, and the Board of County Commissioners, in the case of special use permit applications, may waive the requirement of the ground water monitoring well, if, the Applicant can demonstrate, in the application, the ability of the proposed development to sufficiently protect ground and surface waters, and any other environmental features that may be negatively impacted by the development.

(C) The ground water monitoring well shall be constructed, operated, and maintained according to the following standards and requirements:

(1) The ground water monitoring well shall be designed and constructed in accordance with the New Mexico Environment Department's Monitoring Well Guidelines (July 2008).

(2) The ground water monitoring well should be located one hundred (100) horizontal feet away from the Well Pad along the down gradient slope of the ground water as determined by a Hydrologist.

(3) The ground water monitoring well shall be drilled to first water and screened to the depth determined by a Hydrologist.

(D) Ground water samples drawn from a ground water monitoring well shall be collected, analyzed, and prepared in the manner described in Section 6.19(C) of this Ordinance.

6.19 GROUND WATER SAMPLING AND REPORTING

(A) As soon as practicable upon completion of the ground water monitoring well, and prior to commencement of construction on the Oil or Gas Facility, the Operator shall submit an initial ground water sample to establish the site specific baseline ground water quality data prior to development.

(B) Subsequent ground water samples from the ground water monitoring well shall be collected, analyzed, and submitted to the County, at a minimum, once year for the life of a well and an additional ground water sample or samples taken one year after the Oil or Gas Well has been designated as plugged and abandoned pursuant to NMOCD regulations. The annual ground water monitoring schedule shall be determined by the Director.

(C) Ground water samples should be collected by a qualified environmental consultant, analyzed in a certified laboratory, and should, at a minimum, include the following information:

(1) Field measurements, taken at the Well Site, of the following elements:

(a) depth to groundwater;

(b) depth of the screen;

(c) specific conductance;

(d) pH; and

(e) temperature.

(2) Laboratory analysis of the following elements:

(a) total dissolved solids (TDS);

(b) chloride;

(c) sulfate;

(d) nitrate as total nitrogen;

(e) calcium;

(f) magnesium;

(g) sodium;

(h) volatile organic compounds, using EPA method 8260B; and

(i) total recoverable petroleum hydrocarbon using EPA method 4181.

(D) The Operator shall submit the results of the ground water analysis along with a summary of the analysis results which shall be in narrative form and shall describe any change or variation between the baseline ground water quality data and the ground water sample. The Operator shall report, in the summary to the County, any increases in concentrations of the compounds analyzed pursuant to Section 6.19(C) and which are above those previously reported.

6.20 INSURANCE REQUIREMENTS FOR OIL AND GAS WELLS WITHIN CRITICAL MANAGEMENT AREA OVERLAY ZONE DISTRICTS

(A) For all Oil and Gas Wells permitted within a Critical Management Area Overlay Zone District, the Operator shall be required to purchase and maintain in force, for the duration of the permit, an Environmental Pollution Liability insurance policy.

(B) The Environmental Pollution Liability policy shall, at a minimum, meet the following

requirements:

(1) the policy shall be issued by an insurer with an A- Class VIII or better rating by the A, M, Best Key Rating guide or with such financially sound insurance carriers acceptable to the County;

(2) the County, its officials, employees, agents, and officers shall be endorsed as an additional insured or coinsured on the policy;

(3) all policies shall be written on a claims made basis with a retroactive date that is the same date as the issuance of the Oil or Gas permit, or a date prior to that. The policy and the same retroactive date must be maintained in force for the duration of the permit or until the well is plugged and abandoned pursuant to OCD records;

(4) policies shall be maintained in the amount of at least one million dollars ($1,000,000) per occurrence, with an annual aggregate of at least two million dollars ($2,000,000) and shall be written to cover, at a minimum, the following occurrences;

(a) Sudden and accidental pollution resulting from the seepage, escape, spill, or release of smoke, vapors, fumes, acids, alkalis, toxic or hazardous chemicals, waste material, or any other irritant, contaminant, or pollutant;

(b) bodily injury;

(c) property damage, including loss of use of damaged property or property that has not been physically injured or destroyed;

(d) cleanup costs;

(e) defense costs, including costs and expenses incurred in the investigation, defense, or settlement of claims.

(5) deductibles shall be listed on the Certificate of Insurance and shall not exceed twenty-five thousand ($25,000) dollars and shall be on a per occurrence basis;

(6) all policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the County; and

(7) each policy shall be endorsed to provide the County a minimum thirty (30) day notice of cancellation except when the policy is being cancelled for non-payment in which case, ten (10) days advance notice is required.

