



# Land Use

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**BOULDER COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**November 13, 2012, 4:00 P.M.**

**Commissioners' Hearing Room, Third Floor  
Boulder County Courthouse  
Boulder, Colorado**

**Docket DC-12-0003: Amendments to Oil and Gas Development Regulations  
Public Hearing for the Board of County Commissioners to consider proposed Land Use Code amendments addressing oil and gas development within the Boulder County Land Use Code**

*Coordinating Staff:* Kimberly Sanchez, Planning Division Manager - Land Use Department  
Jeff Robbins, Outside Counsel on Oil and Gas Issues

**AGENDA:**

1. COUNTY STAFF PRESENTATION
  - a. Kim Sanchez, Planning Division Manager
  - b. Jeff Robbins, Outside Counsel on oil and gas issues
  - c. Mike Matheson, County outside technical consultant
2. Board of County Commissioners Q & A (Technical consultants will be available, along with staff, to answer the Board's questions)
3. PUBLIC COMMENT (3-min. allowance per individual speaker\*\*)  
\*\* Time may be pooled (up to 12 minutes maximum) provided all individuals who are donating time are present. Anyone wishing to exceed 12 minutes must contact the Land Use Department with a request for consideration prior to the hearing.

All public comment received to date is available on the County's oil and gas website at:

<http://www.bouldercounty.org/dept/landuse/pages/oilgas.aspx>

**PACKET CONTENTS:**

Item	Pages
o Land Use Department Memo	2-22
o Draft Regulations (Attachment A)	A1-A42
o Resolutions enacting moratoria (Attachment B)	B1-B9
o Boulder County Comprehensive Plan Amendments – Adopted 8/15/2012 (Attachment C)	C1-C6
o Maps (Attachments D1-D4 Planning Commission recommendation, D5-D8 Staff recommendation)	D1-D8
o Industry comments (letters from Encana and Noble)	E1-E159

### **SUMMARY**

Today's public hearing is the introduction of the proposed revisions to the Boulder County Land Use Code Article 4-900, Development Plan Review for Oil and Gas Operations ("Draft Regulations") and related provisions of the Land Use Code to the Board of County Commissioners (BOCC). The Planning Commission reviewed the proposed regulations and heard from the public at public meetings on September 24<sup>th</sup>, October 1<sup>st</sup>, October 17<sup>th</sup>, and October 30<sup>th</sup> and recommended approval of the Draft Regulations to the Board of County Commissioners. Included in Planning Commission's recommendation to the Board of County Commissioners were motions to 1) extend the moratorium on the intake and processing for oil and gas development plan review applications for an additional 3-6 months, and 2) review the adopted regulations 6 months and 18 months after their effective date. Their other recommendations are discussed in the previous Planning Commission staff reports and have been incorporated into the Draft Regulations that will be considered by the Board of County Commissioners. (All previous Planning Commission staff reports can be found on-line on the County's oil and gas webpage.)

The Draft Regulations include primarily the proposed creation of a new Article 12 of the Land Use Code (see Attachment A), as well as some changes to Article 4 and other Code-conforming amendments as needed throughout the Code. Staff drafted these proposed regulations with several goals in mind. The regulations are intended to address issues raised by the Planning Commission in its recent update of the Comprehensive Plan policies applicable to oil and gas development; to reflect today's industry, its practices, and impacts on land use, transportation, public health, parks and open space, and other environmental and natural resources across the County; to respond to public questions and concerns; and to provide the maximum protection possible for local public health, safety, and welfare under current state and federal law. Lastly, an overarching goal is to require that impacts from oil and gas operations be mitigated to the greatest extent possible, where they cannot be entirely avoided. The set of proposed regulations for review in front of the Board of County Commissioners includes the revisions approved by the Planning Commission in their discussions on September 24<sup>th</sup>, October 1<sup>st</sup>, October 17<sup>th</sup>, and October 30<sup>th</sup>. Where there are differences between Planning Commission's recommendation and Staff's in the Draft Regulations, the options under consideration are noted in brackets.

### **ACTION REQUESTED FROM THE BOARD OF COUNTY COMMISSIONERS**

Staff does not anticipate that the Board of County Commissioners will be able to take final action on the Draft Regulations at this initial hearing. We look forward to receiving additional input from the public, Industry and State, as well as further refinement of the proposed regulations by the Board.

Following today's staff presentation and public testimony, Staff recommends that the BOCC table the subject docket to Thursday, November 15, 2012 at 9:00 a.m. in order to further discuss the proposed text amendments and provide direction to staff.

### **Anticipated Schedule for BOCC's Review of the Draft Regulations:**

- ***Tuesday November 13, 2012 at 4:00 P.M.*** – Staff will present the Draft Regulations to the BOCC for the first time. The BOCC will take public comment and table the docket for further discussion on November 15 at 9:00 A.M.
- ***Thursday November 15, 2012 at 9:00 A.M.*** – Follow-up meeting to the November 13<sup>th</sup> public hearing. BOCC will have a discussion and provide direction to staff concerning the Draft Regulations. [Note: no public comment would be taken at this session.]

- **Tuesday December 4, 2012 at 4:00 P.M.** – The BOCC’s second public hearing on the Draft Regulations. Staff will present any revisions that have been made to the Draft Regulations and the BOCC will take public comment and either take final action or give further direction to staff.
- **Thursday December 13, 2012 at 4:00 P.M.** – Anticipated adoption of the proposed regulations by the BOCC.

Other meetings may be scheduled as necessary and will be posted on the County’s oil and gas website at: <http://www.bouldercounty.org/dept/landuse/pages/oilgas.aspx>

A mid-December adoption date will provide County staff with the necessary time to work on implementation of the regulations prior to the February 4, 2012 moratorium expiration deadline.

## **BACKGROUND**

### ***Moratoria on Oil and Gas Development Applications***

On February 2, 2012, the Board of County Commissioners enacted a temporary moratorium on the intake and processing of applications for oil and gas operations through adoption of Resolution 2012-16 (see Attachment B1). This six-month moratorium was then extended until February 4, 2013 by adoption of Resolution 2012-46 (Attachment B2). The purpose of these moratoria were to allow County staff a reasonable amount of time to explore the adequacy of the County’s Comprehensive Plan policies and Development Plan Review (DPR) regulations, based upon a more informed assessment of industry activities and trends, anticipated associated land use impacts, and an appropriate regulatory response at the County level. The resolutions directed County staff to study the current regulations and to prepare necessary amendments to the current DPR process to ensure that the development of new oil and gas operations within unincorporated Boulder County is regulated in a manner to ensure protection of the environment, and the health, safety and welfare of the county’s citizens.

The predominant reasons behind the moratorium included the recently rapid pace of development of the oil and gas industry in the Denver Julesberg Basin generally and Wattenberg Field in particular; potentially major changes in drilling and resource recovery methods and technology; growing public concern, County-wide, statewide and nationwide, over hydraulic fracturing operations including possible adverse water quality impacts and ineffective waste disposal methods; the impacts associated with evolving industry technologies in such areas as truck traffic and road usage, land surface disturbance and reclamation, location and extent of structures (well pads, tank batteries, fencing, and the like), noise and odor, and wildlife, soil, air and water resources; major amendments over the past five or so years to the Colorado Oil and Gas Conservation Commission’s (and related state agencies’) regulations, as well as the growing involvement of federal agencies such as the U.S. Environmental Protection Agency; the outdated nature of the County’s oil and gas DPR regulations which were enacted in 1993 and never substantively amended thereafter; and the outpouring of letters, e-mails, and other expressions of concern by residents of Boulder County over the past several months, worried about existing and future oil and gas development plans and questioning the ability of state and local regulation to deal with associated impacts.

