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BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF BERNALILLO:

Section 1. Intent. This ordinance approves and accepts the annexation of real property into the corporate boundaries of the Town of Bernalillo, as requested in the Fisher Sand and Gravel Annexation Petition.

Section 2. Legal Requirements Met. The Annexation Petition and Annexation Map of Fisher Sand and Gravel having been presented to the Governing Body of the Town of Bernalillo, pursuant to the petition method of annexation, in full compliance with state law as set forth in §3-7-4, §3-7-17, and §3-7-18, NMSA 1978, the Governing Body finds as follows:

- A. The Annexation Petition seeks to have annexed into the corporate boundaries territory that is contiguous to the Town of Bernalillo.
- B. The Annexation petition is signed by the owners of a majority of the number of acres in the contiguous territory and is accompanied by a map that shows the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the Town of Bernalillo.
- C. The Annexation Petition has been presented for consideration and is recommended for approval pursuant to the standards and requirements for annexation set forth in all applicable laws and ordinances.

Section 3. Consent and Approval. The Governing Body hereby annexes the property described in the Fisher Sand and Gravel Annexation Petition and hereby consents to and approves the annexation of such contiguous territory being more particularly described in the legal description of the contiguous territory attached hereto as **Exhibit A** and incorporated herein by reference in its entirety.

Section 4. Zone Map Amendment. Purpose: That the property described on Exhibit A attached hereto consisting of approximately 43.4705 acres, more or less, shall be annexed into the Town of Bernalillo and zoned as follows:

- A. Conditional uses as approved in the M-1 zoning district as to the entire annexed property identified on Exhibit A attached hereto.
- B. In addition to the uses M-1 zoning designation approved in Paragraph A above, the existing gravel mining operation on the annexed property is hereby granted a conditional use permit and shall be allowed to continue on the entire annexed property subject to the following limitations:
 - 1. All gravel mining on the annexed property shall cease seven

- 87 (7) years after the date of this Ordinance; provided that, all gravel
88 mining on the portion of the annexed property identified as Phase
89 1 on Exhibit B attached hereto shall cease two (2) years after the
90 date of this Ordinance. For the purpose of this ordinance, gravel
91 mining means the excavation, removal, processing (grinding,
92 separating and washing) and marketing operations with regard to
93 sand and gravel. Sales of sand and gravel mined from the
94 annexed property may continue under the conditional use permit
95 for 2 years after mining operations have ceased.
- 96 2. There shall be no asphalt batch plant on the annexed property.
 - 97 3. Hours of operation shall be limited to 7:00 am through 5:00
98 pm, Monday through Friday.
 - 99 4. The mining operation on the annexed property shall comply
100 with any applicable environmental regulations.
 - 101 5. Within one (1) year after mining has ceased upon the annexed
102 property, the then landowner shall reclaim the annexed property
103 in accordance with the Reclamation Plan for the annexed property
104 attached hereto as Exhibit C. Within ninety (90) days after the
105 date of this Ordinance, the applicant shall deliver to the Town of
106 Bernalillo a Reclamation Performance Bond in a form acceptable
107 to the Mayor or his designee securing the completion of the
108 reclamation work required by the Reclamation Plan and this
109 Ordinance.
 - 110 6. If the amount of water purchased from the Town of Bernalillo
111 for the mining operation in any calendar year exceeds the
112 maximum amount allowed by Section 22(D) of Town's
113 Subdivision Regulations, then the landowner shall compensate
114 the Town for the cost to prepare a water budget pursuant to, and
115 in compliance with, the applicable provisions of the said Section
116 22(D).
 - 117 7. The Town of Bernalillo shall not be responsible for the cost of
118 extending water or wastewater infrastructure, as they relate to
119 Town of Bernalillo design standards, to the annexed property.