(C) A separate Environmental Pollution Liability insurance policy shall not be required if environmental pollution liability coverage is included in the Applicant's general liability policy, provided that the provisions of that coverage meet all of the requirements described in this Section, or the policy is reviewed and approved by the Director, the County Attorney, and the

County's Risk Management Office.

(D) Applicant's representing companies with a net worth of not less than twenty-five million dollars ($25,000,000) as shown in the company's most recent financial statements, may be exempted from the insurance requirements of this Section. The Director may request copies of the company's most recent financial statements to ensure compliance with this provision.

(E) Upon request, certified copies of the Environmental Pollution Liability insurance policy shall be submitted to the County, Any failure on the part of the County to request documentation of the required insurance shall not constitute a waiver of the insurance requirement provided in this Section.

ARTICLE 7
FRONTIER DISTRICT: CREATION OF DISTRICT AND GENERAL APPROVAL REQUIREMENTS

7.1 FINDINGS

The Board hereby finds, declares, and determines as follows:

(A) There is potential for oil and gas development in other parts of the County, outside the Energy Resource Development District, such as in the Frontier District. The Frontier District contains the Chama Basin which has been designated as a frontier or wildcat basin. Frontier basins are defined as regions that are currently nonproductive and largely unexplored.

(B) Portions of the surface of the Frontier District contain critical natural resources and habitat for the County, including Critical Management Area Overlay Zone Districts as identified by the Comprehensive Plan. The Frontier District has some of the highest elevation, and precipitation levels in the County and acts as a natural reservoir, catching precipitation in the high elevations and distributing that water across the County and regions further south of the County via streams, rivers, and aquifer recharge. Both the Headwaters Critical Management Area Overlay Zone District and large portions of the Riparian/ Floodplain Critical Management Area Overlay Zone District are located in the Frontier District and these overlay districts contain essential wildlife habitat such as trout streams, riparian corridors and aquatic habitat, elk calving habitat, and habitat for endangered, threatened, and sensitive species. The Frontier District also contains historical, cultural, and archeological resources, as defined in the Comprehensive Plan, that the County wishes to protect in these areas.

(C) The sensitive habitats and resources found in the Critical Management Area Overlay Zone Districts of the Frontier District are threatened by all forms of development, not just oil and gas development. However, new development can play an important role in providing residents with economic opportunity and can contribute to the overall economic viability of the County.

(D) The County recognizes that oil and gas development will expand into areas outside of the Energy Resource Development District and into the Frontier District. The County also recognizes that it is the right and economic interest of private Surface Property Owners and mineral right owners to develop mineral rights, and that the development of these resources can

provide County residents with jobs and economic opportunity, and taxes received from oil and gas development can be a significant source of revenue for the County. As directed by the Comprehensive Plan, the County intends that this Ordinance will foster sustainable economic opportunity for County residents of the Frontier District, through oil and gas development and at the same time protect unique and essential natural resources, habitat, and wildlife from the potential impacts of that development.

(E) In order to accomplish these objectives, there is created by the Ordinance, the Frontier District overlay zone, the boundaries for which are described in Exhibit A attached hereto. Exploratory oil and gas activities within the Frontier District, which do not involve drilling, shall be subject to an exploratory permit approval process and subsequent notice to proceed, as set forth in this Ordinance and subject to those regulations also set forth in this Ordinance. All other oil and gas development in the Frontier District shall be subject to a special use permitting process, as set forth in this Ordinance and subject to those regulations also set forth in this Ordinance.

(F) In order to promote the efficient and cost-effective review and consideration of applications for special use permits in accordance with the purposes and goals of this Ordinance, the County encourages Applicants for special use permits to avail themselves of the procedures provided herein for the submission of combined applications for special use permits where Applicants intend to explore or develop oil and gas resources with multiple Oil or Gas Wells as part of a coordinated plan that may be implemented in one or multiple phases.

7.2 CREATION OF DISTRICT

There is hereby created the Frontier District, the boundaries for which are shown on Exhibit A attached hereto.

7.3 AREA AND BOUNDARY OF DISTRICT

(A) The area of the County included within the Frontier District overlay zone is fully described on Exhibit A attached hereto, which exhibit is incorporated by this reference. The Official Zoning Map of the County is hereby amended to include and reflect the designation and boundary of the Frontier District overlay zone.

(B) Where the Frontier District boundary line intersects fee surface property, the entire fee surface property shall be considered within the Energy Resource Development District, not within the Frontier District.