### ***Amendments to the Boulder County Comprehensive Plan***

With the renewed interest and activity surrounding oil and gas development and considering the ever-changing oil and gas regulatory environment, staff determined and the BOCC agreed that the existing oil and gas policies of the Boulder County Comprehensive Plan (BCCP) required revision in order to better capture these movements as well as to respond to public concerns about the

impacts to health, safety and welfare that may accompany accelerated exploration and development in the Niobrara Formation within Boulder County, known as the Wattenberg Field, which has the potential for substantially increased oil and gas exploration and development into the future. Consequently, following enactment of the moratorium, the Planning Commission (PC) held four hearings to review oil and gas policy amendments for inclusion into the BCCP: one to authorize staff to proceed with drafting oil and gas policy amendments (May 16<sup>th</sup>) and three more on June 20<sup>th</sup>, July 18<sup>th</sup> and August 15<sup>th</sup> to review, critique and revise the draft proposals. This step was taken at the direction of the County Commissioners and is consistent with one of the principle functions of the BCCP, that being to provide policy guidance for the development of land use regulations. At the August 15<sup>th</sup> hearing the Planning Commission adopted new text which consisted of the basis for the amendments, the definition of two terms used throughout the amendments, an Objectives statement, 12 new policies, and two policy revisions for inclusion into the Geology and Agricultural Elements of the BCCP (see Attachment C). Extensive written and verbal public commentary was gathered and considered over the course of the process. The policies cover a range of subjects including the County's chosen roles and types of participation at various jurisdictional, stakeholder and policy levels; the identification of issues of concern and effective performance technologies and practices to be considered when reviewing oil and gas development proposals; information sharing and emergency response planning; cooperative use of infrastructure among operators to reduce the proliferation of duplicative facilities; public outreach and engagement; and the complete restoration and reclamation of impacted agricultural lands. In combination the oil and gas BCCP amendments establish a platform for a multi-pronged and comprehensive approach to working with oil and gas development issues across the County and among affected parties.

#### **HISTORY OF OIL AND GAS REGULATIONS IN BOULDER COUNTY**

The BOCC first enacted a Development Plan Review ("DPR") process for oil and gas operations at the height of a prior oil and gas development spurt, in Resolution 93-184 effective October 1, 1993. Prior to that time, the County required Special Use review for oil and gas operations on subdivided land in Rural Residential, Estate Residential and Nonurban Estate Residential zoning districts. Oil and gas operations elsewhere in unincorporated Boulder County were allowed as a use by right but were required to confine offensive odors, noise, fluid, gas, and dust to the leasehold premises, as well as be set back at least 600 feet from the lease lines and from schools, churches, and dwellings on other lots and at least 100 feet from all County and state roads.

The County's current DPR Regulations (codified mainly in Article 4-900 of the Land Use Code) remain substantively unchanged nearly two decades after they were adopted. The current DPR Regulations are akin to a Site Plan Review (SPR) type of administrative process (see Article 4-800 of the Land Use Code), requiring a Land Use Department staff-level review and approval prior to commencement of oil and gas operations. The Land Use Director's decision can be called up before, or appealed to, the Board of County Commissioners (BOCC) in disputed situations. Appeals include the applicant's ability to challenge a condition of approval before the BOCC if alleged to be an operational conflict with the COGCC's rules. Significantly under the DPR Regulations the Director's decision is limited to approving or conditionally approving a proposed development plan; unlike SPR, administrative denial of a Development Plan Review application is not an option. Also, unlike SPR approvals, which expire within three years if not acted upon, DPR approvals do not expire under the current set of regulations. Finally, the County's current DPR regulations have an automatic approval provision if a determination has not been made within 28 days.

The current DPR Regulations' criteria address the following areas: (1) setbacks from buildings (350 feet) and public rights-of-way (150 feet), to "be complied with to the maximum extent possible"; (2)

compliance with specified noise requirements; (3) location of operations to minimize visual impact and surface land disturbance (including siting away from hills/ridges and significant environmental features; painting with colors that blend with the natural environment; location of facilities in existing disturbed areas, with specified exceptions; the requirement for buried pipelines/electrical lines; and landscaping/screening requirements); (4) construction of access roads per County Transportation Department requirements, preference for use of existing roads, and the requirements to obtain oversize/overweight vehicle permits and utilize transportation routes to minimize traffic hazards and public roadway impacts; (5) signs consistent with COGCC requirements; (6) consultation with state and County wildlife authorities where significant wildlife habitat is affected, including a prohibition against threatening an endangered species; (7) air emissions compliant with state and County public health requirements; (8) operations compliant with state water quality control and drinking water standards; (9) waste disposal/treatment consistent with COGCC requirements and any applicable County Public Health and emergency response authorities; (10) location of production tanks within containment berms; (11) land reclamation plan approval; (12) compliance with all COGCC requirements (including the ability to appeal permit conditions to BOCC which the operator asserts conflict with COGCC rules); and (13) consistency with the BCCP, applicable intergovernmental land use agreements, and the Land Use Code.

Staff believes that amendments to the current regulations are necessary in order to address points of administrative uncertainty under the DPR Regulations and to add areas not currently regulated which staff believes the County has the authority to, and should, regulate.

**COUNTY AUTHORITY TO REGULATE OIL AND GAS OPERATIONS AND THE OPERATIONAL CONFLICT DOCTRINE**

A County's powers to enact traditional land use regulations governing land uses in its unincorporated areas is under most circumstances not constrained by the potential of conflicting regulations at the state level. A County's ability to regulate oil and gas operations is one of the circumstances where this is exceedingly more complicated. This regulatory dynamic is important for the BOCC to understand as it undertakes a review of the Draft Regulations over oil and gas operations.

The Colorado Oil and Gas Conservation Commission (COGCC) is the state agency empowered to oversee the orderly and efficient development of oil and gas in a manner consistent with the protection of the environment and public health, safety and welfare. The Colorado legislature has delegated authority to the COGCC to regulate the technical or "downhole" aspects of oil and gas development. The delegation of this technical authority solely to this state agency was done in order to ensure the orderly development of the state's natural resources by centralizing standards and criteria while preventing the proliferation of multiple local ordinances and regulations. Examples of these areas of regulatory authority are topics such as drilling and spacing units, downhole drilling regulations, exploration and production waste management, and hydraulic fracturing. In recent years, the COGCC was delegated additional authority with regard to the regulation of the environment as it relates to oil and gas operations and with regard to the impacts to wildlife from oil and gas operations. Boulder County has express statutory authority and jurisdiction to regulate the land use aspects of oil and gas operations with the caveat that local land use regulation cannot "operationally conflict" with regulations of state agencies with authority to regulate oil and gas operations.

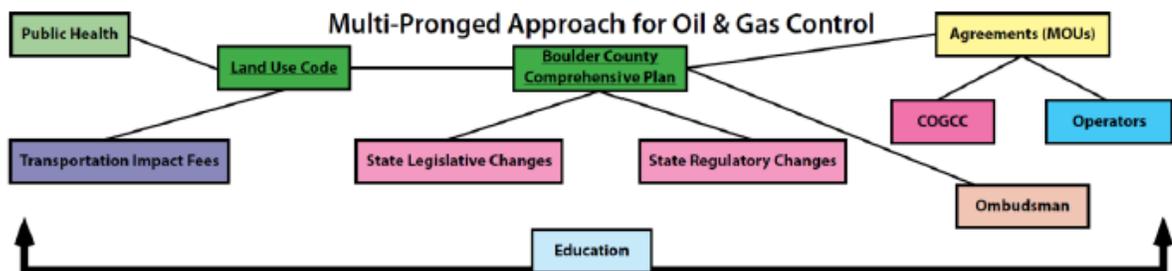
Importantly, the authority delegated to the COGCC did not originally, nor through the recent additional legislative grants of authority, negate the traditional land use authority delegated by the

legislature to local governments over oil and gas operations. The Colorado Supreme Court has specifically held that the original enactment of the Oil and Gas Conservation Act, the act establishing the COGCC, did not preempt county land use regulatory authority. In other words, when the Colorado legislature created the COGCC as the agency with the primary responsibility of regulating and overseeing oil and gas development, the legislature did not mean to remove the existing authority of local governments to regulate oil and gas operations. Moreover, all the recent additional delegations of authority to the COGCC contain provisions ensuring the continued existence and non-diminution of the County's land use authority.

Despite the foregoing, there is not a bright line identifying the extent of local authority to regulate land use aspects of oil and gas operations and the corresponding authority of the COGCC to regulate technical or environmental aspects of oil and gas operations. There is in essence an area of overlapping jurisdictional capacity where both the state and the local governments have regulatory authority. This intersecting or parallel relationship exists because it is difficult to distinguish between an environmental or safety regulation (non-technical areas of authority delegated to the state) on the one hand and a land use or surface-oriented regulation on the other hand. In these areas, the Courts have stated local government regulations are valid so long as the operational effect of the application of the local regulations does not conflict with the application of the state statute. With respect to operational conflict, the Colorado Supreme Court has declared that state preemption by reason of operational conflict can arise "where the effectuation of a local interest would materially impede or destroy the state interests."

