



VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
ORDINANCE № 2022-03

ESTABLISHING A NATURAL RESOURCES OVERLAY ZONE IN ORDER TO PROVIDE FLEXIBILITY WHILE PROMOTING SUSTAINABLE DEVELOPMENT AND TO EXPAND THE DEVELOPMENT AND UTILIZATION OF THE NATURAL RESOURCES WITHIN VALENCIA COUNTY

PREAMBLE:

WHEREAS, the Valencia County Board of Commissioners met upon notice of a Business Meeting, duly published, at the Valencia County Administration Building, 444 Luna Avenue, Los Lunas, New Mexico 87031 on Wednesday, May 4, 2022, at 5:00 PM as required by law; and,

WHEREAS, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, and also counties pursuant to NMSA 1978, Section 4-37-1 (1995), have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

WHEREAS, NMSA 1978, Section 4-37-1 *et seq.* (1975) provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and,

WHEREAS, the Board of County Commissioner adopted the Valencia County Interim Comprehensive Zoning Chapter, codified as Section 154.001 *et seq.* in the County Code of Ordinances; and,

WHEREAS, the Valencia County Interim Comprehensive Zoning Chapter this Ordinance is adopted pursuant to NMSA 1978, Sections 3-21-1 to 3-21-26 *et seq.* and applies to the unincorporated lands within the County of Valencia’s jurisdiction; and,

WHEREAS, the pursuant to Section 154-003 the general purpose of the Valencia County Interim Comprehensive Zoning Chapter is “[] to minimize traffic congestion on all streets, roads and public ways within the county's jurisdiction; to secure safety from fire, flooding and other dangers; to promote the public health, safety and general welfare; to safeguard adequate light, and air quality; to prevent the overcrowding of land; to avert the undue concentrations of populations; to facilitate the adequate provisions for transportation systems, water quality, sewerage, schools, parks and other public facilities; to conserve the value of buildings and lands; to advance the goals,


policies and objectives of the comprehensive plan; and to encourage the most appropriate use of lands throughout the unincorporated areas of Valencia County.; and,

WHEREAS, the Board of County Commissioner has determined that the Valencia County Comprehensive Zoning Chapter should be amended to provide for a natural resources overlay zone as set forth below.

NOW, THEREFORE, BE IT ORDAINED by the Valencia County Board of Commissioners that the following provisions shall be enacted to provide for a Natural Resources Overlay District in the County of Valencia.

BOARD OF COUNTY COMMISSIONERS

RESOLVED, ADOPTED, AND PASSED on this 4th day of May 2022.

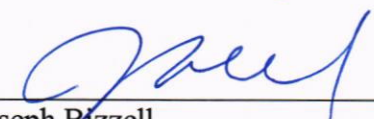


Gerard Saiz
Commissioner, District I

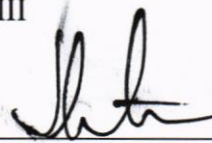
Troy Richardson
Commissioner, District II

NO VOTE


David A. Hyder
Commissioner, District III



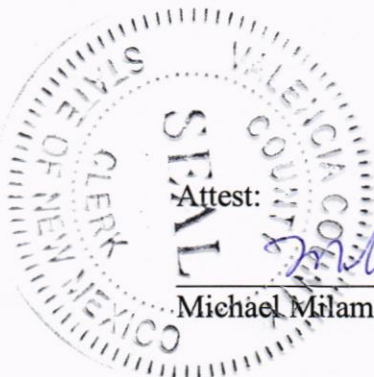
Joseph Bizzell
Commissioner, District IV



Jhonathan Aragon
Commissioner, District V

Attest:


Michael Milam, County Clerk



154.155 Natural Resources Overlay Zone (NROZ)

A. Purpose. The purpose of the Natural Resources Overlay Zone (NROZ) is to provide flexibility while promoting sustainable development and to expand the development and utilization of the natural resources within Valencia County. This zone is intended as a holding overlay zone to allow for future development of property to occur in an organized and sustainable pattern. NROZs should:

1. Promote the use of underutilized land;
2. Further economic development;
3. Promote employment opportunities within Valencia County, and;
4. Help diversify energy production and diversify the local economy.