6.4 DEVELOPMENT PERMITTED WITHIN THE FRONTIER DISTRICT

(A) Oil and gas development, within the Frontier District, shall be considered as an industrial land use according to Article II Section IV of the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

(B) No Oil or Gas Facility shall be constructed or operated anywhere in the County, within the Frontier District, unless a special use permit and subsequent notice to proceed for such Oil or

Gas Facility has been approved and granted in accordance with this Ordinance.

(C) No exploratory activities related to oil or gas development shall be permitted anywhere within County, unless an exploratory permit for such activities has been approved by the Director in accordance with this Ordinance.

6.5 PRE-APPLICATION MEETING

No less than thirty (30) days prior to the submission of an application for a special use permit within the Frontier District, the Applicant shall meet with the Director and such other employees, representatives or consultants of the County in order to discuss the anticipated submission of the application, including, but not limited to, a general discussion of the application process, the materials to be included in the application, the coordination of the required Onsite Visit, and the manner in which the Applicant intends to comply with the requirements for the submission and processing of its application.

6.6 ONSITE VISIT

(A) All special use permit applications require an Onsite Visit to be arranged and conducted by the Operator prior to the consideration of the application.

(B) Prior to the Onsite Visit, the Operator shall flag all proposed access roads along the center line, and stake, with wooden staking, the proposed Oil or Gas Well Site, two (2), two-hundred (200) foot directional reference stakes from the Well Site, the exterior dimensions of the proposed drill pad, proposed cuts and fills, and the outer limits of the area proposed to be disturbed.

6.7 REVIEW PROCESS AND CRITERIA FOR SPECIAL USE PERMITS

(A) Once the Pre-application Meeting and the Onsite Visit have been held, the Applicant may submit their application to the County. The application for a special use permit shall be processed and reviewed as per the procedure set forth in Article II, Section VI of the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

(B) In addition to the goals, policies, and assessment criteria listed in the Rio Arriba County Design and Development Regulation System Ordinance 2009-09 and the Comprehensive Plan, the following additional assessment criteria shall be used in the consideration of application for special use permits for oil or gas development:

(1) compliance with the design and performance standards of this Ordinance;

(2) the proposed Best Management Practices and mitigation measures; and

(3) any Surface Use Agreement between the Surface Property Owner and the Operator.

6.8 COMBINATION OF APPLICATIONS FOR MULTIPLE SPECIAL USE PERMITS

(A) Applicants for special use permits are encouraged to combine applications for special use permits, to be reviewed and considered simultaneously for approval under this Ordinance where the simultaneous submission, review, and consideration of combined applications, that encompass multiple Oil or Gas Facilities and Well Sites, would satisfy and promote the following goals:

(1) The Oil and Gas Facilities that would be subject to such combined applications are intended to explore or develop a resource in such a manner that the facilities are expected to be constructed and developed simultaneously or in phases as part of a coordinated plan.

(2) The size of geographic area in which such Oil and Gas Facilities are proposed to be located is such that simultaneous review and consideration of combined applications for such facilities can be effectively and efficiently accomplished and in a manner that is consistent with the purposes, goals, and provisions of this Ordinance.

(3) The number of proposed Oil and Gas Facilities is of a number that the simultaneous review and consideration of combined applications for such facilities can be effectively and efficiently accomplished and in a manner that is consistent with the purposes, goals and provisions of this Ordinance.

(4) The impacts associated with such Oil and Gas Facilities are or may be cumulative in nature such that they can be effectively and efficiently reviewed and considered in a manner that is consistent with the purposes, goals and provisions of this Ordinance.

(B) Whether applications for special use permits may be combined shall be discussed at the pre-application meeting. The Director shall have the discretion in determining whether applications for special use permits may be combined as provided by this section.

(C) In cases where applications for special use permits are combined in accordance with this Section, the Applicant may, where practicable, consolidate versions of the special use permit application submittal requirements so long as there is adequate information presented about each individual Oil or Gas Well combined within the special use permit application so that the impact of that individual Oil or Gas Well can be reasonably assessed.

(D) In cases where applications for special use permits are combined and receive simultaneous review and consideration, the subsequent notice to proceed permit application must be filed for each individual Oil or Gas Well that was encompassed within the combined special use permit application. Notices to proceed may be issued separately and at different times for the different individual Oil and Gas Wells for which a special use permit has been granted as part of a combined application.

6.9 NOTICE TO PROCEED

(A) Upon the approval and granting of a special use permit, the Applicant may apply for a notice(s) to proceed for any number of Oil or Gas Wells approved under that special use permit application. An application for a notice to proceed may be made at any time for the duration of

the special use permit provided that the special use permit has not expired or been revoked, and is still valid.

(B) An application for a notice to proceed shall be made using an application form(s) to be prepared and approved by the Director.