**AREAS OF CONCERN TO BOULDER COUNTY RELATED TO POTENTIAL NEW OIL AND GAS OPERATIONS AND THE "MULTI-PRONGED APPROACH"**

The revised Boulder County Comprehensive Plan identifies a number of goals to be addressed through the County's update to its oil and gas regulations or through the other avenues. Following adoption of the Comprehensive Plan amendments, the Board of Commissioners and the Planning Commission met for a joint study session on August 22, 2012. At that session, staff and the Board/Planning Commission discussed that addressing the foregoing concerns successfully would require a variety of measures, including both regulatory and non-regulatory measures. Accordingly, the BOCC and PC identified how implementation of the Boulder County Comprehensive Plan (BCCP) polices would occur under a "Multi-pronged approach" for mitigating the impacts of oil & gas operations:



Recognizing that all policies may not be addressed by regulation, the BOCC and PC jointly identified the methods by which each BCCP policy should be tackled. With regard to potential land use regulations, the Board and PC provided direction to staff to evaluate utilizing local land use regulations in the following areas:

- Agricultural land preservation and conservation
- Baseline data
- Emergency Response

- Greenhouse gas emissions (in particular, methane)
- Impacts on Agricultural lands, including restoration and reclamation
- Impacts on environmental resources
- Operator engagement with local residents and stakeholders
- Monitoring
- Noise
- Setbacks from residences and schools
- Setbacks from water
- Surface agreements potentially enforceable through the Land Use Code
- Shared Infrastructure
- Transportation Standards

Working under the time constraint of the moratorium, it was purposeful to first create a set of regulations that allow for review of oil and gas operations after the moratorium is lifted in a way that avoids or mitigates the identified impacts of concern. As far as other non-regulatory measures are concerned (i.e., the areas that will not be addressed explicitly in the Land Use Code), the County staff's next step is to develop programs and strategies to pursue the other areas identified in the multi-pronged approach.

The County is considering the following actions:

- negotiating a memorandum of understanding with COGCC on delegation of inspection authority to the County level, among other matters
- collaborating with researchers to monitor air quality and discussing with industry funding baseline monitoring
- negotiating one or more memoranda of understanding with operators that would apply to all oil & gas development in Boulder County by the operator
- advocating for changes to CDPHE regulations, such as the recent rulemaking by the Air Pollution Control Division which resulted in revisions to Regulation Number 6 to partially adopt at the state level recent changes to federal (EPA) regulations
- advocating to improve existing COGCC regulations and participating as a party in the current COGCC setback and groundwater monitoring rulemakings
- negotiating surface use agreements with operators on county parks and open space land, which would apply only to the affected parcel(s)
- reviewing the results of the third-party study currently underway of the potential impacts of oil & gas development on the county transportation system, and considering adopting transportation fees to offset impacts
- formulating county legislative positions for state legislative sessions on bills affecting oil & gas development and local authority to regulate same
- exploring contracting or staffing of expertise in oil and gas development to assist staff and the public
- monitoring research developments in the field
- supporting an Oil and Gas Speaker Series led by the University of Colorado's Center of the American West, Colorado Water and Energy Research Center, and new National Science Foundation-funded oil and gas research project.

**THE “DRAFT REGULATIONS” AND OTHER PROPOSED AMENDMENTS TO THE LAND USE CODE**

Staff has drafted a set of regulations that are protective of public health and environment but do not overstep the authority we have as a county government. The Draft Regulations are intended to be consistent with the extent of land use authority over oil and gas operations that the Colorado legislature has provided the County and as has been defined and clarified by Colorado courts.

The Draft Regulations will continue to use a slightly modified Development Plan Review process to review proposed oil and gas operations. The Draft Regulations are re-formatted to a stand-alone new Article 12 however the basic structure of the current regulations remains in place.

The Draft Regulations contain two primary processes for the permitting of a new oil and gas operation: the Expedited Development Plan Review (Expedited DPR) process and the Standard Development Plan Review (Standard DPR) process. The Expedited DPR is a voluntary process that operators can opt for where approval can be obtained within a shorter timeframe, if the proposed oil and gas operation meets particular siting criteria that allow it to qualify for Expedited review. The Expedited DPR has specific objective standards that must be met and requires compliance with greater air and water quality protection measures than are required under the Standard DPR. The Standard review process is the County’s regular (but updated) review process and can be used if operators do not qualify for the Expedited DPR or choose not to meet the requirements. The review criteria employed in the Standard DPR are subjective and goal-based and require an operator to submit site-specific mitigation plans to achieve environmental and other protections.

Key substantive elements to the regulations include the following:

- New or expanded regulatory areas include:
  - Well siting provisions;
  - Air quality provisions\*\*;
  - Water quality provisions\*\*;
  - An expansive emergency response and emergency preparedness plan;
  - Refined transportation standards requiring operations to mitigate any adverse impacts to public and private roads as well as creation of a placeholder for the potential imposition of transportation impact fees to offset impacts to public roads;
  - More expansive plans involving the siting of wells to address compatibility and visual concerns;
  - Newly identified areas for additional purview of cultural and historic resources, recreational activities, scenic and rural character impacts, wetland protection, and well abandonment.
- Refined modification language to require compliance of existing operations with the current regulations to the extent practicable when a new well is proposed on an existing pad.
- Creation of general operational requirements (e.g., conditions of approval) applicable to all proposed new wells that are designed to ensure oil and gas operations are conducted in the least impactful manner. Such requirements include measures to electrify all permanent equipment, dust suppression associated with on-site activities and traffic, down-lighting except during drilling and completion, and weed control.
- Certification, monitoring, and inspection throughout the oil and gas exploration and development process.

\*\*The proposed set of regulations will address air and water quality issues for the first time. Standards in the current DPR regulations only required compliance with state requirements. The Draft Regulations include much more specific local regulation in regard to air and water issues.

The Draft Regulations are intended to be consistent and harmonized with the authority delegated to the COGCC. The overall procedural goal contained within the Draft Regulations is to work within the land use authority provided to counties by enacting the most protective land use regulations governing new oil and gas operations while at the same time recognizing the existence and extent of state authority over oil and gas operations by creating processes that harmonize actual application of the local regulations with the state regulations and state goals. For instance, the following provisions allow for better coordination and harmonization with the State:

- Mandatory early on pre-application process - the Draft Regulations require operators to conduct a mandatory pre-application conference before completing well siting determinations. To be eligible for the Expedited DPR process, the pre-application conference is to be conducted at least thirty (30) days prior to the applicant applying for a COGCC Application for Permit to Drill (APD). This timing provision and the pre-application process of the Draft Regulations are intended to allow the County to harmonize application of its regulatory procedures with those of the COGCC. The pre-application conference allows the operator to be informed as to the County's requirements in a manner so that new proposed operations can be planned in a manner to ensure compliance with the development plan regulations and applicable state and federal regulations.
- Refined operational conflict waiver - this provision allows an operator to early on and up front identify areas of the Draft Regulations that if applied could create an operational conflict concern as against an allegedly conflicting state requirement. A hearing process allows the concern to be raised before the County Commissioners who will determine whether an operational conflict exists and, if so, how to alter strict application of the regulation in a manner to address the operational conflict. The hearing process also invites the COGCC to bring its perspective on the alleged operational conflict so that the County can be informed as to the COGCC requirements alleged to be in operational conflict with application of the County regulation. Finally, the hearing process allows the applicant to develop a full evidentiary record which is a necessary pre-requisite to seeking a review in district court as to the potential for the operational conflict.

As mentioned above, the Draft Regulations contain two primary processes for the permitting of a new oil and gas operation: the Expedited Development Plan Review (Expedited DPR) process and the Standard Development Plan Review (Standard DPR) process. While the components listed in the key elements section above are themes common to both processes, the Expedited and Standard DPR processes can be distinguished as follows:

***Expedited DPR***

The Expedited DPR process is for operators who voluntarily choose to meet this objective criteria based on permitting process and who engage in most effective performance technologies and practices in the planning, development and operation of new or significantly modified oil and gas operations. This process is available for operations that meet certain well siting criteria, meet water well testing provisions, and meet air quality criteria beyond the county's granted authority in a local permitting process. This process provided operators the opportunity to plan for and operate an objectively sited well and to institute measures that objectively protect the health, safety, welfare and the environment and, in exchange, the permitting process is expedited.

