

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

ORDINANCE NO. 2008 - ____

AN EMERGENCY INTERIM DEVELOPMENT ORDINANCE FOR A TWELVE MONTH PERIOD PROHIBITING DEVELOPMENT APPROVALS OR ISSUANCE OF PERMITS FOR ZONING AND SUBDIVISION MAPS, NON-CONFORMING USES, SPECIAL AND CONDITIONAL USES AND EXCEPTIONS, USE AND AREA VARIANCES FOR OIL, GAS, AND GEOTHERMAL DRILLING AND EXTRACTION WITHIN THE GALISTEO BASIN COMMENCING ON FEBRUARY 28, 2008, AND TERMINATING ON FEBRUARY 27, 2009, AND PROVIDING FOR AN EXTENSION TO AUGUST 27, 2009 IF REQUIRED IN THE LEGISLATIVE DISCRETION OF THE BOARD OF COUNTY COMMISSIONERS, UNTIL THE ADOPTION OF A GENERAL PLAN AMENDMENT, A GALISTEO BASIN AREA PLAN, A CAPITAL IMPROVEMENT AND PUBLIC SERVICES PROGRAM, CREATION OF A SPECIAL IMPROVEMENT DISTRICT FOR THE GALISTEO BASIN, AND AMENDMENTS TO THE LAND DEVELOPMENT CODE, ADDRESSING AND RESOLVING CONSIDERATIONS OF PUBLIC HEALTH, SAFETY, CULTURAL-HISTORICAL, ARCHAEOLOGICAL, FISCAL, ECONOMIC, PLANNING, INFRASTRUCTURE AND SERVICES, GROUNDWATER AQUIFERS, ENVIRONMENTAL AND THE PUBLIC NUISANCE IMPACTS OF SUCH GRADING DRILLING AND EXTRACTION.

WHEREAS, the State of New Mexico, Office of the Governor, Bill Richardson, has issued an Executive Order 2008-004, dated the 24th day of January, 2008, imposing a five month moratorium on the processing and approval of applications for permits for oil and gas drilling in Santa Fe County and the Galisteo Basin within the County until a fair and thorough evaluation and assessment by all state executive agencies with relevant knowledge and expertise (“Executive Agencies”) of state laws, regulations, policies and planning documents is conducted concerning the water, environmental, economic, historic-cultural and archaeological impact of drilling and extraction of oil and gas that would be contrary to the interests of the State of New Mexico and its citizens;

WHEREAS, Executive Order 2008-004 directs that the Executive Agencies work collaboratively with other governmental agencies, including affected tribal governments and Santa Fe County (“County”), and to provide an opportunity for government entities, including Santa Fe County, to receive and evaluate input from the public in order to formulate public policy and government planning and report back to the Governor by June 24, 2008;

WHEREAS, Santa Fe County has previously adopted Ordinance No. 2007-14, dated November 27, 2007, placing a moratorium on the acceptance and processing of applications to drill an oil or gas well for a period of three months or until the 28th day of February, 2008;

WHEREAS, Ordinance No. 2007-14 declared an emergency affecting the public health, safety and welfare by reason of applications for drilling new oil and gas wells within the Galisteo Basin without adequate planning, health and safety standards for the location, operation and mitigation of the effects of oil and gas drilling and without appropriate provisions in the County's General Plan and Land Development Code to assure that significant irreparable damage to the human and natural environment does not occur;

WHEREAS, the County's General Plan and Article III, Section 5 of the Land Development Code, have inadequate provisions and standards relating to oil, gas, and geo-thermal drilling and/or extraction necessary to prevent a catastrophic impact upon the public health, safety, fiscal and economic, environmental, historic-cultural and archaeological, infrastructure and public service provision and protection of property rights emanating from such grading, drilling and extraction activity;

WHEREAS, the County is proposing to prepare and adopt amendments to the General Plan: a new Galisteo Basin Area Plan; a Capital Improvement and Public Services Program (CIP); creation of a special improvement district for the Galisteo Basin; and amendments to the County's Land Development Code necessary to implement such General Plan Amendment, Area Plan, Special District and CIP to guide the location and availability of adequate fire, emergency, police and health services, roads, water and storm water management, water pressure and storm water infrastructure and services, and to establish appropriate sustainable design, location, use, and construction conditions and standards to protect the public from environmental, water aquifer pollution, fiscal, economic, health, safety, historic-cultural and archaeological damage from oil, gas, geo-thermal, rock and mineral grading, drilling and extraction activities;