- 121 **Section 5. Findings.** The following are the findings for Annexation and Zoning approval:
122 **A.** All state statutory requirements for approval of annexation have been
123 met.
124 **B.** The zoning designation and uses approved for the annexed property
125 as stated in Section 4 hereinabove are in conformance with the Town of

126 Bernalillo Comprehensive Plan and with all applicable Town zoning
127 ordinances.

128
129 **Section 6. Severability Clause.** If any section, paragraph, clause or provision of this
130 Ordinance, or any section, paragraph, clause or provision of any regulation
131 promulgated hereunder shall for any reason be held to be invalid, unlawful or
132 unenforceable, the invalidity, illegality or unenforceability of such section, paragraph,
133 clause or provision shall not affect the validity of the remaining portions of this
134 Ordinance or the regulation so challenged.

135
136 **Section 7. Compiling Clause.** This Ordinance shall be incorporated in and compiled as part of
137 the Revised Ordinances of the Town of Bernalillo.

138
139 **Section 8. Effective Date. This Ordinance becomes effective ten days after adoption.**

140
141 **ADOPTED THIS 12th DAY OF JANUARY, 2015.**
142 Mayor Torres swore in those wishing to speak against the project.

143
144 Janet Cunningham-Stephens Planning and Zoning Director Presented the following:
145 *January 12, 2015 (see December 22, 2014 – tabled for readvertising due*
146 *to change in ordinance to add zoning/conditional use permit)*

147
148 **Subject:** Fisher Sand and Gravel Annexation
149 **Property Address:** 30A Frontage Road East

150
151 **Applicant/s:** Fisher Sand and Gravel

152
153
154 The applicant is requesting the annexation, initial zoning, and a conditional use permit on the
155 subject property containing 43.4705 acres, more or less. This meeting follows several others that
156 have been held for this same purpose. During the discussion of the case at the hearing on
157 February 24, 2014, the Town Council had several comments/requirements. They were:

- 158 1. How is the operation being defined? Is it mining or grading?
- 159 2. What is the timeframe for gravel extraction on the property?
- 160 3. What is the proposed zoning of the property?
- 161 4. The Town needs a Reclamation Plan for the property.
- 162 5. The Town needs a Reclamation Performance Bond for the property.

163
164 A proposed Ordinance has been prepared by the Town’s legal counsel and the applicant’s legal
165 counsel and is included in the packet as Ordinance 286.

166
167 I would like to turn the presentation over now to the applicant and their agent, Lastrapes,
168 Spangler and Pacheco.
169
170 Matt Spangler Agent for Fisher Sand and Gravel. Fisher is a general contractor that does business in New
171 Mexico. The request is for the property to be annexed of 43.4705 Acres zoned M-1 Zoning with a
172 conditional use permit for mining 7 years on the property. We have come before previously and have been
173 asked to provide more information and made several changes per the request of staff. We have worked
174 with staff and the home associations of some neighbors to set some limits on the Ordinance. Hours of
175 operation will be 7:00 a.m. to 5:00 p.m. Monday –Friday. Also, expressed that there will be no batch plant
176 on the property which was a concern of staff. A reclamation plan has been submitted to staff which
177 commits Fisher Sand and Gravel to return property as stated in the plan. Once the ordinance is approved
178 our insurance company will issue the reclamation bond for the property. We will also work with staff on a
179 water budget if the property exceeds the water usage. All this is written out in the ordinance. The location
180 will provide industrial and commercial development that is on the east side of the freeway. It is removed
181 from other types of development. We believe this would be a good annexation for the Town of Bernalillo.
182 We would ask for you approval of the annexation.
183
184 Councilor Dominguez stated her concerns were on the time frame of the development.
185
186 Matt Spangler stated there have been several time limits discussed at the last meeting the time frame was
187 15 years we currently are requesting 7 years that is the shortest time frame the gravel can be removed from
188 the property given the time limitation of 7:00 a.m. to 5:00 p.m.
189
190 Councilor Dominguez asked that if project is phased out will the pond be done in 3 years.
191
192 Matt Spangler stated that is correct the area that will mined is the area for the pond. It will take the full 7
193 years to mine the property assuming the standard use of gravel. .
194
195 Councilor Dominguez stated that she knows that when a property is developed a drainage plan is done for
196 the property.
197
198 Matt Spangler stated that the primary usage of the pond will be for flood control for the Town of Bernalillo
199 with will be developed by Eastern Sandoval Flood Control Authority. The drainage of the property will
200 flow into that pond as well.
201
202 Councilor Jaramillo asked how is the Town going to monitor the water usage for the property.
203
204 Janet Cunningham-Stephens stated what is normally done is a water budget is done for the property by our
205 water consultant. My understanding is water will be brought in by a water truck for mining.

