



November 6, 2008

HAND-DELIVERED

Santa Fe County Development Review Committee
102 Grant Ave
Santa Fe, NM 87501-2061

Re: Comments of County's Draft Oil and Gas Ordinance

Dear CDRC Members:

On behalf of Drilling Santa Fe, the New Mexico Environmental Law Center submits the attached comments on the draft Oil and Gas Ordinance ("Ordinance"). In our opinion, this comprehensive draft Ordinance represents a groundbreaking step forward for the County as well as an appropriate response to the overwhelming public demand for effective local regulation and control of oil and gas operations in the County. However, we do have several questions and suggestions regarding certain provisions of the Ordinance, as described in our attached comments.

In making your recommendations to the Board of County Commissioners ("BCC"), we respectfully request that you consider our questions and incorporate our suggestions. We further urge you to recommend to the BCC that it adopt a cautious and measured approach in finalizing the Ordinance, including an extension of the moratorium if necessary. We also believe it is important that you and the BCC seek comments and suggestions regarding the Ordinance from the New Mexico Oil Conservation Division, since it regulates oil and gas at the state level and will soon be promulgating special rules for the Galisteo Basin.

We very much appreciate your consideration of our comments. If you have any questions about our comments, please do not hesitate to contact us.

Respectfully submitted,



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NOVEMBER 6, 2008

COMMENTS ON DRAFT OIL AND GAS ORDINANCE

SUBMITTED BY NM ENVIRONMENTAL LAW CENTER
ON BEHALF OF DRILLING SANTA FE

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2 §2 (and throughout the Ordinance): Consider stating that the Ordinance applies to all “Oil and Gas Projects” conducted within the County, including Projects conducted on private, state, and federal lands. As it stands, the Ordinance expressly applies to “oil and gas leases of state and federal lands” but does not mention leases on private lands, as least in the “Applicability” section. Moreover, some oil and gas claims might not be developed pursuant to a traditional lease, and “lease” is defined too narrowly as a “fee simple determinable estate,” which may invite unnecessary legal quarrels.

Also, consider drafting additional provisions to assure that the requirement of an overlay zone on state or federal land is not preempted, which would substantially undermine the Ordinance. Although the County can regulate activities on federal and state land, it presumably cannot zone those lands like it can private lands. Because many of the environmental protections are included in Section 9 (Overlay Zones), an entirely separate section may need to be created specifically for state and federal lands.

3, 40 §§ 5, 8(a), other sections: Because “Project” appears to be the operative term, consider defining an “oil and gas Project” that will invoke the Ordinance and trigger the need for an overlay zone and SUDP, etc.

As it stands, the Ordinance prohibits “oil and gas Projects” but does not define what a “Project” is, and this causes confusion. It is unclear, for example, whether a “Project” would include all oil and gas “exploration” (as defined) or whether a “Project” is (or can be) the same as a “Facility”.

Consider clarifying whether exploration includes activities, such as seismic exploration and surface mapping, which do not require any drilling or that create little or no surface disturbance.

We note that the definition of “*Certificate of Completion*” provides that no “exploration” or “transportation” of oil and gas may occur in the County until one has obtained an overlay zone, SUDP and all other approvals. Taken literally, this would forbid transporting oil and gas through the County by any means, even if the oil or gas is produced outside the County. This is another indication that a “Project” requiring full County approval needs to be carefully and unambiguously defined, but with sufficient discretion given to the Administrator.

4 §5: This provision states that “*the County shall require the owner of the mineral estate, or oil and gas lessee of the mineral estate, to apply for, and obtain: an Oil and Gas*

¹ Refers to section or subsection of the Ordinance on the referenced page.

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Overlay District Classification; subsequent Special Use and Development Permit, Grading and Building Permits; and a Certificate of Completion.”