WHEREAS, the Executive Agencies' reports will not be available until June 24, 2008, and the findings, standards and remedial measure promulgated by such reports will require an additional five months of analysis by the County staff consultants and officials, including preparation and adoption of appropriate provisions into the County's General Plan, Land Development Code and new Galisteo Basin Area Plan, and to establish a new Special Improvement District, Capital Improvement and Public Service Program collectively to implement State and County recommendations;

WHEREAS, the County will require the engagement of planning, fiscal, economic, water, environmental and engineering consultants and attorneys, to analyze and recommend appropriate planning, fiscal, economic, capital infrastructure and public service availability, environmental, water, health and safety goals, objectives, policies, strategies, standards and conditions related to the adoption and implementation of the

General Plan amendments, a new Galisteo Basin Area Plan, Special Improvement District and Capital Improvement and Public Services Program;

WHEREAS, the County will require extensive hearings and workshops to solicit public input, evaluation and recommendations after the County staff consultants and the Executive Agency recommendations are received on or after June 24, 2008, and the adoption of this Interim Development Ordinance is necessary to ensure the benefits of permitting complete discussion and participation by citizens, concerned groups, developers, operators and property owners who will be affected by consideration of amendments to the General Plan and Land Development Code, adoption of a new Galisteo Basin Area Plan, Special Improvement District and Capital Improvements and Public Services Program, without having a race of diligence with owners filing and submitting applications to grade drill and extract oil, gas, and geo-thermal energy during the formulation and public discussion of the new plans, CIP, Special District and Land Development Code regulations;

WHEREAS, the County requires additional time to identify and/or secure additional dedicated funding for administrative, planning, departmental and special district expenses, attorney's fees, consultant studies, extension of capital improvements and public services, including obtaining financial commitments from the State and other sources;

WHEREAS, given the scope of the issues and areas to be addressed by amendments to the general plan, a new area plan, a capital improvement and public service program creating a special improvement district and implementing amendments to the Land Development Code, twelve additional months, in addition to the initial three month moratorium period, is necessary, essential and reasonable in order to complete a fair and comprehensive planning and public participation process that results in legally and scientifically sound plans, policies and regulations;

WHEREAS, the County may extend the period of time of this Ordinance for a further six months from February 27, 2009, if required to complete and adopt the plans and regulations, after public workshops and hearings;

WHEREAS, County preparation of amendments to the General Plan, the creation of a Galisteo Basin Area Plan, a Capital Improvement and Public Service Program, creation of a special improvement district and amendments to the Land Development Regulations, together with the recommended changes in state statutes, programs and regulations guiding the Executive Agencies pursuant to the Governor's Executive Order, require special protection to eliminate the need for hasty adoption of permanent controls in order to avoid the establishment of non conforming uses or to respond in an ad hoc fashion to specific problems. Instead this Ordinance assures that the planning and implementation process may be permitted to run its full and natural course with widespread citizen input and involvement, public debate and full consideration of all issues and points of view;

WHEREAS, the County has committed necessary staff and outside consultant and legal resources to the development of permanent goals, objectives, policies, strategies and regulations to plan for and protect the Galisteo Basin in order to facilitate its diligent and good faith effort to establish: (1) permanent General Plan Amendments; (2) a Galisteo Area Plan; (3) a Capital Improvement and Public Service Program; (4) creation of a special improvement district and (5) Land Development Code amendments to implement this Ordinance within a reasonable period of time;

WHEREAS, this Interim Development Ordinance constitutes a valid exercise of the County's Zoning and/or police power, consistent with NMSA 1978, § 3-21-1 ("Zoning; Authority of County") and NMSA 1978, § 4-37-1 *et seq.* ("County Ordinances"), and the Smart Growth Environmental and Natural Resource Policies of the General Plan, so that the County may regulate and restrict within its jurisdiction the location and use of buildings, structures and land for trade, industry, residence or other purposes and may prohibit the use of property for purposes declared to be injurious to the health and safety of the community; and

WHEREAS, the Board of County Commissioners has reviewed the Smart Growth, Planning, Water, Environmental, Land Use, Fiscal, Economic, Cultural, Historical, Archaeological and Natural Resource goals, objectives, policies of the existing General Plan and the Land Development Code regulations; the Governor's Executive Order and the findings delineated in this Interim Development Ordinance and further finds that the adoption of this Ordinance will serve compelling county, regional, tribal, state, and federal governmental interests to further protect the health, safety, water aquifers, environment, infrastructure and public services, economic, fiscal, historic, cultural and archaeological resources of the County and the Galisteo Basin and constitutes a comprehensive, rational and appropriate exercise of the County's emergency powers and authority.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO:

Section 1. The area of regulation being enforced by this Ordinance constitutes the area within the red and blue lines shown on the Map of the Galisteo Basin, attached hereto and made a part of this Ordinance as Exhibit "A".