B. Submittal Requirements. Prior to submitting an application, the applicant shall meet with the County Zoning Administrator to discuss the development concept, the review and approval process and the submittal requirements. The applicant shall prepare a NROZ Site Plan application to submit to the Zoning Administrator. The Zoning Administrator shall review the applications and if the submittal is found to be complete and in accordance with the County codes and guidelines the Zoning Administrator shall schedule the application for a pre-application conference in accordance with Section 154.077.

1. The following information shall be included in the application:

- a. Legal description of the Real Property and indication of gross area;
- b. Nature of the applicant's interest in the Land to be developed, and an agent authorization letter if applicant is not the project owner; Where the natural resources to be developed are subterranean, as in the case of oil, natural gas, hydrogen, or geothermal resources, the applicant must show ownership (or control by lease) of the proposed initial surface drill site or sites and ownership or lease of at least 50% of the minerals within the proposed NROZ area together with a plan to acquire the right to drill and produce the natural resource or resources from the spacing unit or units associated with the initial proposed drill site or sites within the NROZ by utilization of the State's Pooling statute (See, Section 70-2-17 NMSA1978) and/or related regulations and/or by the further lease or purchase of minerals.
- c. Site Conditions; an analysis of the existing site conditions which indicates at a minimum:
 - i. Topographic contours with intervals of no more than two (2) feet, to a distance to one hundred (100) feet beyond the property boundary. Where the resource to be developed is subterranean, and no building is proposed by the applicant within 330 feet of the proposed NROZ's exterior boundary, the applicant may meet this requirement (and any requirement for scale, other topographic minimum intervals, identification of sloping areas or, except at extraction sites, identification of vegetation in Section 154.038 (A)(1) & (3)) by providing a government topographic map or maps even though the contour

intervals are more than two (2) feet. The term "building" as used above shall not be defined to mean drilling equipment or production equipment which applicant proposes to use to extract the natural resource.

- ii. Location and extent of major vegetative cover (in any),
 - iii. Location and extent of perennial or intermittent streams and water ponding areas, including, but not limited to, the location of all wells and springs,
 - iv. Access including ingress and egress to adjacent properties and streets, including, but not limited to the location of all existing and proposed roads to the property and the initial extraction site or sites,
 - v. Existing drainage patterns,
 - vi. A surface plat of the property to be explored or from which natural resources are to be extracted,
 - vii. The approximate location of exploration and extraction points on the surface plat; these extraction points subsequently may be modified based on results of initial drilling. The modification of extraction points (including, but not limited to, increasing or decreasing the number of extraction points and relocating extraction points) within the NROZ may be made simply by notification in writing addressed to the Zoning Administrator,
 - viii. A description of the type of equipment to be used during the exploration and extraction process,
 - ix. The anticipated time frame for initial exploration,
 - x. The location of areas proposed for extraction, materials storage and transmission; these initially proposed extraction points, material storage, gas gathering systems, water disposal well or wells, and transmission pipeline locations subsequently may be modified based on the results of the initial drilling,
 - xi. Other information considered relevant by the applicant or County staff.
- d. A Site Plan in accordance with Sections 154.035-154.040. Where relevant, plans indicating the alignment and sizing of water lines, sanitary sewers, and storm sewer (if any), as well as easements for all Utilities. Also indicated shall be the proposed surface drainage patterns. Where the natural resource to be developed is subterranean it shall not be necessary to deal with classification of soil types within the NROZ or detail their suitable uses;
- e. Preliminary architectural plans indicating the elevations and exterior finishes of proposed buildings (if any);
- f. Applicants shall provide a form of surety, either through escrow account, bond, or otherwise at the discretion of Valencia County, to cover the cost of repair of any county roads which may be damaged or diminished in quality due to activities; the form of surety may not exceed that imposed on other

industrial activities which have or likely will create comparably damage to or comparable diminishment of county roads.