Consider clarifying whether a “unit operator” (as opposed to a mineral estate owner or lessee) could obtain an overlay zone for an entire oil and gas unit, even though the unit may cover multiple properties, interest owners and leases. Clarify whether such a unit operator could qualify as the “designated representative” of all owners, and thus become an applicant for an overlay zone that covers multiple properties.

4. §5(f): Delete the qualifier “Pueblo” when discussing archaeological and other cultural properties, since artifacts and cultural properties from other Native American tribes may be present in the Galisteo Basin.

3, 40 §§ 5, 8(a) Again, consider clarifying whether the intention is to limit a “Project” to the activities on a property or properties that are under single ownership, i.e., must the applicant own all of the property or O&G development rights on the land to be zoned?

Also consider clarifying (1) how the County will handle oil and gas units consisting of multiple ownership interests (e.g., lessees/working interest owners, royalty interest owners/lessor, and overriding interest owners)²; and (2) how the County will handle O&G Development Rights that are restricted to a single horizon or to particular formations/geologic units.³

Also consider clarifying whether an overlay zone, once created, applies to all subsequent oil and gas developers within the zone or just the applicant who originally obtained it. The normal assumption would be that the overlay zone, once created, would allow any person to apply for an SUDP within the zone (like any other zones created by a local government).

Consider clarifying whether an overlay zone may be depth restricted, depending on the EIR, hydrogeology reports, or other considerations.

4 5(b): Consider combining (e) “Water Availability” and (h) “Geohydrological Report” with the (b) EIR

5 Consider changing first two lines on page 5 to: “identifying fractured, faulted and any other formations that would permit extraneous oil ...,” since fractures are only one type of formation that could allow migration of contaminants.

Consider defining “public nuisance” to include the statutory definitions of public nuisance provided at NMSA 1978, §§ 30-8-1 & 2, 72-13-7.

Consider clarifying how “private” nuisances to adjacent property owners, such as noise and odor, will be handled if they do not rise to the level of a public nuisance.

² The “takings” analysis may become quite complex where an overlay zone or SUDP is denied on a property that is divided up among several interest owners, and where the reservoir extends beneath several properties, which is generally the rule.

³ For example, one group may own the all O&G rights from 4000 to 6000 feet deep, and another group may own from 6000 to 10,000.

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Why codify the alleged common law holding that the mineral estate is the “dominant” estate? This principle of common law may change and is not written in stone or described in detail in NM.

Consider changing “ADP” to “APD,” which commonly means “Application for Permit to Drill” and then define APD as such.

Page 5 continued ...

We note that there does not appear to be any express consequence if the applicant goes to the Oil Conservation Division (OCD) to submit an APD before coming to the County. Therefore, consider clarifying that a drilling permit from OCD, standing alone, does not authorize drilling in the County, and that the County strongly encourages applicants to seek an overlay zone before submitting an APD to OCD.

Since there will not necessarily be any “lease,” written or otherwise, and oil and gas can theoretically be exploited under various instruments, consider defining a generic description of the property interest at issue.

For example, consider defining “Production Rights” to be the “*exclusive right to explore for, produce and develop oil and/or gas within a given area or zone.*” The applicant should then have to prove the existence and extent of such rights in the entire proposed overlay zone. The required proof should be specified, such as a deed, a lease, a unit agreement, an assignment, an option, etc.

Also consider requiring the applicant to provide complete, non-redacted copies of oil and gas leases and all other “proofs” of Production Rights. These documents should be filed of record in the County.

The applicant should be required to provide notice of its application to every other person who may have an interest in the properties within the proposed overlay zone, including: surface owners, royalty owners, overriding interest owners, unit operators, all working interest owners, etc. All of these various interest owners should be bound by the outcome of any beneficial use and value determination, and therefore, all would need to receive notice and an opportunity to be heard.

8 §6(f)(20): The Ordinance mandates “proof” from the proponent of a technological innovation that the technological innovation will be harmless. It would be helpful to explain what burden of proof the County will require.