Elements specific to the Expedited DPR process include:

- 45-day administrative review - an application processed through the Expedited DPR process is to be acted upon within 45 days of the filing of the complete application.

- Specific objective criteria for the operation of an oil and gas operation - the process establishes certain well siting criteria that if complied with will qualify the new operation for Expedited DPR. The process identifies certain techniques and practices in the areas of air quality and water quality that ensure the best level of protection of the environment, health, safety and welfare. In order to encourage its use, the process contains far fewer subjective based criteria and does not require for the most part the development of impact mitigation plans.

In brief, the Expedited DPR process breaks down as follows:

<b>Expedited DPR Eligibility</b>
Wellheads, pumping units, tanks, and treaters are each at least 500' [Staff recommendation] / 1,000' [Planning Commission recommendation] from any <b>occupied structure</b> .
Wellheads, pumping units, tanks, and treaters are each at least 150' from any <b>property line</b> , unless verified written consent is obtained from affected property owners.
Wellheads, pumping units, tanks, and treaters are each at least 500' from any <b>surface water body</b> including, but not limited to, ditches and reservoirs as identified and mapped on the County's Ditch and Reservoir Directory.
Wellheads, pumping units, tanks, and treaters are each at least 500' from any <b>domestic or commercial water well or irrigation well</b> .
Wellheads, pumping units, tanks, and treaters are not located within a <b>platted subdivision or mapped townsite</b> .
The well is not within a <b>high hazard geologic area</b> as defined in the Comprehensive Plan.
The Wellheads, pumping units, tanks, and treaters are not within a <b>floodway</b> .
The Wellheads, pumping units, tanks, and treaters are not within <b>wetlands areas</b> .
The Wellheads, pumping units, tanks, and treaters are not within mapped <b>significant natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat</b> as defined in the Comprehensive Plan.
<b>Pre-Application Conference</b> . Completion of the pre-application conference with the County prior to completing well siting decisions and at least thirty (30) days prior to filing the application for permit to drill with the COGCC; a site visit may be required.

<b>Expedited DPR Application Requirements</b>
<b>Application Form.</b>
<b>Mineral Owner.</b> Certification by the applicant that it is either the owner of the mineral estate or that it has all necessary lease interests in the mineral estate.
<b>Date of APD Filing.</b> Anticipated date of its APD filing with the COGCC.
<b>Pre-Application Conference Checklist.</b> Completion of the pre-application conference with the County prior to completing well siting decisions and at least thirty (30) days prior to filing the application for permit to drill with the COGCC.
<b>Proof of Notice.</b> Proof that applicant has mailed notice to surface owner and surrounding landowners at least ten (10) days prior to the application submittal.
<b>Verification of Legal Access and Use of Private Roads -</b> Information demonstrating that the operator has the right to use private access roads which are necessary for the operation and that the operator has entered an agreement with the private road owner regarding maintenance, improvements necessitated by the proposed oil and gas operation, and reimbursement for damages. Recorded or historically used easements providing access to or across the parcel(s) shall be provided.
<b>Other Wells and Other Oil and Gas Operations.</b> A map showing the location of other wells and other oil and gas operations within one (1) mile of the site.
<p><b>Site Plan.</b> A map with north arrow and appropriate scale for the parcel on which the operation is proposed including the following:</p> <ol style="list-style-type: none"> <li>1. <b>Well Siting.</b> The location of wellhead, pumping units, tanks and treaters.  Expedited DPR applications shall also include information establishing compliance with the <b>well siting criteria of Section 12-601(B)</b>: <ol style="list-style-type: none"> <li>a. Occupied structures within 500 feet [Staff recommendation] / 1,000 feet [Planning Commission recommendation] of each wellhead, pumping unit, tank and treater.</li> <li>b. Property lines within 150 feet of each wellhead, pumping units, tank and treater.</li> <li>c. Surface water bodies (including ditches and reservoirs) within 500 feet of each wellhead, pumping unit, tank and treater.</li> <li>d. Domestic or commercial water wells or irrigation wells within 500 feet of each wellhead, pumping unit, tank and treater.</li> <li>e. Not within a platted subdivision or a mapped townsite.</li> <li>f. Not within a high hazard geologic areas as defined in the Comprehensive Plan.</li> <li>g. Not within a floodway.</li> <li>h. Not within a wetland area.</li> <li>i. Not within a mapped significant natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat on the property as defined in the Comprehensive Plan.</li> </ol> </li> <li>2. <b>Dimensions of the Site.</b> Dimensions of the site, indicating area in square feet and acres, and the area of the site to be disturbed for permanent operations and temporary operations.</li> <li>3. <b>Easements and Rights-of-Way.</b> Utility line easements and rights-of-way within 150 feet of the proposed site and access road.</li> <li>4. <b>Improvements.</b> Existing improvements within 1,500' of the location on which the operation is proposed.</li> <li>5. <b>Existing and Proposed Facilities.</b> Existing and proposed facilities such as structures, pipelines, tanks, wells, gathering lines, flow lines, staging and storage areas, equipment, temporary use area and permanent well pads.</li> <li>6. <b>Existing and Proposed Roads.</b> Existing and proposed roads within the site as well as ingress and egress from public and private roads.</li> <li>7. <b>Parcel and Site Features.</b> Site features such as floodplains, water bodies, drainage patterns, ditches, wetlands or aquatic habitat, vegetative cover, wildlife habitat and wildlife migration routes, and geologic features within 1,500 feet of the location on which the operation is proposed.</li> <li>8. <b>Topography.</b> Existing and proposed topography at five-foot intervals to portray the direction and slope of the area affected by the operation within 1,500 feet.</li> </ol>

<b>Expedited DPR Application Requirements (cont.)</b>
<b>Agricultural Land Mitigation Plan.</b> An assessment of any agricultural lands potentially impacted by the proposed operation and a plan for mitigating said impacts in compliance with Section 12-602(E).
<b>Air Quality Plan.</b> A Plan establishing compliance with the air quality provisions of Section 12-602(A).
<b>Emergency Preparedness Plan.</b> A plan establishing compliance with Emergency Response provisions of Section 12-602(B).
<b>Land Disturbance Mitigation Plan.</b> An assessment of areas of land disturbance, an analysis of the species, character and density of existing vegetation on the site, a summary of the potential impacts to vegetation as a result of the proposed operation, and a plan, including proposed landscaping, revegetation, and other mitigation measures, demonstrating compliance with the standards of Section 12-602(F).
<b>Operations Plan.</b> A plan describing the proposed operations including the method and schedule for drilling, completion, transporting, production and post-operation.
<b>Transportation Plan.</b> A report containing the information described in Section 12-500(N): <ol style="list-style-type: none"> <li>1. Map indicating proposed trip routes for all traffic serving the oil and gas operation during all phases of well development and operations.</li> <li>2. Indicate for each segment of the proposed route in Boulder County the types, sizes, weight, number of axles, volumes, and frequencies (daily, weekly, total) and timing (times of day) of all vehicles to be used for the proposed oil and gas operation.</li> <li>3. Identify all measures necessary to ensure the safety and quality of life experience of other users of the county transportation system, adjacent residents, and affected property owners.</li> </ol>
<b>Water Quality Plan.</b> A plan establishing compliance with the water quality provisions of Section 12-602(C).

<b>Expedited DPR Review Standards</b>
<b>Air Quality Mitigation Measures - Section 12-602(A)</b> <ol style="list-style-type: none"> <li>1. 98% VOC destruction or control efficiency</li> <li>2. Flare and Combustion Devices</li> <li>3. Fugitive Emissions</li> <li>4. Use of Closed Loop Pitless System</li> <li>5. Green Completions</li> <li>6. Capture of Produced Gas (vs. flaring or venting)</li> <li>7. Pneumatic controllers</li> <li>8. Maintenance During Well Blowdowns</li> <li>9. Maintenance of Gathering Lines and Pipelines</li> <li>10. Rod-packing Replacement</li> <li>11. Certification</li> </ol>
<b>Emergency Response - Section 12-602(B)</b>
<b>Water Quality Monitoring and Well Testing - Section 12-602(C)</b> <ol style="list-style-type: none"> <li>1. Abandoned Oil and Gas Well Assessment</li> <li>2. Water Well Sampling</li> </ol>
<b>Transportation, Roads, Access Standards, and Fees - Section 12-602(D)</b> <ol style="list-style-type: none"> <li>1. Ensure public safety</li> <li>2. Minimize land disturbance</li> <li>3. Compliance with Transportation Standards.</li> <li>4. Applicable transportation fees prior to issuance of a DPR permit</li> </ol>
<b>Agricultural Land Mitigation – Section 12-602(E)</b>
<b>Land Disturbance Standards – Section 12-602(F)</b>

## **Expedited DPR Post-approval Requirements**

**General Oil and Gas Facility Operational Requirements – Section 12-602 (G)**  
**Section 12-800 Conditions of Approval**

### ***Standard DPR***

The Standard DPR process is a goal-based based criteria land use permitting process. In the Standard DPR process, subjective land use criteria are used to review the impacts to resources on a unique site. The operator is required to create mitigation plans to protect land uses and the environment and to address surface impacts for each, identifying the techniques it will use to mitigate any potential impacts. For instance, rather than locating a proposed new well pursuant to specific objective criteria (500 feet from a residence, 500 feet from a water well, etc.), the Standard DPR process requires the operator to locate a well in a manner that minimizes impacts to adjacent land uses, water quality, air quality, visual and scenic resources, etc.