Section 2. During the effective period of this Interim Development Ordinance, the boundaries of the Galisteo Basin Map (Exhibit "A") may be amended by the County by ordinance of the Board of County Commissioners to extend the effective territorial boundaries beyond the Galisteo Basin up to and including the County's full territorial jurisdiction, through the adoption of a new Map replacing Exhibit "A".

Section 3. During the effective period of this Ordinance no new application, nor processing of any existing and filed application, nor issuance of any applicable permit, for zoning and subdivision approval, special use permit, development permit, exploration permit, extraction permit, conditional use permit, special exception, non-conforming use,

area or use variance, grading, or building permit related to drilling or extraction of oil, natural gas, or geo-thermal energy, within the boundaries of the Exhibit “A” Map shall be accepted or processed by the County, its staff, departments, commissions, and/or the Board of County Commissioners until the adoption of permanent plans, a capital improvement and public services program, creation of a special improvement district and amendments to the Land Development Code regulations.

Section 4. The County Manager and County Attorney are directed to have the County’s Growth Management Department begin immediately to engage county staff and expert consultants and attorneys to develop and focus the Growth Management Department’s efforts to develop studies, reports and recommendations relating to the following matters:

A. Consideration of the creation of a legislative overlay zoning district for the territorial area contained within the boundaries of Exhibit “A” for oil, gas, geo-thermal grading, drilling, and/or extraction taking into account comprehensive planning, performance and sustainable environmental standards required to apply the overlay zoning district to a property within the territorial boundaries of Exhibit “A”;

B. Amendment of the General Plan and preparation of a Galisteo Basin Area Plan to incorporate goals, objectives, policies and strategies relating to consideration of the location, timing and sequencing of oil, natural gas, or geo-thermal drilling or extraction use, including but not limited to, consideration of potential impacts to water aquifers, environment, health, safety, fiscal, economic, historical-cultural-archaeological resources, and the adequate provision of public facilities and services necessary to support the operation of any such oil, gas, geo-thermal energy grading, drilling and excavation use;

C. Adoption of a Capital Improvement and Services Program implementing the long term goals, objectives, policies and strategies of the General Plan Amendment and Galisteo Basin Area Plan with respect to provision of adequate public facilities and public services over the life of the Plans necessary to service any oil, gas, or geo-thermal, grading, extraction or drilling use;

D. Adoption of amendments to the Land Development Code with respect to establishing sustainable environmental standards and conditions for building, construction, grading, excavation and drilling of oil, gas, or geo-thermal uses; including implementation of the goals, objectives, policies and strategies of the General Plan amendment, the Galisteo Basin Area Plan, the state Executive Agency and Governor’s recommendations and the findings and purposes of this Ordinance relating to health, safety, protection of private property, water aquifers environmental, historical-cultural and archaeological resources; and to assure the adequate provision of public facilities and public services to support the needs generated by oil, gas, or geo-thermal grading, excavation and drilling use.

E. Creation of a special improvement district within the territorial limits of Exhibit "A" for the assessment to oil, gas, or geo-thermal grading, excavation and drilling uses, the cost of providing for the reasonable and proportionate legal, administrative expenses and expert studies; and for the costs of public facilities and services the need for which is generated by such uses; and

F. Any other and further actions necessary to carry out the purposes of this Ordinance.

Section 5. If any section, subsection, sentence, clause, item, change or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 6. All ordinances or parts of any ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

Section 7. An emergency is hereby declared because of the imminent danger to adjoining property owners, water aquifers, environmental, health, safety, fiscal, economic, cultural-historic-archaeological resources; to remedy deficient public facility and services of the County within the Galisteo Basin by virtue of applications to grade, drill and excavate for oil, gas, or geo-thermal uses within the Galisteo Basin.

Section 8. It is necessary for the protection of the public health and safety of the County that this Ordinance take effect immediately upon recordation.

Section 9. This Ordinance will cease to be of effect by February 27, 2009, or for any period of extension for six months thereafter no later than August 27, 2009.

PASSED AND ENACTED THIS 26th Day of February, 2008.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO**

By: _____
Jack Sullivan, Chair

ATTEST:

Valerie Espinoza, County Clerk

SEAL

Approved as to form:

Stephen C. Ross