206 Matt Spangler stated the use of water would be for dust abatement. The water would come from the Town
207 of Bernalillo or other areas. If we exceed that minimum amount we would then come before the Town to
208 obtain a water budget. We do not know right now if we will go above the amount of water required.

209
210 Mayor Torres stated that they would be treated just like any other Commercial Development that has come
211 before the town to obtain water rights.

212
213 Andy Edmondson Public Works Director stated that Fisher Sand and Gravel would be given a fire hydrant
214 water meter to draw water from our system it would be billed monthly. This would show the water usage
215 every month.

216
217 Councilor Sisneros asked how many acres was going to be for the ESCFCA ponding.

218
219 Matt Spangler stated 7 ½ acres.

220
221 Councilor Prairie asked if after the 7 years the mining is not complete would you come back for an
222 extension to mine the property.

223
224 Mayor Torres stated that for the conditional use permit it is required the staff review yearly to insure
225 compliance of the permit.

226
227 Councilor Prairie stated it was mentioned that water would be brought in from other places where would
228 that be.

229
230 Matt Spangler stated there are wells available in Algodones and one on the property for water.

231
232 Councilor Prairie asked what if there was not a boom in construction and you are in the middle of mining
233 the hill and the 7 years is up how are you going to return the property to the Town.

234
235 Matt Spangler stated that in the reclamation plan is how the property would be returned to the Town.

236
237 Councilor Dominguez asked where the gross receipt taxes for the sale of gravel go to.

238
239 Matt Spangler stated it is at point of sale.

240
241 Mayor Torres asked on Section B the statement “ is recognized as a pre-existing use formerly allowed by
242 Sandoval County” should be deleted as far as the Town is concerned it is not a pre-existing use whether or
243 not it was. I have conflicting information whether or not the County did allow mining on that property. I
244 am concerned that is on the ordinance and it has no meaning to the Town.

245

246 Chris Perez Town Attorney stated that item can be deleted

247
248 Mayor Torres asked one item that he is concerned is the ponding area is 3 year would you change that to
249 two years.

250
251 Dave Olson stated yes that could be possible.

252
253 Mayor Torres stated that on B1) related operations could be explained.

254
255 Matt Spangler stated that is the operation of sales, grinding, washing and separating the gravel.

256
257 Chris Peres stated that could read “for the purpose of this ordinance, gravel mining means the excavation,
258 removal, processing (grinding, separating and washing) and marketing operations with regard to sand and
259 gravel.

260
261 Mayor Torres stated on the next line Sales of sand and gravel mined from the annexed property may
262 continue until such material is fully sold. I think the end date should be in there.

263
264 Matt Spangler stated M-1 designation allows sales. There will be some material that will need to be sold
265 after the seven years.

266
267 Chris Perez stated that there is a plan to reclaim the property on the reclamation plan.

268
269 Matt Spangler stated there may be still some product left to be sold.

270
271 Mayor Torres stated he is not comfortable with an open ended date. The property needs to be reclaimed
272 with no material on the property.

273
274 Matt Spangler stated would a two year time limit be reasonable.

275
276 Mayor Torres stated that would be agreeable.

277
278 Mayor Torres stated on section 5 if the word “substantially” could be deleted.

279
280 Matt Spangler stated yes.

281
282 Mayor Torres stated on section 7 it states the Town of Bernalillo shall not be responsible for the cost of
283 extending water or wastewater” does it make a difference.

284
285 Matt Spangler stated that someone else may come along and develop near the property and we do not want

286 to be responsible for developing the infrastructure for someone else.

287

288 Mayor Torres stated that the wording also had to be reworded on item 7.

289

290 Matt Spangler stated that anything having to do with the project would be the responsibility of Fisher Sand
291 and Gravel.

