

Key Protections Lost Under the New Draft Ordinance

Exploratory oil and gas companies are fully aware that they have leased all of their minerals in Santa Fe County subject to the protections of the current county Mining Ordinance. If the County weakens those protections, then they receive a windfall at the expense of the public and surface owners.

	Existing Ordinance	Draft Ordinance
Water Rights	Requires proof that the applicant possesses sufficient water rights, with proven water availability, to accommodate normal operation and emergency requirements.	No such requirement.
Water Wells	Mining Facility must be located at least 500 ft from any water well.	Oil or gas well must be located at least 200 ft from any water well.
Setbacks	0.5 mile from any residential, institutional, or recreational use.	While it might not have been intended, the practical effect of the setback variance provision is to render the proposed 0.5 mile residential setback absolutely meaningless; the variance provision subordinates the County's regulatory authority to impose a setback to the State's rules on well spacing. The net effect is NO residential setback requirement whatsoever.
Dominant Estate	Mineral owner/lessee and surface owner on a level playing field.	Mineral estate is specified as the "dominant" estate. This characterization is an anachronism that does not reflect the current legal relationship between the mineral owner/lessee and the surface owner under New Mexico law. As a result, the ordinance subordinates the property rights of the surface owner to the mineral owner/lessee.
Master Plan	The required Master Development Plan facilitates a comprehensive analysis of the cumulative impacts of all reasonably foreseeable oil and gas exploration and production activities.	Piecemeal analysis performed on well-by-well basis only. Narrows the analysis in a way that precludes a comprehensive assessment of cumulative impacts associated with oil and gas field development.
Reclamation	The operator must have sufficient water rights to ensure success of all revegetation efforts.	No such requirement

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Approval Process	Multiple levels of review: MPRP, Code Administrator, CDRC and the County Commission. At each level of review, there is the possibility for additional analysis of the application and expert review and comment on the application. The MPRB (Mining Plans Review Board) consists of 9 members, 2 from the general public and 7 from various fields of expertise such as geo-hydrology and ecology and is responsible for reviewing technical components of environmental and impact assessments.	MPRB eliminated from review process. No mention of the CDRC or the Commission in reference to decisions on Oil and Gas permit applications. Ordinance is entirely silent on where permitting authority lies.
Application Process	A new permit must be acquired when the status of the well expands from exploration to extraction. This allows for phased permitting.	No such requirement.
Financial Warranties	County has authority to require a bond that will cover all reasonably foreseeable costs that will be incurred by the operator during and after exploration and production including reclamation costs, remediation costs and surface damage compensation. County may require posted bonds to remain in effect for up to 20 years after cessation of operations. No dollar limit imposed on bond requirement.	\$5,000 per well or \$50,000 blanket bond Countywide. Bond to be discharged when well is plugged and abandoned. Relies on insurance policies, rather than firm bonding requirements. Insurance policies are not likely to pay for foreseeable damages.
Chemical Processing Bond	County may require a special financial warranty in cases where an operator uses toxic or hazardous chemicals in order to assure cleanup, reclamation and repayment for loss, damage, or injury. It is in effect up to 30 years after cessation of operations.	No such requirement.

Additional Concerns

Hydraulic Fracturing	No enforceable County regulation of hydraulic fracturing processes, including the chemicals used in fracturing, the permissible depth of fracturing relative to groundwater, and the degree of induced fracturing allowed.
Monitoring	Oil and Gas inspector position created with far-reaching oversight authority over oil and gas activities in County. No meaningful professional qualification requirements, no conflict of interest prohibition, no prohibition against "revolving door" scenarios where inspector seeks industry employment after serving in a County regulatory role.