

Comments on the draft Oil and Gas Overlay Zoning District Ordinance.

Section 2 Page 2: Does the proposed ordinance ONLY apply to leases on Federal and State lands? It appears not; however, we believe that it could be misinterpreted.

Page 4: Reports and Documents: It would be useful to refer to the section of the proposed ordinance that specifically refers to each report required.

Page 5: Paragraph 5: Will it be easier for ands Oil and Gas developer to poorly construct the presented overlay requirements so that it can go directly to the application for a “beneficial use and value assessment and Arbitration of statements “a” through “e”?

Section 7.A.1 page 26. Definition of “major Arterial” would clearly include County Road 44 and 45. How was this determined? And by whom? San Marcos would beg to differ.

Section 7 Page 32. Definition of primary arterial is clearly Not the same as a “Major Arterial. State Route 14 is primary, but not County road 44 or 45.

Section 7 Page 35. There is no definition of “Secondary Arterial”.

Section 7, Page 34: There is no definition of “road Collector” as required on Page 14, “collector, street, road”

Page 35: “Sending Parcel”. If the Oil and Gas estate is leased, does this mean that the right to develop is “extinguished” for the duration of the lease? If so, what happens if the lease is transferred to a third party? What happens if the lease is cancelled? Can the right-owner then re-sell the lease and the sending parcel would become a candidate for development once again?

Page 39: Check on the term “variance”. Can a right owner, whose lease dedicates a parcel as a “sending parcel”, claim a variance to force the re-allocation of the parcel to production?

Section 9.5(b) page 47

Unclear: since surface and subsurface are not bound, subsurface “tracts “do not necessarily follow surface ownership. Does this section mean that if the boundaries of a sub-surface tract are broken up for the purposes of sale or lease, then, the division falls under the surface subdivision rules?

Page 43, Section 9.4.1: This section should be retitled to allow for the future addition of other definable “LESA” areas. The Galisteo Basin Special provisions should then be a heading under this Section. The Bonanza Creek Ranch comes to mind as a second “special Provision” area.

Page 47 Section 9.6

An “accurate Map” should be listed in the definitions section, and should require specific attributes that are both compatible and available in digital format to form an overlay in the County’s GIS system (as outlined in the Oil and Gas Plan Document)

Page 48 Section 9.6(2.d)

“... proposed traffic routes to the nearest intersection...” Presumes that “nearest” is “best” or has the least impact. Presumes also that traffic routes go ONLY to one of two primary routes. What about railroad railheads and pipeline terminal locations?

Section 9.6.1. EIR

9.6.1.2(a) Reasonable alternatives to the project” or does this mean “reasonable alternatives to the project that mitigate adverse effect”?

9.6.1.2 (b): Who in the county will be responsible for responding? This should be spelled out.

9.6.1.5 Project Description: Regional map and detailed topo map should also include electronic information for input into the County GIS system.

9.6.1.7.1 (page 53) The term “significant” may need definition. This may be Ok as the subjects are more clearly defined in 9.6.1.7.2.

9.6.1.7.3 Mitigation in General

How is the EIR contractor to obtain mitigation measures proposed by “interested parties”? Is there a requirement for additional meetings with the public prior to the draft EIR’s publication. Or is input by interested parties left to the creation of the RFP or the contractor?

9.6.1.7.3(a)(2) “donditions”... conditions?

9.6.1.7.3 (a)(3) who determines the “insignificance” of an impact and how and when is this determined? Should “insignificant effect or impact” be defined in Section 7?

9.6.1.7.3 (b)(B)3 “deeding the site” does this refer to both surface and mineral rights. How do you get the boundaries to coincide?

9.6.1.7.4 (c) What is the “Scoping Process” who in the county would be responsible for identifying alternatives prior to the presentation of the EIS and other documentation. Who will write the scope of work to produce the EIS under contract? Who pays for it? What is the time line, estimates of cost, etc?

General EIR

Does the EIR tend to favor the creation of large overlay districts or small ones? If small ones, will the EIR discuss impacts of multiple overlapping overlay districts proposed by different subsurface owners and leases? Will a change in lease ownership of subsurface resources that significantly alters the character of the new, consolidated (or fractured) lease holdings force the creation of a new EIR? If so, by whom.

If “lease” areas fluctuate due to the terms of individual leases within the “whole”, will this be discussed in the EIS? What is the potential impact of leases being dropped from an overlay district, and picked up by another company. Will transferred lease have to produce a new application and will the original overlay district have to be re-evaluated or redefined?

9.6.1.10.2 Page 60

Like to see something about the formation of public interest groups to help advise the EIS contractor.. something outside a public meeting. The assumption here is that the public would be prepared to provide insight and input to the contractor at the time of the first public meeting. This is not a good assumption.

9.6.1.11 Page 60

The final EIR MUST have the county’s preferred alternatives distinguished so that the public will have the opportunity to judge the Boards development approval’s actual input. The final EIR is submitted by a contractor. WHO makes the recommendation to the Board insofar as which of the offered alternatives is the preferred alternative?