2. Public Hearing and Decision by Planning and Zoning Commission.

a. Notice of Pubic Hearing.

The Zoning Administrator shall prepare and publish a notice of public hearing in accordance with Section 154.077.

b. Review.

In considering the application, the Planning and Zoning Commission shall consider the site conditions; the interrelationship with the plan elements to conditions both on and off the property; the impact to the existing and anticipated traffic and parking conditions; pedestrian and vehicular ingress and egress; building location and height; landscaping or re-vegetation as necessary; lighting; grading; signage; screening; setbacks and other related matters.

- a. The Planning and Zoning Commission shall consider oral or written statements from the applicant, the public, county staff or its own members. The Commission may question the applicant and approve, disapprove, or table NROZ and Site Plan. The application may not be continued for more than two (2) regular meetings of the Planning and Zoning Commission without the consent of the applicant.
- b. If the Planning and Zoning Commission determines that the proposed NROZ and Site plan will not be detrimental to the health, safety or general welfare of the community nor will burden public facilities or services and at the same time is in harmony with the purposes and intent of this Ordinance, the Planning and Zoning Commission may recommend approval of the NROZ and Site Plan along with the necessary conditions to fulfill the intent of this Ordinance. Any determination that the proposed NROZ will be detrimental to health, safety or general welfare must be specific in nature and must be related to the proposed location of the NROZ and cannot be based on generic and speculative harms. In making this determination, the Planning and Zoning Commission must also consider the advantages from the successful development of the natural resource at the proposed NROZ site, including but not limited to the increased economic vitality of county, the potential jobs created and the potential increase in county tax revenue.
- c. The Planning and Zoning Commission shall forward its written recommendation to the County Commission, which recommendation must address, at minimum, the criteria outlined in Section 154.061(C) and the criteria outlined above.

3. Public Hearings and Decision by the Board of County Commission.

a. Notice of Public Hearing.

The Zoning Administrator shall prepare and publish a notice of public hearing in accordance with Section 154.077.

b. Review.

In its deliberations on the proposed NROZ and Site Plan, the County Commission shall consider oral or written statements from the applicant, the Valencia County Planning and Zoning Board, the public, county staff or its own members. Following the public hearing, the County Commission may approve the NROZ and Site Plan application, approve the applications with modifications or conditions, deny the applications or continue the hearing. The application may not be continued for more than two (2) business meetings in succession without the consent of the applicant.

c. Review criteria.

The County Commissioner shall review the application in accordance with the criteria outlined in Section 154.061(C), and the additional criteria outlined above.

C. Schedule of Natural Resources Project.

1. Upon submittal of the NROZ application, the applicant shall also submit a Natural Resources Project schedule. The development of the Natural Resources Project must begin within twenty-four (24) months from either of the following:

- a. if no appeal is timely filed in district court to appeal the Board of County Commissioners approval of the NROZ application, then from the date of the expiration of such time period to appeal or
- b. if an appeal is timely filed in district court to appeal the Board of County Commissioners approval of the NROZ application, then from the date of the expiration and exhaustion of the appeal process.

A request for an extension of the twenty-four (24) month period within which to commence development may be administratively extended administratively for a one (1) year period upon receipt of an application for extension at least sixty (60) days prior to the expiration of the twenty-four (24) month period for the following bases reasons:

- a. Final lender approval if money is being borrowed; or
- b. Delay caused by the failure of state or federal regulatory authority to timely address, or by any party's continuance for any hearing on, drilling applications or pooling applications and/or a de novo hearing or any other appeal of any pooling order which causes a delay in drilling.
- c. State or Federal Laws changed which affected the project, and amended applications or additional documentation is required before the project may begin; or

- d. A Federal, State or Local regulatory body requires additional documentation prior to approval or
- e. Unexpected shortages of basic materials such as drill pipe necessary for the project or service contractors such as drilling contractors necessary to carry out the anticipated work.
- 2. The applicant may propose to develop the Natural Resources Project in phases. Such phasing schedule will be submitted with the application to the County for review and approval by the Board of County Commission. Each phase will be administratively approved without the consent of the Commission.

