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ORDINANCE 001-2012

AN ORDINANCE SETTING FORTH EMERGENCY PREDATOR-HUMAN INCIDENT PROTECTIVE MEASURES REVISEING CATRON COUNTY ORDINANCE NO. 001-2007

WHEREAS, on February 15, 2006, the Catron County Commission passed Resolution 33-2006, Declaration of Catron County State of Economic and Agricultural Emergency; and,

WHEREAS, on January 24, 2007, the Catron County Commission passed *Resolution 036-2007, Emergency Wolf-Human Incident Protective Measures*; and,

WHEREAS, on April 18, 2007, the Catron County Commission passed *Amended Catron County Ordinance 001-2007: An Ordinance Setting Forth Wolf-Human Incident Emergency Protective Measures*; and,

WHEREAS, the Catron County Commission finds and determines that these emergency measures thus far have provided some relief to predator-human encounters; the County realizes that since human incidents with wolves and other predations are increasing rather than decreasing; since the risk of wolf attacks on humans has become more likely as human/wolf incidents increase, additional emergency measures are necessary for the protection of the health and safety of the in Catron County; and, these escalating incidences include human suffering, loss of income, loss and damage to private property, and disruption of the normal functioning of government and communities in Catron; and,

WHEREAS, the Catron County Commission finds and determines that the U.S. Fish and Wildlife Service (“USFWS”) actions to address Mexican Gray wolf threats to human

settlements, households and residents of the county are not effective in reducing and eliminating these threats to human populations; and,

WHEREAS, the Catron County Commission finds and determines that all predators can pose serious threats to human settlements, households and residents of the county; and,

WHEREAS, the Catron County Commission desires to increase its ability to protect its citizens from imminent threat from Mexican wolves; and,

WHEREAS, the County Commission has filed petition permits to “take” problem wolves without any response from USFWS; the USFWS has refused Catron County’s request for legitimate participation on wolf related National Environmental Policy Act (“NEPA”) assessment teams; the USFWS has rejected wolf impacted rancher requests for Takings Implications Assessments (“TIA”); the USFWS has not responded to the County’s well documented psychological documentation by licensed helping professionals; the USFWS has not acknowledged or notified Catron County or its residents of the presence of wolves; and, the USFWS has not promulgated a policy related to habituated wolves; and,

WHEREAS, many experts on predators, including wolves, can show that habituated predators may cause imminent danger to the Citizens of Catron County because these predators may have lost their fear of humans; and,

WHEREAS, Catron County Commission has a fiduciary responsibility under its statutory police powers to protect the health, safety and welfare of its residents; and, the County reserves the right to take whatever actions necessary to do so; and,

WHEREAS, NMSA 1978, § 4-27-1 provides that all counties are granted “...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 any county or its inhabitants. The board of county commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties”; and,

WHEREAS, NMSA 1978, § 4-37-2 provides that county ordinances are effective within the boundaries of the county, including privately owned land or land owned by the United States; and,

WHEREAS, the USFWS final rule implementing the introduction of the experimental wolf population allows Mexican Gray Wolves (“wolf”) to be “taken” in certain instances. See 63 C.F.R. §§ 1752, 1759; and,

WHEREAS, the USFWS, New Mexico Game and Fish Commission, Arizona Game and Fish Department, APHIS, the U.S. Forest Service and others, in a document called *Mexican Wolf*

Encounter Safety Tips, states that “if in imminent danger, do what is necessary to protect yourself, your family, or the lives of others”; and,

WHEREAS, the County Commission finds and determines that wolf and other predator-human encounters are threatening family households, exposing children to health and safety risks with confirmed psychological trauma to children and rural families; and, these increasing incidents may result in “imminent danger to individuals, families and the lives of other” within Catron County; and,

WHEREAS, the Catron County Commission desires an emergency response that is more effective, direct and immediate, when asked by its residents for assistance when the residents are threatened by predator encounters, and require immediate protection for their health, safety and welfare; and, the problem has progressed beyond the capability of regular personnel and resources to mitigate the threat and actual damages, requiring additional emergency measures.