Definitions

Several additional definitions are needed, including APD, recharge zone, geologic hazard, produced water, aquifer, nuisance, Oil and Gas Inspector, CDRC, Hearing Officer, oil and gas unit, unit operator, unit agreement, drilling well, publication (as in “publication of notice”), financial assurance, and vadose zone.

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11 §7: Again, consider clarifying whether the “applicant” can be a “unit operator” who is appointed under a unit agreement and is responsible for all oil and/or gas exploration and production within a unit comprised of multiple properties, interest owners and leases. Can the entire unit be covered by one overlay zone, even though it is comprised of multiple property owners with varying interests in oil and gas (e.g., working interest owners, royalty interest owners, and overriding interest owners)?

Anyone who applies for an overlay zone should have to certify that they are the agent and representative of everyone who has an interest in production from the target reservoir or unit within the proposed overlay zone, such as all working interest owners, royalty owners, and overriding interest owners. If they are ultimately denied an overlay or SUPD, then the BU and value determination would presumably have to bind all of these various interests and their successors.

12 §7: The phrase, “base zoning district,” occurs only in the definitions section. Why is it included here and does every area in the County fall within one or more base zoning districts?

14 §7: The following definition does not make sense and needs to be rewritten:

“Commission: The State of New Mexico Oil and Gas Commission A parcel or parcels of land, or an area of water, or a combination of land and water, and/or developed Facilities and complementary structures and improvements, including, but not limited to, areas for vehicular access within an Oil or Gas Facility or Facilities or Project Site.”

Also, there is no “Oil and Gas Commission” in New Mexico.

14 §7: “Common ownership” may not be as important as “common operation and/or control” under an O&G Unit consisting of multiple leases with varied ownership. Consider defining “common operation and/or control” and using this or a similar term throughout the Ordinance.

15 § 7: Consider defining “Santa Fe County” more precisely or incorporating by reference the official metes and bounds description for the County.

17 §7: “Developer” is defined but occurs nowhere in the body of the Ordinance.

17 §7: Consider redefining “development” to require drilling, construction of structures, pits or ponds or significant disturbance, etc. As currently defined, “development” would include merely transporting oil or gas through the County or mapping the surface geology.

Elsewhere the Ordinance refers to “land disturbance activities” (§9.5), which suggests this may actually be what the County seeks to regulate. What about noisy oil and gas activities, such as seismic exploration, that do not necessarily create any surface disturbance?

18 §7: What happens to “development rights” that originate from a lease and the lease thereafter expires or terminates? Must development rights be transferred within the same reservoir, or do development rights operate independently of the subsurface? Can development rights on one property, where production is divided among one group of lessees and royalty

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owners, be transferred to another property where production may be divided among a completely different group of lessees and royalty owners?

19 § 7: Clarify whether “Drilling” includes re-entering an existing well or wells.

21 §7: In defining “exploration,” is it the intent of the Ordinance to require overlay zoning and SUDP for exploration that does not require drilling and that creates little or no surface disturbance? This ambiguity could be removed by defining “Project” and providing a better definition of “Facility” and its relationship to “Project.”

Consider defining “Exploration Well or Exploratory Well.” The Ordinance uses both terms.

22 §7: “Gas” as defined appears to exclude non-hydrocarbon gases, such as CO2 and hydrogen. Was this intentional?

22. §7: In the definition of “fracturing or fracing,” insert “either alone or combined with natural or synthetic chemicals” after “water”.

23 §7: Is there any difference between a “Geohydrologic report” and a “Geo-Hydrologic report” and why have these two definitions? Elsewhere the Ordinance refers to a “Geohydrological report.” There should presumably be only one definition and it should be used consistently throughout the Ordinance.

23. §7: Consider adopting the State Engineer’s definition of “groundwater,” which is

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

23. § 7: In the definition of “historical, cultural, or archaeological resource” it is unclear whether the parenthetical “or eligible for designation” means eligible for designation in the state register of historic places or the federal register of historic places or both.