Elements specific to the Standard Review process include:

- Mandatory Applicant Neighborhood Meeting – the applicant will be required to conduct a neighborhood meeting 30 days before it files an application with the County. The purpose of the meeting is for the applicant to provide an overview of its proposed oil and gas operation and allow those in attendance to provide input on the proposed operation including but not limited to well siting and well locations and suggested mitigation measures.
- A number of mitigation plans addressing impacts to: agricultural land, cultural and historic resources, geologic hazards, land disturbance, natural resources, recreational activities, scenic attributes and rural character, surrounding land uses, transportation system, water quality, and wetlands.
- Board of County Commissioners Public Hearing – the Board of County Commissioners will conduct a public hearing to review Standard DPR applications. (The current DPR process does not require a public hearing, but is an administrative review only.)

In brief, the Standard DPR process breaks down as follows:

### **Standard DPR Eligibility**

Applications that choose the Standard DPR Review.

Applications that do not qualify for Expedited Review.

Applications that are reclassified from Expedited Review.

<b>Standard DPR Application Requirements</b>
<b>Application Form.</b>
<b>Mineral Owner.</b> Certification by the applicant that it is either the owner of the mineral estate or that it has all necessary lease interests in the mineral estate.
<b>Date of APD Filing.</b> Anticipated date of its APD filing with the COGCC.
<b>Pre-Application Conference Checklist.</b> Completion of the pre-application conference with the County prior to completing well siting decisions and at least thirty (30) days prior to filing the application for permit to drill with the COGCC.
<b>Proof of Notice.</b> Proof that applicant has mailed notice to surface owner and surrounding landowners at least ten (10) days prior to the application submittal.
<b>Verification of Legal Access and Use of Private Roads -</b> Information demonstrating that the operator has the right to use private access roads which are necessary for the operation and that the operator has entered an agreement with the private road owner regarding maintenance, improvements necessitated by the proposed oil and gas operation, and reimbursement for damages. Recorded or historically used easements providing access to or across the parcel(s) shall be provided.
<b>Other Wells and Other Oil and Gas Operations.</b> A map showing the location of other wells and other oil and gas operations within one (1) mile of the site.
<b>Site Plan.</b> A map with north arrow and appropriate scale for the parcel on which the operation is proposed including the following: <ol style="list-style-type: none"> <li>1. <b>Well Siting.</b> The location of wellhead, pumping units, tanks and treaters.</li> <li>2. <b>Dimensions of the Site.</b> Dimensions of the site, indicating area in square feet and acres, and the area of the site to be disturbed for permanent operations and temporary operations.</li> <li>3. <b>Easements and Rights-of-Way.</b> Utility line easements and rights-of-way within 150 feet of the proposed site and access road.</li> <li>4. <b>Improvements.</b> Existing improvements within 1500' of the location on which the operation is proposed.</li> <li>5. <b>Existing and Proposed Facilities.</b> Existing and proposed facilities such as structures, pipelines, tanks, wells, gathering lines, flow lines, staging and storage areas, equipment, temporary use area and permanent well pads.</li> <li>6. <b>Existing and Proposed Roads.</b> Existing and proposed roads within the site as well as ingress and egress from public and private roads.</li> <li>7. <b>Site Features.</b> Site features such as floodplains, water bodies, drainage patterns, ditches, wetlands or aquatic habitat, vegetative cover, wildlife habitat and wildlife migration routes, and geologic features within 1,500 feet of the location on which the operation is proposed.</li> <li>8. <b>Topography.</b> Existing and proposed topography at five-foot intervals to portray the direction and slope of the area affected by the operation within 1,500 feet.</li> </ol>
<b>Agricultural Land Mitigation Plan.</b> An assessment of any agricultural lands potentially impacted by the proposed operation and a plan for mitigating said impacts in compliance with Section 12-703(A).
<b>Air Quality Plan.</b> A Plan establishing compliance with the air quality provisions of Section 12-703(B).
<b>Emergency Preparedness Plan.</b> A plan establishing compliance with Emergency Response provisions of Section 12-703(D).

### **Standard DPR Application Requirements (cont.)**

**Land Disturbance Mitigation Plan.** An assessment of areas of land disturbance, an analysis of the species, character and density of existing vegetation on the site, a summary of the potential impacts to vegetation as a result of the proposed operation, and a plan, including proposed landscaping, revegetation, and other mitigation measures, demonstrating compliance with the standards of Section 12-703(F).

**Operations Plan.** A plan describing the proposed operations including the method and schedule for drilling, completion, transporting, production and post-operation.

**Transportation Plan.** A report containing the information described in Section 12-500(N):

- Map indicating proposed trip routes for all traffic serving the oil and gas operation during all phases of well development and operations.
- Indicate for each segment of the proposed route in Boulder County the types, sizes, weight, number of axles, volumes, and frequencies (daily, weekly, total) and timing (times of day) of all vehicles to be used for the proposed oil and gas operation.
- Identify all measures necessary to ensure the safety and quality of life experience of other users of the county transportation system, adjacent residents, and affected property owners.

**Water Quality Plan.** A plan establishing compliance with the water quality provisions of Section 12-703(L). The provisions of Section 12-602(C) in the Expedited DPR process may also be considered and used in the implementation of this plan. )

### **Additional Standard DPR Application Requirements**

**Cultural and Historic Resources Mitigation Plan.**

**Geologic Hazard Area Mitigation Plan.**

**Natural Resources Mitigation Plan.**

**Recreational Activity Mitigation Plan.**

**Scenic Attributes and Rural Character Mitigation Plan.**

**Surrounding Land Uses Mitigation Plan.**

**Wetlands Protection Plan.**

<b>Standard DPR Review Standards</b>
<b>Agricultural Land Standards - Section 12-703(A)</b>
<b>Air Quality Standards - Section 12-703(B)</b> <ol style="list-style-type: none"> <li>1. 98% VOC destruction or control efficiency</li> <li>2. Flare and Combustion Devices</li> <li>3. Fugitive Emissions</li> <li>4. Certification</li> </ol>
<b>Cultural and Historic Resource Standards - Section 12-703(C)</b>
<b>Emergency Response - Section 12-703(D)</b>
<b>Geologic Hazard Area - Section 12-703(E)</b>
<b>Land Disturbance Standards - Section 12-703(F)</b>
<b>Natural Resource Standards - Section 12-703(G)</b>
<b>Recreational Activity Standards - Section 12-703(H)</b>
<b>Scenic and Rural Character Standards - Section 12-703(I)</b>
<b>Surrounding Land Uses Standards - Section 12-703(J)</b>
<b>Transportation - Section 12-703(K)</b> <ol style="list-style-type: none"> <li>1. Ensure public safety</li> <li>2. Minimize land disturbance</li> <li>3. Compliance with Transportation Standards.</li> <li>4. Applicable transportation fees prior to issuance of a DPR permit</li> </ol>
<b>Water Quality Standards - Section 12-703(L)</b>
<b>Wetlands Protection Standard - Section 12-703(M)</b>