D. Amendments to NROZ Approval.

1. Minor Changes.

Minor changes in the location and placement of buildings and/or structures may be authorized by the Zoning Administrator, including but not limited to changes due to when unforeseen circumstances such as engineering requirements dictate such a change, or where the natural resource to be produced is from a subterranean resource and the initial exploratory drilling renders information suggesting that future extraction points should be modified, change of the extraction points (including increasing or decreasing the number of extraction points), change in the type(s) of well(s) to be drilled and/or change in the size and/or location of any drill site or spacing unit, provided that such changes or amendments:

- a) Do not substantially alter the road design or layout;
- b) Do not substantially alter the original conditions for approval;
- c) Involve no changes in permitted use of the property;
- d) Do not change the general character or content of an approved plan in a material way;
- e) Have no adverse effect on adjoining or surrounding property;
- f) Do not result in any substantial change of major external access points;
- g) Do not decrease the minimum specified yard setback;
- h) Have no greater adverse effects on traffic operations than the original plan.

2. Major Changes.

All changes except minor changes are major changes. Applications for major changes shall follow the procedures for approval of the NROZ and Site Plan.

E. Denial of NROZ Application.

If an application for a Natural Resource Overlay Zone is denied, no new application for a NROZ by the same applicant on the same site or portion of the site may be filed prior to one (1) year after the date of denial.

F. General Requirements and Standards.

1. Modification of Restrictions of the Underlying Zoning District(s).

- a. A NROZ may be used to modify the zoning restrictions of the underlying zoning district of a parcel, in accordance with the requirements of this section. The requirements of this section are in addition to the application requirements set forth in section 154.077 and 154.035-154.040. If there is a conflict between the requirements or provisions of this section and those of sections 154.077 and 154.035-154.040, the requirements or provisions of this section shall govern and supersede those of the other sections.
- b. The NROZ designation, if approved by the Board of County Commissioners, shall be considered a holding zone, wherein the underlying zoning of the site shall stay in effect until the removal and reversion of the NROZ by the Commission or by operation of this Ordinance. The reversion of the NROZ shall occur by operation of law if not commenced in accordance with Natural Resources Project Schedule detailed herein, or alternatively upon application by the project owner(s), their representative, or the County. Where the natural resource to be developed within the overlay zone is subterranean, and the proposed subterranean development and the underlying zoning development of the site are compatible, the Board of County Commissioners shall recognize that compatibility and allow both to proceed.

2. Natural Resource Overlay Zone Continues During Life of Production

Where a NROZ has been created and from a subterranean source the applicant or project owner of the NROZ has drilled a productive well or wells on the NROZ, the NROZ shall not terminate or be terminated during the life of production from the well or wells. The NROZ shall continue in existence so long as production from the NROZ continues. Further, the temporary cessation of production from an NROZ shall not cause the termination of the NROZ so long as the applicant or project owner is, in good faith, seeking to reestablish production.

3. Ownership

- a. The land proposed for the NROZ may be owned by multiple owners if all parties with interests in such land execute the NROZ Site Plan application. A NROZ shall not be approved unless the applicant(s) has/have acquired actual ownership or executed a long-term lease (ten (10) years or more) for all the property composing the proposed NROZ. However, where the natural resources to be developed are subterranean, as in the case of oil, natural gas, hydrogen, or geothermal resources, the applicant must show surface ownership, or control by lease, of the proposed initial surface drill site or sites and ownership or lease of at least 50% of the minerals within the proposed NROZ area together with a plan to acquire the right to drill and produce the natural resource or resources from the spacing unit or units associated with the initial proposed drill site or sites within the NROZ by utilization of the State's Pooling statute, NMSA 1978, Section 70-2-17 and/or related regulations and/or the further lease or purchase of minerals. Where the natural resource to be developed is a subterranean resource, a lease need not be ten

(10) years, but it must contain a lease provision continuing the lease during the life of production produced from the lease.

b. For purposes of this section, project owner or owners, or any assignee of the project owner or owners for all or any portion of the Natural Resources Project, shall be defined as the applicant for the purposes of development of subterranean natural resources.