24 §7: “Intensity” and several other definitions occur only in the definitions section. Consider eliminating definitions that are not used in the body of the Ordinance.

24. §7: In the definition of “inventory,” insert “Tribe or” between “Indian” and “Pueblo” in the second line.

25 §7: “Lessee” should be defined, if at all, simply as the lessee under and an oil and gas lease. Because oil and gas can be developed under a variety of legal documents, consider defining “Production Right Owner” or just “Owner” as a person having the exclusive present right to explore for and develop oil and gas within a defined area or zone within the County, regardless of the source of that right.

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27. §7: In the definition of “nonliving materials” delete “plant” at the beginning of the definition.

28 §7: Again, it is unclear whether a “Facility” is the same as a “Project”; whether a “Project” consists of one or more “Facilities”; or whether a “Facility” may consist of more than one well or thing. This leads to several uncertainties, for example:

- If there will be no permanent “Facilities,” is any overlay zone or SUDP required?
- Does a drill rig that will, for example, be onsite for 10 days and then leave qualify as a “Facility”?
- Would an exploration drill hole qualify as a “Facility” even if no casing or other permanent equipment is left in place?
- Do you need an SUDP for each Facility or just one for the entire Project (assuming that a Project may consist of several Facilities)?
- Do you need an SUDP for each well or drill hole in all circumstances?
- Do O&G pipelines that merely pass through the County qualify as “Facilities”?

29 §7 “Operator or owner” occurs in only one subsection of the Ordinance and appears inconsistent with the emphasis elsewhere in the Ordinance on “property under the same ownership.” As discussed elsewhere in these comments, the “operator” may be more relevant as a regulated entity than any particular owner.

30 §7: “Owner”: Since oil and gas can theoretically be developed under a variety of legal documents, consider defining “owner” as a person having the exclusive present right to explore for, produce, and develop oil and gas within a defined area or zone within the County. Also consider defining “operator” as a “unit operator or other person who has the exclusive present right to control and conduct all oil and gas exploration, production and develop activities within an oil and gas unit or other defined area or zone.” In many instances the unit operator could be the most appropriate applicant.

As noted above, the Applicant/Owner/Operator should have to notify all others who may have an interest in the same property, such as royalty owners, working interest owners, overrides, surface owners, etc.

“Owner” should be defined to include all those who have a percent interest in production, including all their assignees and successors in interest, as well as reversionary interests and lessors.

“Ownership” needs to be defined. Is a royalty interest owner an “owner,” for example? Does a unit agreement covering multiple properties and including multiple leases qualify as “same ownership,” and would the “unit operator” qualify as an “owner”?

31 §7: There are several New Mexico cases holding that counties and cities have no “inherent police power” under New Mexico law. Consider removing the reference to “inherent power” and limiting the definition to describing what police power is (rather than its source).

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33. §7: In the definition of “public meeting” consider adding the clause “as defined in the New Mexico Open Meetings Act” at the end of this definition.

35 §7: Again, consider clarifying whether “same ownership” includes all properties (regardless of ownership) within an oil and gas unit, even though the unit consists of multiple interest owners, lessees, and surface owners.

35. §7: In regards to the definition of “sand and gravel pit,” is the inclusion of “oil and gas” in this definition intentional? If so, it could cause confusion about what is a sand and gravel pit and what is an oil and gas operation.

36 §7: It appears that an “SUDP” can be obtained for a Facility or a Project. If so, when do you need more than one SUPD for a Project, if ever?

37 §7: Consider defining “State Engineer” to be the New Mexico State Engineer. He has jurisdiction over a number of things, including the administration of water rights.

 “Subsurface estate” and “subsurface oil and gas lease” and other such definitions may exclude other relevant oil and gas interests. Consider creating a generic definition, such as “Production Rights” (as suggested above).