(C) In addition to the application for a notice to proceed, the Applicant shall submit adequate documentation to the Director demonstrating compliance with any conditions of approval associated with the approval and granting of the special use permit.

(D) Within fifteen (15) calendar days of the application and application materials being submitted, the Director shall verify that the conditions of approval have been satisfied and shall either grant or deny the application for notice to proceed and shall provide the Applicant with a written notice of the decision.

(E) Each individual Oil or Gas Well approved under the special use permit shall have a unique notice to proceed attached to it. If an Operator is found to be non-compliant with the design and development standards in this Ordinance, the notice to proceed for that non-compliant Oil or Gas Well shall be revoked and that Oil or Gas Well shall no longer be legally authorized to operate.

6.10 REFERRALS

The Director may refer an application to other government agencies, cities, counties or entities having a statutory or regulatory interest in the matter, or otherwise affected by the application, for review and comment. The application review process shall not be delayed pending review or commentary from a referral agency(ies).

6.11 CONSULTANTS

If the Director determines that the application for a development permit may present a negative impact on archeological resources, ground or surface water quality, or the environment, the Director may, at the expense of the Applicant, hire experts to review an application or to evaluate specific technical issues related to archeological resources, surface or ground water quality or the environment. If the Director determines that the County should retain such experts, the Director shall notify the Applicant and the Applicant shall have the opportunity to to provide recommendations of experts to the County. The Applicant shall make a company check, cash, certified or bank check, or letter of credit, deposit in an amount to be determined by the Director for each application submitted, to cover all of the County's expenses incurred to engage such consultants and experts as the Director considers necessary and appropriate.

6.12 OTHER AUTHORIZATIONS

The Applicant may proceed with other necessary regulatory approvals with the NMOCD and other applicable regulatory agencies concurrently with the filing of an application for a special use permit with the County.

6.13 AUTHORITY

(A) The Board of County Commissioners is granted the authority to approve and grant a special use permit in accordance with the requirements and standards of this Ordinance.

(B) The Board of County Commissioners is granted the authority to impose any conditions, in the approval and granting of any special use permit as necessary to carry out the intent and purpose, and to implement the requirements and standards, of this Ordinance, to protect the public health and welfare, and to ensure that any special use permit, when implemented, complies with the criteria for the approval and granting of a special use permit.

6.14 EFFECT OF APPROVALS

When a special use permit has been granted for an oil or gas development within the Frontier District, in accordance with this Ordinance, such special use permit and subsequent notice to proceed, together with any other required County permits and any conditions associated therewith, shall constitute sufficient authority for commencement of drilling, operation, production, maintenance, repair and testing and all other usual and customary activities associated with oil and gas development.

6.15 APPLICATION FEES

Each application shall be accompanied by a nonrefundable application fee in the amount set forth. The application fee shall be paid by company cashier's check, wire transfer or certified funds. The Board shall have authority to adjust from time to time the fees set forth:

(A) Special Use Permit – Seventy-five dollars ($75.00)

(B) Notice to Proceed – Fifty dollars ($50.00)

6.16 APPEAL

(A) The decision by the Director to approve or deny an exploratory permit or notice to proceed is subject to appeal in the same manner and in accordance with the procedures outlined in the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

(B) The decision by the Board of County Commissioners to approve or deny a special use permit is subject to appeal in the same manner and in accordance with the procedures outlined in the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

6.17 EXPIRATION OF SPECIAL USE PERMIT

(A) A special use permit issued pursuant to this Ordinance shall expire if construction of at least one of the Oil or Gas Facilities approved under the special use permit has not commenced within three (3) years of the date on which the special use permit was approved by the Board. This three (3) year period shall be tolled pending the exhaustion of any administrative and

judicial appeals.

6.18 ACTIVITIES FOR WHICH APPROVAL IS NOT REQUIRED WITHIN THE FRONTIER DISTRICT

The following activities do not require the issuance of an exploratory permit or a special use permit under this Ordinance:

(A) Mapping or surveying activities that do not cause or result in any disturbance of the land.

(B) Any planning activities that do not disturb the land or adjacent properties.

ARTICLE 8
SPECIAL USE PERMIT APPLICATION CONTENTS AND SUBMITTALS

8.1 GENERAL SUBMITTALS

Applications for a special use permit for an oil or gas development within the Frontier District shall be made by completing an application form(s) that will be prepared and approved by the Director and will also include the following required submittals:

(A) Proof of compliance with the Surface Owners' Protection Act ("SOPA"), N.M.S.A. 1978, § 70-12-1 (2007). Proof of compliance may be satisfied by submitting a copy of the Surface Use Agreement or a letter signed by the applicant statement, the Surface Property Owner stating the Operator has complied with SOPA or proof of bonding as required by SOPA.