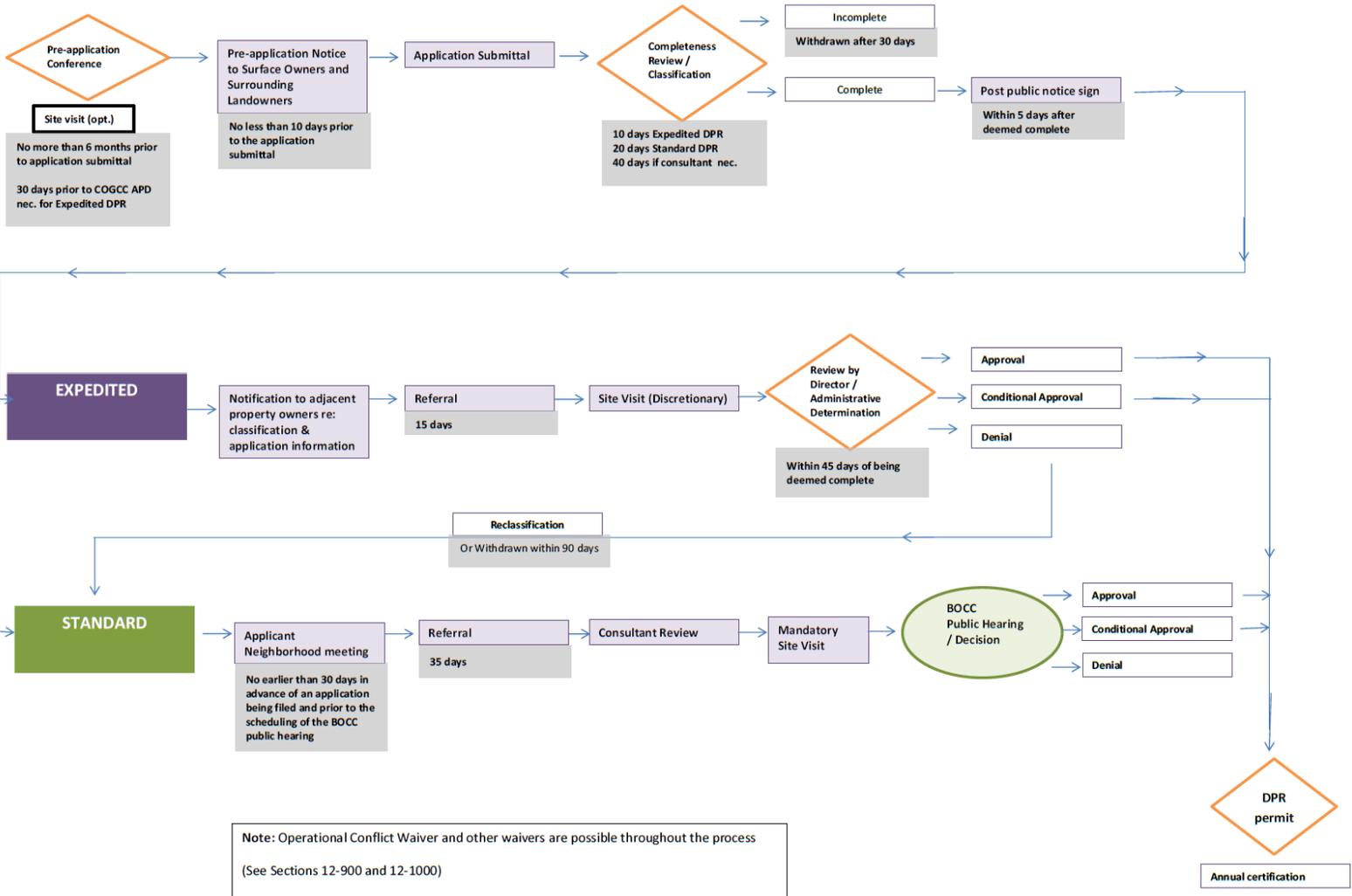
<b>Post-approval</b>
<b>General Oil and Gas Facility Operational Requirements – Section 12-703(N)</b> Section 20-800 Conditions of Approval
<b>Other conditions of approval specific to the Standard DPR review</b>

Both the Expedited and Standard review processes provide the most protective land use regulations governing new oil and gas operations and each provides the highest level of protection to public health and the environment. However, the processes differ in their regulatory approach and whether they achieve compliance through objective standards (Expedited DPR) or evaluate impacts and require mitigation on an individual site basis (Standard DPR). Having two processes in the Code provides operators a choice if they can qualify for Expedited DPR.

**Process**

The overall process tracks as illustrated in the flowchart below.

**Oil and Gas Development Land Use Code Amendments**  
**Expedited and Standard DPR Processes**



***Other Proposed Amendments to the Land Use Code***

Other proposed amendments to the Code include new definitions and review for Major Oil and Gas Facilities and Pipelines. These pertain to other operations that are not associated with extraction of the resource but are related to the processing or transmission of it:

- Major Oil and Gas Facilities (Art. 4-506.D) - the amendments to the Land Use Code include the creation of a new use definition for Major oil and gas operations. This use would be allowed in the General Industrial Zoning District and require Special Review. Major oil and gas operations would be defined as: water injection wells and facilities, centralized water transfer stations, centralized water pump stations, storage yards and construction staging yards in place for longer than six months, and any other oil and gas operation the location of which is not dependent upon development of the mineral resource or subject to Article 12. As noted, these uses are not dependent on being located in a certain area relative to the mineral resource. As a result, major oil and gas operations are to be permitted under the normal special review process for industrial activities.
- Pipelines (Art. 4-514.E and P) - the amendments to the Land Use Code expand upon and create specific standards addressing the permitting of flow lines and gathering lines associated with proposed new oil and gas wells. Flow lines are defined as pipelines which connect individual well sites to gathering lines and gathering lines are defined as pipelines transporting produced gas, oil, or water from multiple well sites to centralized facilities. Both flow lines and gathering lines are associated with movement of the mineral resource from its original location to other areas. As a result, on-site flow lines and gathering lines are reviewed and permitted in association with the development plan review for the proposed well necessitating the new pipeline. Any new constructed or substantially modified pipelines may need to comply with the new provisions in Art. 4-514.E for Gas and/or hazardous liquid pipelines. The Draft Regulations contain new criteria concerning siting, alignment and minimizing of disturbance to the surface associated with new flow lines and gathering lines.
- Other Code-conforming amendments to Article 4 and as needed throughout the Code, such as changing the definition of "Oil and Gas Development" in the Art. 4 uses to "operations" to conform with the proposed terminology; deletion of Article 18 definitions that are now solely in (necessary for) Article 12; and cross-reference changes/other clerical changes as needed.

**PLANNING COMMISSION'S REVIEW AND RECOMMENDATION TO THE BOCC**

On September 24<sup>th</sup> staff introduced the proposed Land Use Code amendments addressing oil and gas development to the Planning Commission at their first public hearing on the matter. The Planning Commission heard from staff, the County's outside counsel and the County's oil and gas technical consultant, held a public hearing, and began to discuss their initial thoughts. The September 24<sup>th</sup> meeting was tabled to October 1 in order for Planning Commission to thoughtfully consider the materials presented and public comment, and to continue the discussion and provide direction to staff after having time to digest the information and public comments. On October 1<sup>st</sup> Planning Commission provided its initial comments to Staff and the public at a public meeting.

In general the discussion at the October 1<sup>st</sup> Planning Commission public meeting revolved around whether the Expedited and Standard DPR processes are designed to generally achieve the same outcome of protecting the public (understanding that superior air and water quality protections are gained through the Expedited DPR). Much of the dialogue involved fleshing out the similarities and differences between the two processes in order for Planning Commission to decipher whether the two tracks are accomplishing similar results. There was concern expressed that the review criteria for Expedited DPR might be too relaxed since Expedited review does not require all the same

mitigation plans that the Standard review does. To that point, Planning Commission directed staff to identify and examine what areas are not being directly addressed in the Expedited DPR (vs. Standard DPR) to verify that nothing critical is overlooked. They stated they did not want to lose the protective measures that are examined under the Standard DPR process, but at the same time they acknowledged that they recognize there are certain tradeoffs to be made by an operator proceeding through one process over the other.

Other substantive areas of discussion on October 1<sup>st</sup> were related to the public notification area (originally proposed at 1,500 feet) and whether the neighborhood meeting idea required in the Standard review should be required in Expedited DPR. Planning Commission wished to expand the notice area from 1,500 feet to ½ mile (2,640 ft.) and wanted to require notice regarding proposed oil and gas operations be sent to tenants as well as owners if the parcel owner does not reside on the property. Additionally, Planning Commission directed staff to prepare some different scenarios for the Expedited siting criteria (i.e., a 1,500 ft. setback from occupied structures, and a scenario that sited oil and gas operations one “football field” (300 ft.) away from property line, two football fields from occupied structures, and three football fields from water wells and surface water bodies). Other questions that were raised on October 1<sup>st</sup> were related to whether non-VOC emissions, including as silica sand dust, are being addressed adequately in the Draft Regulations. Lastly further refinement of the Emergency Preparedness and Response plans were suggested.