 Again, is this Ordinance intended to cover non-hydrocarbon gases, such as hydrogen and CO₂, which can be explored for and produced like O&G?

37 §7: Can “subject property” include multiple properties and interests?

37. §7: In the definition of “tank battery,” delete “located at a convenient point.” It seems extraneous.

39. §7: Consider defining “wetland” consistent with U.S. Army Corps of Engineers or New Mexico Environment Department regulations.

40 §8(a): Again, this section appears to restrict an overlay zone to property that is held by one applicant, whereas oil and gas units may consist of multiple leases that are combined into a “unit” and operated as if the multiple leases were one lease. There is one unit operator, who is usually one of the lessees in the unit.

 Again, can a unit operator/applicant obtain a single overlay zone for an entire unit, even if the unit includes multiple properties under different ownerships?

40 §9.1: “This section applies to ... Projects that have adverse effects and impacts both on and offsite.” This begs the question: Can there be “Projects” within the meaning of the Ordinance that do not have such effects, and do these non-impacting Projects require an overlay zone, SUDP, etc.?

44, etc. §(c)(1)(C): “Light Sensitivity Areas” should be “Low Sensitivity Areas” and this should be corrected throughout.

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44-47 §§(c)(2) – (c)(4)

The phrase “drilling well” is awkward since most wells are “drilled” (unless they are hand-dug). Consider revising to “oil and gas well” or “exploration and production well” or simply defining “drilling well” as any well or hole that is drilled for the purpose of exploring for or producing oil or gas.

As mentioned above, it looks like the applicant must own all the property to which an overlay zone will apply, but the properties need not be contiguous. It therefore appears that every separate owner of property within an oil and gas unit could be required to apply for separate overlay zones corresponding to their individual properties. If they did this, then they could theoretically game the system to obtain much greater well densities depending on how many separate properties were involved.

For example, if there are 20 separate property owners/lessees within a unit, then each could theoretically obtain an overlay well density for their individual properties (in a HS Area) of 1 well per 400 acres (of land in single ownership). But with 20 separate non-contingent properties, the overall well density could be as high as 1 well per 20 acres. This would appear to defeat the County’s purpose.

47. §9.6(1): It would be helpful to know what level of detail would be required for the mandated Project area maps and the geographical scope required, e.g., would it be required to cover a 5 square mile radius from the concept site’s perimeter consistent with the other subsections of this section or a smaller or larger area?

52, etc. § 9.6.1.6, etc.: In several places the EIR section contains this phrase “*or if no notice of preparation [of the EIR] is published.*” Consider clarifying what and who will determine whether notice is published and what standard will be applied. Why not require notice should be published in all cases?

Also, in addition to the existing notice provisions in the Ordinance, consider adopting the public notice requirements in New Mexico’s Solid Waste Act, NMSA 1978, § 74-9-22(C):

This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish.

54 §9.6.1.7.2(d): The significant environmental effects of the proposed oil and gas Project should specifically include the Project’s cumulative effects, i.e., its incremental effects combined with the effects of other past, present, or reasonably foreseeable future Projects, irrespective of whether those Projects are oil and gas related or not.

54. §9.6.1.7.3: It is unclear whether mitigation measures would be required in all circumstances where there is a significant environmental impact irrespective of whether the mitigation measures are feasible or whether mitigation measure would only be mandated when “reasonably feasible.” If the latter is the case, what would constitute “reasonably feasible”?

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In addition, the County should consider basing the Ordinance on the U.S. Council of Environmental Quality regulations in its requirements for discussing cumulative impacts. *See*, 40 C.F.R. §1500 *et. seq.*

Subsection (b)(1)(A): Substitute “reasonably foreseeable” for “probable”.

Subsection (b)(1)(B): Substitute “An evaluation” for “A Summary”.

61 §(d): In referring to “reservation capacity,” consider clarifying the nature of pipeline of concern.