(B) A vicinity map of the Well or Facility Site, drawn at a scale 1:2000 feet and depicting the following features:

(1) section, township, range;

(2) Well or Facility Site boundary;

(3) north arrow and scale;

(4) major geographic features such as, slopes, drainage areas, and floodplains;

(5) major surface water features;

(6) topographic features;

(7) all state, county and private roads, existing and proposed access, and existing proposed pipeline routes, including gathering lines and transmission lines;

(8) the location of all fire, police, and emergency response service facilities. If these facilities are not located on the vicinity map, the Applicant shall provide the contact information, address, direction, and mileage to the nearest emergency response service facility.

(C) A copy of the Operator's County Business License, where applicable.

(D) A site plan of the Well or Facility Site with the following information, if not already required by a permitting agency:

(1) north arrow and scale;

(2) the location, size, and orientation of existing and proposed structures and facilities;

(3) recorded utility and access easements;

(4) existing water wells;

(5) all surface water features.

(D) A photograph of the Well or Facility Site which clearly depicts the physical condition of the Well Site from all four coordinate directions.

(F) A Surface Disturbance Plan submitted in accordance with Section 5.2 of this Ordinance.

(G) A Visual Mitigation Plan submitted in accordance with Section 5.3 of this Ordinance.

(H) Emergency Response Information submitted in accordance with Section 5.4 of this Ordinance.

(I) A description of the source and access route for all water anticipated for use during development and operation of the oil or gas development, and the disposal location and transportation method for produced water.

(J) A solid waste management plan including a description of anticipated solid wastes to be created during development and operation of the oil or gas development and the proposed disposal location and method of transportation.

(K) An Environmental Report prepared in accordance with Section 8.2 of this Ordinance.

(L) The following information regarding the Applicant and the Operator of the proposed Oil or Gas Facility:

(1) name, business address and telephone numbers of the Applicant and Operator responsible for proposed Oil or Gas Facilities;

(2) the name, title, address and telephone numbers of those persons appointed by the Applicant to serve as the contact persons with the County for purposes pertaining to the submission and processing of the Applicant, including, if applicable, a description of the areas or issues for which each such person is responsible.

(M) Copies of all applicable NMOCD documents to be filed in conjunction with the

proposed Oil or Gas Facility, provided upon the Director's request.

(N) Proof of insurance as required in Section 6.20 of this Ordinance.

(O) Such additional information as is required by the Director to determine the application's and the proposed development's compliance with this Ordinance.

8.2 ENVIRONMENTAL REPORT

(A) For the purposes of this Ordinance, the Environmental Report shall be similar in format to the Environmental Assessment as described in the National Energy Policy Act (40 CFR 1508.9). The information used to compile the environmental report should be gathered from the appropriate Federal and State agencies and the Applicant may also consult data and information compiled by the local surface management agency, such as the BLM's Resource Management Plan or the USDA Forest Service's Forest Plan.

(B) Organized by section, the Environmental Report should be a narrative that identifies, based on the available Federal and State data, existing soil, water, air, and habitat quality, and should discuss all possible environmental impacts of the proposed development, the proposed development alternatives, the proposed mitigation measures for the development, and the cumulative impacts the development may have on the environment over the life cycle of the development. The Environmental Report shall discuss, at a minimum, the following:

(1) A wildlife and habitat quality report containing at a minimum:

(a) An inventory of sensitive, threatened, and endangered species found in the area, as identified on both Federal and State registries.

(b) A review of whether or not the development is located in a key conservation area, as mapped and defined by the New Mexico Department of Game and Fish and the United States Fish and Wildlife Service.

(c) An analysis of how the development will impact other wildlife and habitat in the area including a discussion of how the development might contribute to local habitat degradation, fragmentation and loss.

(d) A description of rangeland quality.

(2) A hydrologic report containing at a minimum:

(a) a description of the local hydrology and water quality as established by the New Mexico Office of the State Engineer, any available cathodic well data, the Rio Chama Regional Water Plan, the Jemez y Sangre Regional Water Plan, and or the United States Army Corps of Engineers;

(b) depth to ground water and a description of the geology existing between the surface and first ground water; and

(c) a depiction of all possible contaminant pathways leading from the Well Site to surface and ground water within a half (0.5) mile of the Well Site. This depiction should include pathways leading to all down gradient water courses (perennial, ephemeral, and dry) within 1,000 feet of the Well Site and any down gradient ground water measured at a depth to ground water of less than or up to five hundred (500) feet.