292

293 Andy Edmondson stated that it should read “as they relate to Town of Bernalillo design standards, to the
294 annexed property.

295

296 Mayor Torres swore in those individual wishing to speak for or against Ordinance #286.

297

298 The names of the individuals that spoke and were against Ordinance #286 were Ed Majka, Chris Paul, and
299 Mann Mandelow.

300

301 The Concerns of those that spoke were as follows;

302

- Impact on Gravel Pits on Residential Property Values

303

- Air Pollution from Dust

304

- Increased Traffic during commuter hours

305

- Violations in other communities Fisher Sand and Gravel has operated

306

- How will the Town regulate Fisher Sand and Gravel

307

- Length of Time of Operation be reduced to 5 years

308

- Noise Levels

309

310

311 James Pikes concern was from the Water and Soil Conservation and would like to know if they were going
312 to recycle some of the water they used on the project. We will have 5 federal monitors for our water and
313 contamination in the river there will also be fines for contamination to the river.

314

315 Kelly Fetter is in favor of Ordinance #286 his property is in the Town of Bernalillo on Hill Road has been
316 flooded by the two box culvert that are east of MCT property. The ponding will help flooding on his
317 property. The gentleman that spoke about the MS4 permit is correct with the monitoring and fines. The
318 pond would help the Town comply with the regulation of permitting for the EPA regulation by having the
319 pond on that property. There is a lot of the discussion about how long this development will take. It is
320 important for people to be mindful that we have had three construction projects that took place on 550 to
321 Tramway. The gravel there on the property to construct the 7 ½ acre pond would have been more than
322 enough for those projects if they would have been allowed to progress and mined. This would not be a
323 non-issue. John Koller was not able to attend this evening. He and I are in full support of this project and
324 the pond and exercise their capitalist right in our county to receive some benefit from land that they own.
325 Folks need to think if this is sold to the property owners on the South it becomes tribal land and we have

326 no say so. We can be shielded by the pond for the MS-4. As a resident of Placitas and a resident of
327 Bernalillo I support it.

328
329 Larry Blair spoke in favor of Ordinance # 286 stated the pond would be on the south end of the property. It
330 would be 45 acre feet capacity it would be significant to the run off that comes off that area. A 100 year
331 event is 812 cubic feet of water. By building the pond it would improve the situation. Last summer two
332 floods came through there. This would go a long way of solving that.

333
334 Chris Perez read the changes to be made to Ordinance #286

335
336 Item B strike out “recognized as a pre-existing use formerly allowed by Sandoval County is”

337
338 B1) on line 7 (grinding, separating and washing) and marketing, line 8 strike “related”, line 10 strike
339 “until such material is fully sold” add under the conditional use permit for 2 years after mining operation
340 have ceased.

341
342 B5) on line 3 strike “substantially”

343
344 B7) on line 2 add “as they relate to Town of Bernalillo design standards”

345
346 Councilor Jaramillo moved to adopt Ordinance #286 Extending and Increasing Corporate Limits
347 of the Town of Bernalillo with amended changes to Ordinance #286. The Motion was seconded
348 by Councilor Sisneros and the motion carried unanimously.

349
350 Roll Call Vote

351 Councilor Dominguez Yea

352 Councilor Jaramillo Yea

353 Councilor Sisneros Yea

354 Councilor Prairie Yea

355

356 **APPROVAL OF MINUTES:6a) Regular Meeting of December 22, 2014**

357 Councilor Dominguez moved to approve the minutes of December 22, 2014 as presented. The
358 motion was seconded by Councilor Jaramillo and the motion carried unanimously.

359

360 **NEW BUSINESS: 7a) Discussion Consideration, Action and Adoption of Resolution**
361 **1/12/15 Dissolution of Memorandum of Agreement to Host the New Mexico Wine Festival**
362 **at Bernalillo. Presenter: Maria Rinaldi**

363

364 RESOLUTION 1-12-2015

365 Dissolution of Memorandum of Agreement to Host the New Mexico Wine Festival at Bernalillo