61 How will the County determine the number and kinds of County Facilities that will be needed for a given Project?

62 §9.6.2.3: This provides that the County will assume “maximum density of oil and gas wells in the Project and relevant affected areas.” Does this mean the standard 40 acres per well, regardless of land ownership, or the maximum density allowed under the Low, Moderate or High Sensitivity Area per a given property under “same ownership”?

Consider clarifying whether development agreements and SUDPs, etc. are assignable to third parties. Presumably an overlay zone applies to all persons and remains in place regardless of whether the original applicant, its successor, or an entirely new person is developing the oil and gas. In contrast, an SUDP is presumably issued to a certain person and cannot be assigned unless approved by the County.

63 § 9.6.2.5: Duration--will a SUDP, development agreement, etc., survive the termination or expiration of an oil and gas lease on the property at issue? If a second oil and gas lease is issued on that property, would the second lessee be required to go through the whole process again? Presumably the overlay zone would remain in place, but would the new lessee/operator be required to get a new SUDP for the same facilities or could it obtain an assignment of the existing SUDP?

67 §9.6.3.6: Water: What are the requirements of the Ordinance when there is no need for a permanent supply of water for an oil and gas Project? Under what circumstances, if any, will the applicant be required to hook up to County water?

70 §9.6.5.1.1: The Ordinance appears to require all Projects to secure a 50-year water supply. What if the Project will not need a permanent supply of water? What if the Project only uses water on a temporary basis, e.g., for fracing or during drilling?

§9.6.5.1.4-5: Can water be hauled to a Project, as needed, or acquired from a private water supply or water rights?

71 §9.6.5.4.2: To the extent that a Project requires a permanent water supply, the Ordinance should require an adequate showing that the applicant has the necessary water rights or sources of supply.

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- If the County will supply the water, then the applicant should be required to acquire and transfer the necessary amount of water rights to the County.

- If the applicant will use its own water rights, then the applicant should have to provide all documentation regarding the existence and extent of such water rights, such as a court order, state engineer permit, declaration, etc.

- It is awkward to speak of “those basins for which a court or board had adjudicated the rights to pump groundwater.” The board does not adjudicate water rights in New Mexico (only courts do). Where a water right has been adjudicated, then the applicant should have to provide the court order. Where it has not been adjudicated, the applicant should have to provide an OSE permit or Declaration or Change of Ownership.

79-80 §9.6.7.1.2: Nothing in the Ordinance appears to prohibit a person from drilling “exploratory wells” to determine geohydrology before they apply for an overlay zone. Furthermore, a permit to do so may be obtained from the State Engineer as a matter of course. Given this reality, there appears to be nothing in the Ordinance that would prohibit a person from drilling “exploratory water wells” to investigate both the geohydrology and the oil and gas potential of a given area at the same time, without obtaining any authorization from the County.

- Can the applicant use existing wells and data, or must it drill 3 new wells per 40 acres in all cases?

- “Exploration wells,” whether to determine the geohydrology of an area or its oil and gas potential, should be small bore wells that cannot be readily converted into production wells. For additional comments regarding exploration or test wells, please refer to our separately comments entitled the “Hydrogeological constraints on oil and gas drilling in the Galisteo Basin.”

79. §9.6.7.1.2: This section appears to limit the inquiry to “the aquifer,” but several aquifers may be adversely affected by oil and gas drilling and all such aquifers should be characterized. Consider defining “aquifer” to mean geologic formations containing groundwater having a TDS of 10,000 or less, since all such groundwater is protected under the New Mexico Water Quality Control Commission regulations. For additional comments regarding aquifer characterization or testing, please refer to our separately comments entitled the “Hydrogeological constraints on oil and gas drilling in the Galisteo Basin.”

§9.6.7.2(e): Geologic maps, cross sections, etc. should be required for each formation through which the applicant proposes to drill.