(3) A description of local air quality as defined by the New Mexico Air Quality Bureau and the United States Environmental Protection Agency, and an analysis of the project's anticipated impacts on local air quality.

(4) A soil survey including a description of soil type and prevalence as determined by the Natural Resource Conservation Service and an analysis of the ability of the soil to support the proposed development and the project's anticipated impacts on soil.

(5) A discussion of designated historical, cultural, and archeological resources, if applicable.

(C) A discussion of all proposed mitigation techniques to be used.

ARTICLE 9
DESIGN AND DEVELOPMENT STANDARDS FOR OIL AND GAS DEVELOPMENT WITHIN THE FRONTIER DISTRICT

9.1 GENERAL REQUIREMENT

All drilling and other operations conducted at an Oil or Gas Facility or construction of structures associated with, or serving an Oil or Gas Facility, for which a special use permit are required, shall strictly comply with the requirements of Article 6 and this Article, Article 9, of this Ordinance and shall be conducted at all times in accordance with the Best Management Practices of a reasonable and prudent Operator.

9.2 WATER MONITORING REQUIREMENTS FOR THE FRONTIER DISTRICT

(A) For all Oil and Gas Wells permitted within the Frontier Basin District, from which the depth to ground water is measured at one hundred (100) feet or less from the bottom of pit or the below-grade tank, whichever is lower, the Operator shall be required to drill and maintain a water monitoring well prior to initiating construction of the Oil or Gas Facility or Facilities.

(B) The water monitoring well shall be constructed, operated, and maintained according to the standards and requirements set froth in Section 6.18 of this Ordinance.

(C) All ground water sampling shall be conducted according to the schedule and requirements set forth in Section 6.19(C) of this Ordinance.

(D) If the depth to ground water cannot be determined based on existing data, the

Applicant shall be required to drill a temporary bore hole, of minimum diameter size necessary, prior to consideration of the application to prove the depth to ground water. If ground water has not been reached once the temporary bore hole has been drilled to one hundred (100) feet, the Applicant will not be required to drill the bore hole deeper. (reconcile so it is a condition of approval

(E) As soon as practicable, after the temporary bore hole has been drilled to one hundred (100) feet, or first ground water has been reached in the temporary bore hole, the Applicant shall submit to the County a summary of the drilling results which shall be prepared by a qualified environmental consultant and, at a minimum, include the following information:

(1) a depiction the location of the temporary borehole on the site map;

(2) a copy of the ground water monitoring well (construction) log, where available;

(3) a copy of the lithologic log, where available; and

(4) the depth to ground water or final depth of the temporary bore hole if ground water is not reached.

ARTICLE 10
ENFORCEMENT

10.1 VIOLATIONS, ENFORCEMENT, PENALTIES

(A) It shall be unlawful to engage in any exploratory activities related to oil or gas anywhere within the County without an approved exploratory permit.

(B) It shall be unlawful to construct, install, or operate or cause to be constructed, installed, or operated any Oil or Gas Facility or Facilities in the County without (a) the issuance of a development permit for any Oil or Gas Facilities that are located in the Energy Resource Development District, or (b) or the issuance of a special use permit for any Oil or Gas Facilities located in the Frontier District.

(C) Any Operator, person, firm, corporation or legal entity that violates any provision of this Ordinance, any provision or condition of any special use permit or development permit for an Oil or Gas Facility or Facilities or a valid directive or order of the Director, shall be subject to the penalties set forth Article III, Section I of the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

ARTICLE 11
APPLICATION FOR VARIANCE

11.1 GENERAL PROVISION

Applications for variance of any of the standards associated with any permit contained within this Ordinance shall be submitted in accordance with Article II, Section VI of the Rio Arriba

County Design and Development Regulation System Ordinance 2009-09.

ARTICLE 12
APPEALS

12.1 GENERAL PROVISION

Any person aggrieved by a formal decision of the Director under this Ordinance may appeal the decision in accordance with Article III, Section II of the Rio Arriba County Design and Development Regulation System Ordinance 2009-09.

ARTICLE 13
NONCONFORMING USES

13.1 NONCONFORMITIES

Within the County, there are Oil or Gas Facilities that were legally established and existing before the effective date of this Ordinance that do not conform to the requirements of this Ordinance. The purpose of this Article is to regulate such nonconforming uses to the full extent permitted by law.

13.2 PERMITTED CONTINUANCE

Unless otherwise stated herein, nonconforming Oil or Gas Facilities located anywhere within the County, that were legally permitted and have drilled an oil or gas bore hole of at least two hundred (200) feet before the effective date of this Ordinance shall be permitted to continue. Legally permitted Oil or Gas Facilities which do not have an oil or gas bore hole of at least two hundred (200) feet shall be required to apply for the appropriate County permit(s) as required by, and as set forth in this Ordinance.