Staff responded to these points, both through edits to the Draft Regulations and further discussion with the Planning Commission, at the October 17<sup>th</sup> public hearing. At the October 17 public hearing, Planning Commission reviewed the requested changes made to the initial draft and directed Staff to make some additional changes to the Draft Regulations.

Discussion at the October 17<sup>th</sup> public hearing centered largely on what qualifies for Expedited review, the Expedited DPR setback scenarios requested on October 1<sup>st</sup>, and, resultantly, the pros and cons of tightening the Expedited eligibility criteria to limit Expedited review to those areas where operations are most appropriate versus relaxing the Expedited eligibility criteria so that more applications might qualify for Expedited DPR and better air and water quality protection measures that the County does not otherwise have the authority to require can be voluntarily obtained. Planning Commission ultimately landed on recommending a 1,000 ft. setback from occupied structures. Other motions they made included requesting that the adopted regulations undergo a review 6 months and 18 months after they become effective and that the Board of County Commissioner extend the moratorium an additional 3-6 months (4-1 vote). Again they provided further direction to staff for additional edits to the Draft Regulations and tabled the docket to October 30<sup>th</sup>.

On October 30<sup>th</sup> the Planning Commission further discussed the setbacks proposed in Expedited DPR, how the various setbacks might affect the viability of the Expedited process, and what may be gained or lost in exchange. Their overall sentiment was that they value a greater distance from occupied structures (determined to be 1,000 feet per their recommendation). There was also ample discussion regarding air quality monitoring and whether the air protection measures proposed in the Draft Regulations deal with the appropriate areas of concern. Public Health staff helped respond to the Planning Commission’s questions.

Ultimately Planning Commission, by a vote of 6-1, approved the Draft Regulations and forwarded their additional motions to require subsequent review of the adopted regulations and extend the moratorium onto the Board of County Commissioners. Planning Commission’s recommended edits

have been incorporated into the Draft Regulations that will be considered by the Board of County Commissioners (and individual edits are discussed in detail in the previous Planning Commission staff reports which can be found on-line on the oil and gas website).

The primary area where staff departs from Planning Commission's recommendation is in the Expedited DPR setback from occupied structures (Section 12-601.B.1). Staff endorses a 500 ft. setback from occupied structures, rather than Planning Commission's recommended 1,000 ft. setback. Staff's recommendation is based on the fact that a 500 ft. setback from occupied structures will open up more area for operations to qualify for Expedited review, while still maintaining a significant setback and making the Expedited DPR more viable which creates more opportunity for the county to gain the additional air and water quality protection measures that can only be obtained voluntarily.

#### **OTHER IDEAS UNDER CONSIDERATION**

Staff is interested in evaluating a method to incent the use of existing well pads. One possibility (proposed in the Option below) is to allow existing well pads to be eligible for Expedited Development Plan Review. Benefits of utilizing existing well pads include: less new disturbance on the site (no new roads, well pad areas, etc.), shared use of infrastructure, and, where a new well is approved on an existing pad, the remaining infrastructure on the pad is required to be updated to meet the current regulatory standards to the extent practicable. Staff also understands from industry input that it is likely that most of the new wells in Boulder County will be planned for use on existing pads. Consequently, opening up existing pads for new wells would create more opportunity for the County to gain the additional air and water quality protection measures that can only be obtained through the Expedited DPR process. While staff believes that this idea presents a lot of potential to create good outcomes, challenges related to the utilization of existing well pads include concentration of impacts to areas that were already in operation which could present an unfair burden on neighboring properties. Planning Commission discussed this concept at their October 30<sup>th</sup> meeting and opted not to move the idea forward as part of their formal recommendation to the BOCC.

Staff plans to discuss and develop this idea further with Industry, the BOCC and the public, but the basic concept would be to possibly allow existing well pads to be eligible for Expedited DPR. Staff anticipates that flexibility with the setbacks and which siting criteria apply may be necessary in order for this idea to be viable.

Option – add a new subsection C to **Section 12-601 Process Specific to Expedited DPR:**

**C. Eligibility of Existing Well Pads for Expedited Development Plan Review.** A existing well pad will qualify for the administrative expedited development plan review process based upon a determination by the Director that it is located in a manner that meets the following siting criteria:

1. The wellhead, pumping units, tanks, and treaters are at least \_\_\_ feet from any occupied structure.
2. The wellhead, pumping units, tanks, and treaters are at least \_\_\_ feet from any property line, unless verified written consent is obtained from affected property owners.
3. The wellhead, pumping units, tanks, and treaters are at least \_\_\_ feet from any surface water body including, but not limited to, ditches and reservoirs as identified and mapped on the County's Ditch and Reservoir Directory.

4. The wellhead, pumping units, tanks, and treaters are at least \_\_\_\_ feet from any domestic or commercial water wells or irrigation wells.
5. The wellhead, pumping units, tanks, and treaters are not located within a platted subdivision or mapped townsites.
6. The wellhead, pumping units, tanks, and treaters are not located within a high hazard geologic area as defined in the Comprehensive Plan.
7. The wellhead, pumping units, tanks, and treaters are not located within a floodway as defined in Article 4-400.
8. The wellhead, pumping units, tanks, and treaters are not located within wetlands areas.
9. The wellhead, pumping units, tanks, and treaters are not located within mapped significant natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat as each is defined in the Comprehensive Plan.

#### **INDUSTRY INPUT**

Staff has received letters from Encana and Noble, the primary operators in Boulder County to date (see Attachment E). Their general concerns include the rapid pace of the Code amendment process, potential operational conflicts that might arise, and concern that the County is regulating in areas under the purview of the State.

Staff continues to actively engage in discussions with these operators and is meeting with them on November 12. Based on this discussion, staff expects to have some potential changes that we will introduce to the BOCC and the public for consideration at the November 13<sup>th</sup> public hearing.

#### **PUBLIC INPUT**

Staff has received numerous emails from the public. All public comment received to date is available on the County's oil and gas website at:

<http://www.bouldercounty.org/dept/landuse/pages/oilgas.aspx>

The majority of the emails are requests for the County to ban fracking due to concerns regarding its impacts to air, water, public health, and the environment. Staff has also received a number of specific edits and suggestions to the Draft Regulations as well.

#### **TEXT AMENDMENT CRITERIA REVIEW**

Pursuant to Article 16-100 of the Land Use Code, no text amendment shall be adopted by the Board of County Commissioners unless the Board has determined that:

1. the existing text is in need of the amendment;
2. the amendment is not contrary to the intent and purpose of this Code; and
3. the amendment is in accordance with the *Boulder County Comprehensive Plan*.

Planning Commission provided a recommendation to approve the Draft Regulations onto the Board of County Commissioners. The moratorium adopted by the Board of County Commissioners demonstrated the need for the amendments; the amendments are not contrary to the intent and purpose of the Code but update and revise the outdated DPR regulations that are currently in place; and the amendments do not conflict with the Boulder County Comprehensive Plan but they implement many of the policies that were adopted by the Planning Commission on August 15, 2012.

Consequently, staff finds the criteria for text amendments in Article 16-100.B. of the Land Use Code are met.

**SUMMARY AND RECOMMENDATION**

The overall goal contained within the Draft Regulations is to work within the land use authority provided to counties by enacting the most protective regulations governing new oil and gas operations while at the same time recognizing the extent of state authority over oil and gas operations. Staff has attempted to create processes that address areas of great local importance but harmonize application of the local regulations with the state.