80 § 9.6.7.1.3:

- (1) What does “single or multiple units or aquifers” mean? How deep do you go? What constituents should be analyzed for? Where will the applicant be required to sample from? This section should also require samples be split with the County and the results made available to the public. For additional comments this topic, please refer to our separately comments entitled the “Hydrogeological constraints on oil and gas drilling in the Galisteo Basin.”

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The applicant should be required to provide comprehensive baseline water quality data for all aquifers that may be adversely affected by its operation, as discussed in our separately submitted comments entitled the “Hydrogeological constraints on oil and gas drilling in the Galisteo Basin.”

- (2) An “analysis of all contaminant pathways” may be impossible to provide. Consider adding the word “likely” or “probable” and require the applicant to identify all water wells, springs, water courses, wetlands, lakes, etc., within a one-mile radius. The text should add “including fracture zone.”

- (3) A definition for “unsaturated or vadose zone map” needs to be provided.

- (4) Need to clarify what the wells are going to be “upgradient” and “down gradient” of.

83 §9.6.11.1: Should this section provide that the County will enter into development agreements with the *applicant* for an overlay zone rather than the owners mineral estates and lessees? The County presumably would not enter into a development agreement except in the context of an application for an overlay zone or SUDP permit.

85 §9.7.2.1: It should be made clear that the transfer of develop rights to a property, standing alone, does not authorize anyone to explore for or produce oil or gas. You need an appropriate property right, an OCD permit, overlay zone, SUDP, etc.

88 Top of page: Again, this section appears to require an “ADP” (which should be changed to APD) after overlay zoning approval, but nothing prevents a person from obtaining the ADP before coming to the County. Consider clarifying that the County strongly encourages applicants to seek an overlay zone from the County before submitting an ADP to OCD.

88 §11.1: This section prohibits a person from conducting “any work” before obtaining a SUDP. “Work” should be defined.

91 §11.8.5: Again, can a “unit operator” obtain a SUDP or overlay involving multiple properties?

92 §11.8.6.7-10: Consider applying the same “bad actor” requirements that are applicable to the new operator to the original operator as well. Also, the language has shifted from “owner” (e.g., in Section 9) to “operator”. This may be appropriate, but the Ordinance should be consistent throughout. Additionally, the “bad actor” provision should include past acts of non-compliance with statutes or regulations of the United States or any state, not just contemporary non-compliance.

95 §11.14.8: “Operator or owner” is a defined term but occurs only in this section. Everywhere else the Ordinance appears to require that a “Project” be located on property in the “same ownership” and to focus on the “owner” of that property. In contrast, this section appears to be concerned with either the owner or “other person, corporation or legal entity in charge of the operation and management of an Oil and Gas Facility or Project and who is designated as the

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Operator by the OCD.” (*From* Definition of “Operator or owner”). Why the shift in emphasis here (and why only here)?

97 §11.17.4: This section should be stricken in its entirety. Self-insurance should be prohibited under all circumstances.

101 §11.25: Consider defining “setback” to make it clear that the BCC can increase the setback distances or create additional ones on an SUDP-basis. In other words, the setback distances here are only minimums. Also, consider adding a 0.5 mile setback/buffer zone from riparian areas.

Consider clarifying where the setback distances are measured from. For example, do you measure from the property boundary, the fence, or the house in the case of “dwelling”?

107 Section 12: How will beneficial use and value determinations be made regarding reservoirs that extend beneath multiple properties and that have been divided up among multiple lessees, working interest owners, royalty owners, override owners, etc.

Again, consider requiring the applicant to provide notice to all persons who have an interest in production from the property being considered.

111 §12.7: This section provides that the notice for a SUDP application shall be the same as that provided for an overlay zone application. However, it is unclear exactly what public notice will be provided regarding the County’s receipt of an overlay application. Will there be any published notice?

This concludes our comments on the draft Ordinance at this time. Because of the complexity of the issues and length of the Ordinance, we reserve the right to submit additional comments to the BCC.