13.3 PROHIBITION ON THE EXPANSION OF NONCONFORMING USES

(A) Legal nonconforming Oil or Gas Facilities shall not be expanded, substantially modified, or increased without first obtaining all applicable permits and approvals required by this Ordinance, including, but not limited to, a special use permit if located within Frontier District or a development permit if located within the Energy Resource Development District. Examples of expansions, modifications and increases of a legal nonconforming use for which applicable permits and approvals must be obtained include, but are not limited to:

(1) the substantial modification of an Oil or Gas Well.

(B) The following do not constitute substantial modifications to a legally nonconforming Oil or Gas Facility requiring permits or approvals under this Ordinance:

(1) routine repairs and maintenance that will not result in an increase of the area of surface disturbed;

(2) activities associated with the planning of Oil or Gas Facilities or the preparation of applications for approvals under this Ordinance that do not result in the disturbance of the surface of

the ground.

13.4 ABANDONMENT OF NONCONFORMING USES

If any legal nonconforming Oil or Gas Facility is permanently abandoned as defined in this Ordinance, the use of such Facility thereafter shall not be allowed without first obtaining all applicable permits and approvals required by this Ordinance, including, but not limited to, a special use permit if located within the Frontier District or a development permit if located within the Energy Resource Development District

13.5 DAMAGE OR DESTRUCTION OF A NONCONFORMING USE

A legal nonconforming use of an Oil or Gas Facility that is demolished or destroyed by an act of nature or as the result of actions not intended and over which the owner of such facility had no control, the status of such facility as a legal nonconforming use shall be allowed to continue provided that the replacement of such facility is completed in accordance with applicable Federal and State regulations.

ARTICLE 14
MISCELLANEOUS

14.1 INDEMNITY AND EXPRESS NEGLIGENCE

Each permit issued for an Oil or Gas Facility shall include the following language:

"THE OPERATOR DOES HEREBY EXPRESSLY RELEASE AND DISCHARGE, ALL CLAIMS, DEMANDS, ACTIONS, JUDGMENTS, AND EXECUTIONS WHICH IT EVER HAD, OR NOW HAS OR MAY HAVE, OR ASSIGNS MAY HAVE, OR CLAIM TO HAVE, AGAINST THE COUNTY OF RIO ARRIBA AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, SUCCESSORS, ASSIGNS, SPONSORS, VOLUNTEERS, OR EMPLOYEES, CREATED BY, OR ARISING OUT OF PERSONAL INJURIES, KNOWN OR UNKNOWN, AND INJURIES TO PROPERTY, REAL OR PERSONAL, OR IN ANY WAY INCIDENTAL TO OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK PERFORMED BY THE OPERATOR UNDER ANY OIL OR GAS PERMIT GRANTED UNDER, AND IN ACCORDANCE WITH THIS ORDINANCE.

THE OPERATOR SHALL FULLY DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS THE COUNTY OF RIO ARRIBA, NEW MEXICO, ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, EMPLOYEES, SUCCESSORS, ASSIGNS, SPONSORS, OR VOLUNTEERS FROM AND AGAINST EACH AND EVERY CLAIM, DEMAND, OR CAUSE OF ACTION AND ANY AND ALL LIABILITY, DAMAGES, OBLIGATIONS, JUDGMENTS, LOSSES, FINES, PENALTIES, COSTS, FEES, AND EXPENSES INCURRED IN DEFENSE OF THE COUNTY OF RIO ARRIBA, NEW MEXICO, ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES AND DEATH IN CONNECTION THEREWITH WHICH MAY BE MADE OR ASSERTED BY OPERATOR, ITS AGENTS, ASSIGNS, OR ANY THIRD PARTIES ON ACCOUNT OF, ARISING OUT OF, OR IN ANY WAY INCIDENTAL TO OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK

PERFORMED BY THE OPERATOR UNDER ANY OIL OR GAS PERMIT GRANTED UNDER AND IN ACCORDANCE WITH THIS ORDINANCE."

14.2 SEVERABILITY

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

14.3 EFFECTIVE DATE

As necessary to protect the public health and safety, this Ordinance proposed for adoption shall take effect immediately upon its recordation by the County Clerk.