4. NROZ Regulations; Definition

Exclusion. Land which is located within the boundary of the Middle Rio Grande Conservancy District defined as the *Greenbelt* may not be included within an NROZ.

“Natural Resources Project” means a project to extract timber and any metalliferous or nonmetalliferous mineral product, combination or compound, and to extract oil, natural gas, hydrogen, and/or geothermal resource, liquid hydrocarbon, individually or any combination thereof, or carbon dioxide.

5. Front, Rear and Side Yard Building Setback Regulations.

Natural Resources building and equipment setbacks from all property lines which form the perimeter of the boundaries of the NROZ or from all interior and exterior rights-of-way shall be a minimum of thirty (30) feet. The siting of the surface hole location of any well for production of any subterranean resource shall be at least 500 feet from an occupied permanent residence unless the operator obtains written permission from the owner of such occupied permanent residence to site such well closer.

6. Operation and Maintenance Requirements.

The property shall be maintained by the owner(s) of the property and/or the operators of the NROZ in such a way that the property shall be clear of debris, weeds, trash etc. However, where the natural resource being produced is a subterranean resource, only the drill sites and production sites are required to be maintained free of debris, trash and weeds. The equipment shall remain in good repair and working order. Within one hundred and twenty (120) days, unless sooner is warranted by the specific circumstances, malfunctioning, equipment in disrepair or inoperable equipment shall be removed from the NROZ or to a designated equipment yard within the NROZ, provided such a yard is permissible in the underlying zone. The situation, operation, and maintenance of all equipment must be consistent with all applicable Federal, State and local laws and regulations.

7. Environmental Standards

- a. All excavation, including blasting, processing, maintenance and truck traffic shall be conducted in a manner that minimizes the adverse effect to persons and activities on adjoining property due to noise, dust, odor, vibration or surface water pollution or erosion.

- b. Any mining operation shall not exceed state or federal standards for noise emission, air contamination and water quality standards. Additionally, federal environmental quality permits shall be obtained for each site if required by federal law.
- c. Excavation which results in ponding shall be deep enough to prevent stagnation and development of mosquito-breeding areas or shall be backfilled with a material that will not impair groundwater quality. However, where the natural resource being produced is a subterranean resource the drilling for which and the extraction of which is governed by state law and/or regulations such state law and/or regulations shall supersede this provision.

8. Roadways

(a) All access to a Natural Resources Project site shall be by a route or routes approved by the Commission and shall be constructed and maintained by the applicant in a manner as to eliminate, as far as practical, noise or dust that adversely affects persons living in the vicinity, or crops or livestock being raised in the vicinity.

(b) Approval of road routes shall be based on the following criteria:

- 1. The applicant presents evidence demonstrating roads, bridges and culverts on the routes to and from the proposed facility are able to support the projected loadings;
- 2. Management techniques used to protect against noise, odor, dust, litter, and dangerous or hazardous conditions on the proposed routes are mitigated to the maximum extent available;
- 3. Acceptable load limits placed on local roads are not, or will not be exceeded by the proposed use; and
- 4. Based upon weight bearing capacities of any access roads on any of the proposed routes, the county determines that improvements to the roads designated as routes must be made by the applicant before the proposed use of the route begins.

9. Site operation and safety.

(a) All excavation, processing and stockpiling of mineral resources shall take place under conditions which will provide for the reclamation of the site for future uses and will protect the safety of the public.

(b) If planned drilling is within one quarter mile of a home or homes, unless the homeowner or homeowners otherwise consent(s) in writing, all work in preparation of the site for drilling shall be conducted between the hours of 7 a.m. and 7 p.m.

(c) Unattended well sites shall be enclosed with a six (6) foot chain link fence with a locked gate.

(d) All extraction operations shall be in compliance with state and federal standards on noise, vibrations and emissions.

(e) Off-street parking shall be provided at a ratio of 3 spaces per well site.