NOW THEREFORE, BE IT RESOLVED, the Board of Catron County Commissioners does hereby reaffirm the State of Emergency due to increasing wolf-human encounters as well as due to other predators.

BE IT FURTHER RESOLVED, the Board of Catron County Commissioners hereby adopts the Catron County Revised Ordinance No. 001-2007: *An Ordinance Setting Forth Emergency Predator-Human Incident Protective Measures*. Procedures for implementing the emergency measures for this proclamation shall have the force and effect of law.

BE IT FURTHER RESOLVED, the purpose of this ordinance is to set forth and specify emergency response to resident requests for help to remove threatening predators in order to protect families and the lives of others. In implementing this ordinance, priority response will be to requests from disadvantaged or vulnerable individuals and families, including but are not limited to children, elderly, mentally or physically handicapped, other impaired individuals as defined by the American Disabilities Act.

BE IT FURTHER RESOLVED, Catron County Commission predator protection management objectives are to:

1. Prevent human death and injury;
2. Assist County residents who encounter predators and fear for their lives;
3. Provide rapid response to residents who cannot safely protect themselves from predator encounters that present a threat, as described above;
4. Reduce predator-human interactions; and,
5. Reduce habituated predators from human encounters.

BE IT FURTHER RESOLVED, since response time is critical, the County may issue a dispatch order, to lethally remove a predator(s), when there is an imminent threat of bodily injury to the effected household(s).

BE IT FURTHER RESOLVED, the Catron County Commission specifies the following procedures in responding to immediate assistance from requests by county residents, as described above.

SECTION 1:

Procedures are hereby established for responding to resident complaints or need for immediate assistance to remove predators that are threats or danger to humans, including children or other defenseless persons, domestic animals and/or livestock. The County Investigating Officer will quickly respond to any of the following predator-related activities:

- 1.1 Continuously approaching people without signs of fear,
- 1.2 Continuously entering human developments without fear,
- 1.3 Becoming habituated to humans and human food items,
- 1.4 Acquiring human foods at least once,
- 1.5 Attacking or injuring a human, or,
- 1.6 Where and when residents are unable or disadvantaged to protect themselves from predators, the County may intervene as a third party to assist said residents in removing threatening predators.

SECTION 2:

The Investigating Office of the Sheriff's Department shall assume the following actions:

- 2.1 Upon receiving a request for assistance from county resident, the Investigating Officer of the Sheriff's Department will make the determination to respond to the request.
- 2.2 The Investigating Officer of the Sheriff's Department will immediately respond to the scene of the threat and check the resident/s and make an initial observation for obvious physical effects and/or imminent danger of humans, livestock and/or domestic animals.

SECTION 3:

The Investigating Officer of the Sheriff's Department will assume the following actions:

- 3.1 Confirm the threatening incident.
- 3.2 Identify and document the presence of predator(s) and determine if such presence is causing imminent physical or bodily danger or harm.
- 3.3 If there is an imminent threat of bodily harm, the County Investigating Officer may act in defense of others to alleviate the threat. Lethal take of a predator may occur if the officer determines that (1) there is apparent imminent danger of bodily harm to others, (2) the apparent danger would have caused a reasonable person to act the same way in the same circumstances.
- 3.4 Provide comfort and apply first aid.
- 3.5 Contact EMS and County Sheriff to treat and investigate as necessary.

- 3.6 Complete investigation.
- 3.7 Document incident.
- 3.8 Notify Catron County Commission and County Sheriff.
- 3.9 In the case of a lethal take of a predator that is not threatened or endangered, according to the Endangered Species Act the County Officer will contact the New Mexico Fish and Game Department within 24 hours.
- 3.10 In the case of a lethal take of a predator that is listed as threatened or endangered, according to the Endangered Species Act, the County Officer will preserve the site with the minimum of disturbance and then call the USFWS within 24 hours.
- 3.11 Inspect and document physical effects.
- 3.12 Photograph all scenes where physical effects occurred.
- 3.13 Measure canine spread in millimeters.
- 3.14 Prepare incident report including all non-confidential information described above and transmit to the Catron County Commission, FWS and US Wildlife Service and New Mexico Fish and Game Department within seven days.