REVIEWED, APPROVED, AND ADOPTED ON THIS 20TH DAY OF MAY, 2009, BY THE RIO ARRIBA BOARD OF COUNTY COMMISSIONERS:

_____
ELIAS CORIZ, CHAIRPERSON
DISTRICT I COMMISSIONER

_____
ALFREDO MONTOYA
DISTRICT II COMMISSIONER

_____
FELIPE MARTINEZ
DISTRICT III COMMISSIONER

ATTEST:

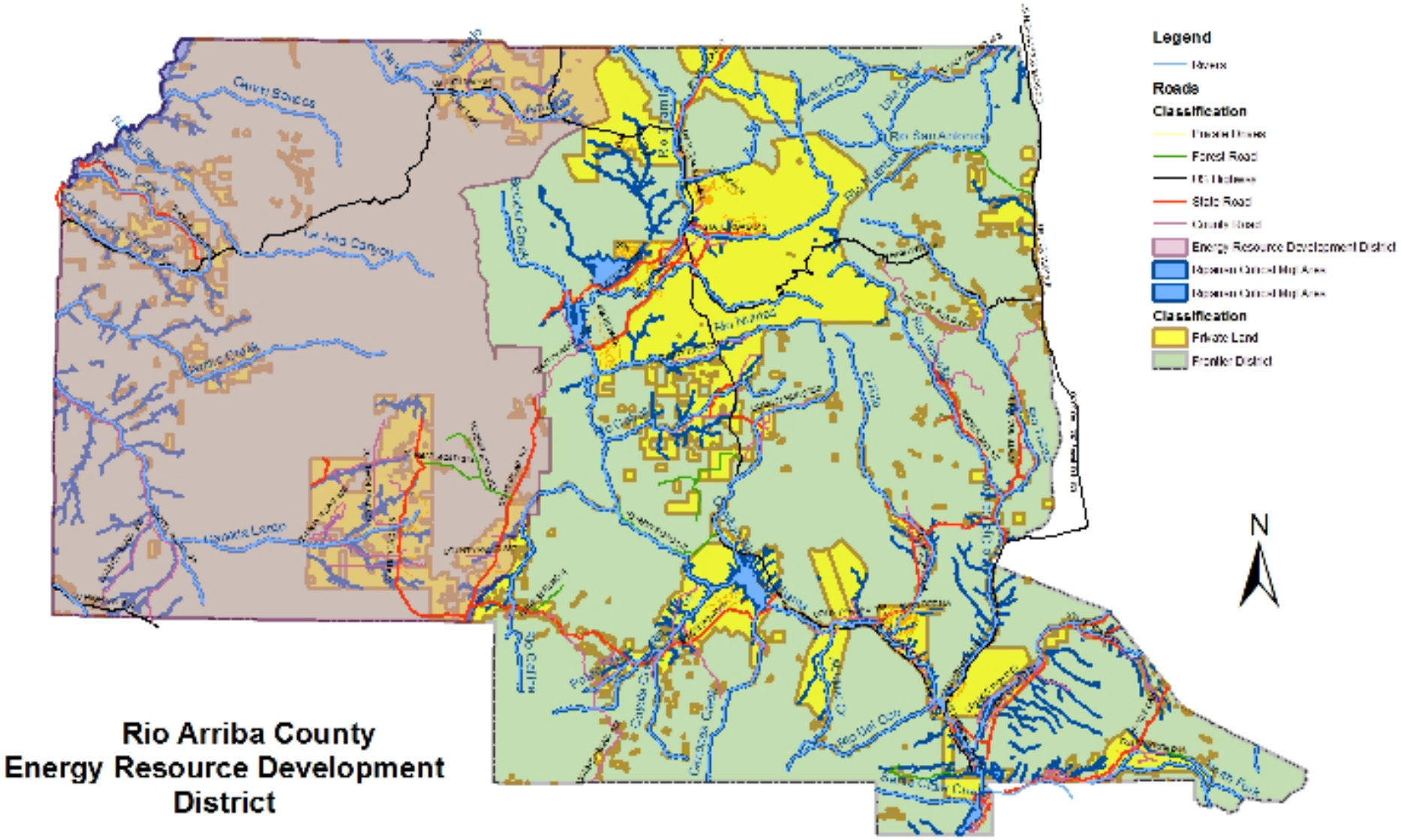
_____
MOISES A. MORALES, JR., RIO ARRIBA COUNTY CLERK

CERTIFICATE OF FILING

I, MOISES A. MORALES, JR., County Clerk, do hereby certify that the foregoing ordinance designated as Ordinance 2009-01 was filed in my office on the _____day of _____2009 in Book Number _____ Pages _____

_____
MOISES A. MORALES, JR., COUNTY CLERK

EXHIBIT A


Legend
Roads
Classification
Forest Road
State Road
Energy Resource Development District
Classification
Private Land
Frontier District
N
Rio Arriba County
Energy Resource Development
District