(f) Light rays shall be directed or shielded to confine direct rays to the site as required by the Night Sky Protection Act, NMSA 1978, Section 74-12-1 et seq.

(g) The drilling site and access roads to the site shall be treated to reduce dust and mud.

(h) Blasting shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. No blasting shall occur on Sundays or federal or state holidays. In the event the operator cannot comply with this restriction due to unforeseen circumstances, the operator may exceed the limitations set forth above; provided that in no event shall the owner or operator blast outside the restrictions set forth above more than four (4) times in one (1) calendar year.

(i) Prior to a blasting operation, the operator shall be responsible for notifying adjacent property owners as to the date and approximate time of the blasting activity.

9. Conflicts

a. If there is a conflict between the requirements or provisions of this Section and those of any other part of the Interim Comprehensive Zoning Chapter of Valencia County, the requirements or provisions of this Section shall govern and supersede any of those of any other part of Chapter 154.

b. If there is a conflict between the state law and/or regulations regarding subterranean resources (including but not limited to oil and gas) and the Interim Comprehensive Zoning Chapter of Valencia County (Chapter 154), then such state law and/or regulations shall govern and supersede any such requirement or provision of Chapter 154.

10. Spacing and Proration Units

Pursuant to the New Mexico Oil and Gas Act (Chapter 70, Article 2 NMSA 1978) and its regulations the size of spacing units have been determined for vertical and horizontal oil and gas wells. A portion of such spacing unit may lie outside of the boundary of the NROZ but any drilling and/or completion of such well must occur only within the boundary of the NROZ.

11. Infill and Water Disposal Wells

If the natural resource being developed is subterranean and state law and/or regulations authorize the drilling of water disposal wells or field infill wells necessary to develop the subterranean natural resource, this provision shall accommodate that drilling.

G. Reclamation.

As an express condition of the grant of the NROZ, the applicant agrees to the following:

1. If the applicant ceases operation of the Natural Resources Project or begins, but does not complete, construction of the project, the applicant shall restore and/or reclaim the site according to the reclamation plan. A temporary shutdown of the Natural Resources Project for up to one year, shut-in well(s), a temporary abandonment of any well(s) or a temporary cessation of production will not initiate this provision.

2. At the time of issuance of application for the construction of the Natural Resources Project, the owner shall provide financial security in the form and amount acceptable to Valencia County to secure the expenses of dismantling and removing structures and to reclaim the parcel, and enter into a performance agreement with the county for any improvements required pursuant to the project. A project owner is required to notify Valencia County immediately upon cessation or abandonment of the operation. The owner shall have twelve (12) months in which to dismantle and remove the structures and equipment from the property. A project owner may apply for a ninety (90) day extension of the decommissioning time, provided such application is made at least sixty (60) days before the end of the construction in decommissioning of the plant. However, where the natural resource which was produced was a subterranean resource the drilling for which and the extraction of which is governed by state law and/or regulations, the state law and/or regulations shall govern financial security or assurance and site reclamation requirements and the plugging of wells and shall supersede these provisions regarding reclamation. If that state law and/or regulations required the owner to provide to the state a plugging bond covering the plugging of the well or wells and remediation of the drill site or drill sites, the bonding provided by the owner to the state shall substitute for the financial security required in this paragraph.

3. Any parcel or site used for a Natural Resources Project shall be reclaimed in accordance with the site operation and reclamation plan on file with and approved by the County.

4. The approved reclamation plan shall be implemented in accordance with the schedule contained therein showing the planned order and sequence of the reclamation.

5. The approved reclamation plan shall require all excavations to be backfilled, contoured or terraced or put to a use shown on the reclamation plan which is compatible with the final depth and slopes within the excavation site.

6. The approved reclamation plan shall require topsoil be saved and stored in a manner as to prevent erosion, and that the topsoil shall be replaced to at least the depth of the original overburden, or to a depth adequate to achieve the approved reclamation use.

7. The approved reclamation plan may, in the county's discretion, provide for reclamation of portions of the site prior to total exhaustion of the resource found on the site.