SECTION 4:

If evidence of psychological effects on a human is present, the County Investigating Officer will:

- 4.1 Provide comfort and aid.
- 4.2 Utilize *Catron County Predator-Human Interactions Complaint Form* to document incident.
- 4.3 Submit Complaint Form document to mental health professional for evaluation.
- 4.4 If the mental health professional confirms and documents that there are psychological effects, the County Investigating Officer shall prepare incident report including all non-confidential information and transmit to the Catron County Commission, USFWS, US Wildlife Services and New Mexico Fish and Game Department within seven days.

SECTION 5:

Definitions:

Child: As used in the Children’s Code [32A-1 -1 NMSA 1978] “child” means a human who is less than eighteen years old.

Dispatch Order: Direction issued by the Catron County Commission and/or the County Sheriff or designee for removal of a predator by lethal means from within the borders of Catron County. The Dispatch Order is the means to ensure that the identified predator is permanently removed and that the threat and/or harm are eliminated and it will not re-enter the boundaries of Catron County.

Habituated Predator: A predator that repeatedly approaches people and or repeatedly visits human use areas in the presence of people without displaying an avoidance response; an habituated predator that stands, looks at people in a fearless manner, cannot be scared off by

yelling, clapping hands, waving arms, throwing objects and/or discharging a firearm. Habituation is a decreasing response to a repeated, non-consequential stimulus; the loss of a fear response to people which arises from frequent non-consequential encounters.

Problem Predator: A predator that:

- (1) Has depredated lawfully present domestic livestock;
- (2) Is a member of a group or pack (including adults, yearlings, and young-of-the-year) that were directly involved in livestock depredations;
- (3) Was fed by or are dependent upon adults involved with livestock depredations (because young animals will likely acquire the pack's livestock depredation habits);
- (4) Has depredated domestic animals other than livestock on private or tribal lands, two times in an area within one year; or,
- (5) Is habituated to humans, human residences, or other facilities.

Predation: Orientation towards the prey followed by: stalking, chasing, catching, biting, shaking the prey, carrying or dragging off. The predator may not show prior threat display or vocalization; it may continue attack on targeted prey, even with interference. Children are particularly susceptible to predation.

Predator: Any animal that lives by preying on other animals (www.thefreedictionary.com), or "is a threat to agricultural products" (77-15-1 NMSA 1978). Predators in New Mexico include but are not limited to bears, lions, jaguars, bobcats, coyotes, wolves, wild and feral swine, feral and vicious dogs and cats.

Predator-Human Interaction: Any incident in which the behavior of a predator has a direct physical or mental effect upon a human.

Threat: Any predator-related circumstance or event with the potential for adverse physical or psychological impact upon a human. A predator is considered to be a threat to a human any time the predator demonstrates menacing or fearless behavior while in close proximity to a human

Wild Predator: A predator with wild characteristics; not tame or domesticated. A wild predator is free ranging exclusively in the wild and has an avoidance response to humans and human use areas.

Severability:

If any section, subsection, sentence, clause, phrase or portion of this ordinance or the application thereof to any person is declared invalid or unconstitutional by the decision of a court of competent jurisdiction, the remainder of this ordinance shall be severed there from and shall remain in full force and effect.

Enactment:

NMSA 1978§ 4-37-7 provides that an ordinance dealing with a declared emergency of immediate danger to the public health and safety need not comply with rules of publication and public notification. Therefore, pursuant to NMSA 1978§ 4-37-9(c), this ordinance shall become effective immediately upon approval by the Catron County Commission.

Recording and Authentication:

This ordinance shall be recorded in the books kept for that purpose and shall be authenticated by the signature of the County Clerk and shall take effect in accordance with the law.

This Ordinance shall remain in effect until the immediate and long term threats are abated.

PASSED, ADOPTED, AND APPROVED at Reserve, Catron County, New Mexico this 18TH day of April, 2012 in regular session by the Board of County Commission.

**BOARD OF COUNTY COMMISSIONERS
CATRON COUNTY, NEW MEXICO**

ATTEST:

/s/
Sharon Armijo, Clerk

/s/
Hugh B. McKeen, Chairman

/s/
Richard McGuire, Member

/s/
Glyn Griffin, Member