9.6.2

The “LOS” definition is confusing.

9.6.2.5 Duration: see arguments concerning multiple lease expiration dates and effects on the overlay.

9.6.2.8: Who determines these costs? Who pays for the creation of the figures, the analysis? Who pays for the staff time to create the recommended annual funding and who approves the figure? Appendix “A” is not included in the draft.

9.6.3.6 Water:

Who does this analysis?

9.6.4 Who approves the plans and when. Flow chart would be useful.

The CIP looks like it will require substantial county staff input, especially from Budget and Maintenance and planning departments. Who pays for the added staff time? Who approves the document?

9.6.6.2.13: “Residential roads” there is no definition in section 7.

9.6.7.1: Should there be a test for flow rate between test wells? Something that would indicate lateral transmissivity, especially in fractured rock formations.

9.6.7.11: Who prepares the hydrological report and who pays for it? Who writes the scope of work and who pays for it? Any contracted report requires a county employee who is knowledgeable in the field the report calls for – to write the scope.

9.6.9: Also must include fees associated with providing long term accession of data from any associated monitoring wells and any other cost associated with water well maintenance, security, etc.

9.6.9: Assessment must include costs associated with the preparation of scopes of work, requests for proposals, contracting for the studies, and the cost of analyzing the studies once accepted. Costs for on-site inspection, periodic review, GIS maintenance and data input support. Costs associated with GIS map production, and GIS data analysis, as outlined in the Oil and Gas addition to the County Plan. Also costs associated with the increased costs to the county for preparation of tax and revenue receipt, bonding, insurance, etc. Who provides the estimate? Who pays for the estimate? Who reviews the estimate of the costs to the county?

9.6.10

Who is responsible for the review and can it be done in thirty days. Given the complexity of the reporting, the requirement for professional review, thirty days is probably not adequate. The State Engineer's Office, for example could probably not respond within this period.

9.6.10.3 We assume that “completeness of the application does not mean approval of the application. This should be made explicit.

9.6.11 Development Agreement

We are uncertain as to when the zoning overlay is approved, or is the development agreement one and the same. If they are not the same, then 9.6.11.1 should clearly state that the development agreements are a requirement of establishing an Overlay Zone. Does 9.6.11 establish an overlay zone? There needs to be a following section that lays out both the procedure for establishing the overlay zone and when this is accomplished. It is NOT clear in the draft and is very, very important.

9.7.2.3: This is fine if Development Rights include an “owned” oil and Gas property. How is this affected with a leased property, especially 9.7.2.3(D)(E)?

9.7.2.3 is unclear when it comes to leased mineral rights. If the County buys the lease that means that it will hold the development right “value” only as long as the lease is held. Since leases generally include a sub-agreement for profit-sharing, should oil and gas be extracted, I fail to see why an oil and gas right owner would agree for a “lease” to sell the lease to an entity that intends to retire it.

Leased rights appear to not be well thought out here.

If the TDR bank will be administered by funds provided by the County, how much will it cost? It would be too sophisticated to ask someone or some county department to take it on as a “secondary duty”.

Section 10

Again, when does the County approval occur within the context of development agreements?

What is “OCD”?

The paragraph is confusing. We would suggest a flow chart.

11.4: If no SUDP’s are granted, there will be no funds, other than County General Funds, to support the necessary infrastructure. Is this wise? Or even “doable”. Does the County need to float a Bond Issue to insure operation money. The Oil and Gas Administrator’s salary will have to be paid even if there is no activity.

The list of required submissions on page 49 (Section 9.6(3)(a-g)) does not conform to the stated sections in the body of the ordinance. This MUST be fixed for the final.

At the end of Section 9, there MUST be a paragraph clearly stating the procedure that will be followed for an Oil and Gas Overlay to be granted or refused.

11.8.3 SUDP should reference 11.25.1.9 for buffer zones around these stated parks.

(.6.11 is labeled “Development Agreements” Is this the same as Section 11.8.6.1 ...development orders in relation to the Overlay District”? What is the difference between developmental agreement and developmental “orders”?

11.34: Should there be some requirement to permit abandoned or non-producing wells to be monitored as part of the County’s water quality and stream flow modeling program?

Where is the “attached” SUDD Appendix A applications fees that Section 11.10 refers to?

Other Comments:

Appendix c of the oil and gas plan details a GIS system to keep track of the various sets of data. No mention of this appears in the ordinance, and no requirement to support such a GIS system is detailed. No vehicle to pay for GIS costs associated with model maintenance is included.

There is no mention of what should occur should a lease be cancelled, defaulted or otherwise ended by either the owner or the lease,

Value assessment and arbitration on Page 5.5 of the oil and gas plan may not be covered in Section 12 of the ordinance.

We are concerned that the indirect costs of the ordinance have not been carefully thought out. This is a good plan, but would be useless if not adequately funded and staffed.