**STAFF RECOMMENDS THAT THE BOARD OF COUNTY COMMISSIONERS APPROVE Docket DC-12-0003: Amendments to Oil and Gas Development Regulations and the official record of the Docket before the Board with its staff comments, public testimony, and Board discussion/action.**

**If the Board is not ready to take final action on the subject docket on November 13, Staff recommends that the Board table the docket to November 15, 2012 at 9:00 a.m.**

# ATTACHMENT A.1

## Proposed New Article 12

### Development Plan Review for Oil and Gas Operations

#### 12-100 Purpose

- A. Boulder County acknowledges the existence of oil and gas mineral property rights within its unincorporated areas. It is the County's objective to exercise its fundamental duty to protect public health, safety, welfare, and the environment from potential adverse impacts of oil and gas exploration and development, and to minimize potential land use conflicts between those activities and current or planned land uses.
- B. Development plan review is the permitting procedure for oil and gas operations. This process is in place because these operations involve industrial type activities which may occur in or near residential and rural areas. Traditional zoning would generally separate these types of uses to mitigate impacts but, because this use must occur near the resource, separation of uses is not possible and, thus, this Article has been promulgated to address this incompatibility. The purpose is to provide a framework for the exploration and production of oil and gas resources in a manner that considers current, planned or future land uses and that mitigates adverse impacts to the public health, safety, welfare, and the environment of the County.
- C. This Article is consistent with the land use authority over oil and gas operations that the Colorado legislature has provided the County and as has been defined and clarified by Colorado courts. Boulder County recognizes that certain Colorado state agencies and the federal government also have authority to regulate certain aspects of oil and gas operations. The regulations of this Article over the land use aspects of oil and gas operations are consistent with this authority. In particular, this Article is not intended to create and is not be applied so as to cause an operational conflict with the state's exercise of its authority over oil and gas operations, which arises when the effectuation of a local interest materially impedes or destroys the state interest in its regulation of oil and gas operations.

#### 12-200 Authority of Article

This article is authorized by C.R.S. §§ 25-8-101 et seq., 29-20-101 et seq., 30-28-101 et seq., 34-60-101 et seq., 25-7-101 et seq., and other authority as applicable.

#### 12-300 Effective Date; Pre-Existing Uses

- A. This Article shall become effective on the date specified in the adopting resolution of the Board of County Commissioners. The provisions of this Article shall apply to all oil and gas operations for which a complete application for development plan review has not been accepted by the County as of the effective date.
- B. Boulder County acknowledges that there are oil and gas operations that were legally established prior to the effective date of this Article that do not conform to this Article. These non-conforming operations shall be allowed to continue provided the post effective date operation remains consistent with the pre-effective date operation. A nonconforming operation shall not be extended, expanded, or altered in a manner that would otherwise be categorized a

1 substantial modification under Section 12-1200(E) of this Article. Any substantial modification to  
2 a non-conforming use shall require a new approval under this Article.  
3

- 4 C. Section 12-400(D)(1) of this Article provides that the expedited development plan review for new  
5 oil and gas operations is not available for applications where the applicant fails to conduct the  
6 pre-application conference with the County at least thirty (30) days prior to filing for an  
7 Application for Permit to Drill (APD) from the Colorado Oil and Gas Conservation Commission  
8 (COGCC). The County recognizes, however, that proposed new oil and gas operations may have  
9 received APD approval from the COGCC during the development of and prior to the effective  
10 date of this Article. For these applications, the County encourages the use of the expedited  
11 development plan review process. Accordingly, oil and gas operations with APD approval prior to  
12 the effective date of this Article that otherwise qualify for expedited development plan review  
13 may be processed as expedited development plan review applications.  
14

## 15 **12-400 General Application Procedure for Expedited DPR and** 16 **Standard DPR**

- 17
- 18 A. **Development Plan Review Required.** All oil and gas operations on public and private land within  
19 the unincorporated areas of Boulder County shall comply with this Article. Prior to the  
20 commencement of any oil and gas operations in the unincorporated County, a development plan  
21 review application must be submitted and approved in accordance with this Article. No other  
22 form of discretionary land use review under this Code is required for oil and gas operations  
23 covered by this Article 12. Development plan review approval is also required prior to the  
24 issuance of any County building permits, or associated grading, access, floodplain, or other  
25 County permits necessary for the oil and gas operation. Oil and gas operations which may not  
26 require a building or other associated County permit must still obtain development plan review  
27 approval under this Article.  
28
- 29 B. **Expedited Development Plan Review Process.** The expedited development plan review process  
30 is the County's process for applicants who voluntarily choose to meet its objective criteria and to  
31 engage in most effective performance technologies and practices in the planning, development  
32 and operation of new or substantially modified oil and gas operations. The process identifies  
33 specific objective criteria for oil and gas operations. The expedited development plan review  
34 process is optional and, while applicants are encouraged to use it, this Article also offers a  
35 standard development plan review process for proposed operations that cannot meet the  
36 expedited development plan review criteria or for applicants who choose the standard  
37 development plan review process. The expedited development plan review process is an  
38 administrative process that only requires review and approval by the Director.  
39
- 40 C. **Standard Development Plan Review Process.** The standard development plan review process is  
41 a regulatory process based primarily upon subjective or content specific criteria for new or  
42 substantially modified oil and gas operations. The standard development plan review process is  
43 available for applicants who choose it, for applications that do not qualify for expedited  
44 development plan review, or for applications that the Director reclassifies from expedited  
45 development plan review to standard development plan review. Such applications shall be  
46 classified as standard development plan review applications and shall be reviewed by the County  
47 and shall require review, public hearing, and decision by the Board of County Commissioners.  
48

1 **D. Pre-Application Conference.** Boulder County requires applicants to engage with local  
2 communities, residents and other stakeholders at each phase of an oil and gas operation,  
3 starting prior to exploration or development activity, in order to provide sufficient opportunity  
4 for comment on plans, operations and performance, and to listen to concerns of the community,  
5 and to address all reasonable concerns as a result of its proposed operation. The pre-application  
6 conference will be used to meet this requirement.  
7

8 **1. Timing.** A pre-application conference as defined in Article 3-201 of this Code shall be held at  
9 least thirty (30) days prior to both the applicant applying for a COGCC APD and submitting an  
10 application for development plan review. The timing provision for the pre-application  
11 conference is intended to allow the County to concurrently carry out its regulatory  
12 procedures in harmony with those of the COGCC. Except for applications under Section 12-  
13 300(C), if the pre-application conference is not conducted at least thirty (30) days prior to  
14 the applicant applying for the APD, the application cannot qualify for expedited  
15 development plan review.  
16

17 **2. Conference.** At the pre-application conference, the Director and the applicant will discuss  
18 the points contained in Article 3-201 of this Code and review the County's development plan  
19 review process so that the applicant can plan its proposed oil and gas operation in a manner  
20 that ensures compliance with the development plan regulations and applicable state and  
21 federal regulations. The pre-application conference also will inform the applicant about the  
22 benefits of the expedited development plan review process. The pre-application conference  
23 also allows the applicant and Director to explore site-specific concerns and issues that relate  
24 to the development plan review process, to discuss project impacts and potential mitigation  
25 methods, to discuss coordination of the County process with the state permitting process,  
26 and to allow the applicant to preliminarily raise any potential operational conflict concerns.  
27 Based upon the foregoing, applicants are encouraged to conduct the pre-application  
28 conference with the County prior to completing well siting decisions. Completion of the pre-  
29 application conference qualifies the applicant to submit an application for a development  
30 plan review provided the application is filed within six (6) months after the pre-application  
31 conference.  
32

33 **3. Site Visit.** At the discretion of the Director after consultation with the surface owner, the  
34 Director may require a site visit as part of the pre-application conference with the applicant to  
35 evaluate well locations, compliance with this Article, or mitigation measures that may be  
36 required to adequately ensure compliance with this Article.  
37

38 **E. Application Submission and Completeness Determination.** The application shall include  
39 documentation establishing that the proposed operation is in compliance with all applicable  
40 requirements of this Article. Boulder County encourages the submission of the application and  
41 supporting documentation in an electronic format. If not electronically submitted, then the  
42 applicant shall submit three (3) copies of the proposed development plan with the completed  
43 application form to the Land Use Department. The application shall contain a certification from  
44 the applicant that the proposed operation complies with all applicable provisions of this Article,  
45 and that the information in the application, as well as in any accompanying documentation, is  
46 true and accurate. The application shall be signed by the same person or entity who will sign the  
47 corresponding application to be submitted to the COGCC. The Director shall determine whether  
48 an expedited development plan review application is complete within ten (10) days after  
49 receipt of the application or twenty (20) days if outside consultants or staff other than the Land  
50 Use Department assist the Director with the completeness determination. The Director shall  
51 determine whether a standard development plan review application is complete within twenty  
52 (20) days after receipt of the application or forty (40) days if outside consultants or staff other  
53 than the Land Use Department assist the Director with the completeness determination.

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**1. Application Deemed Incomplete.** If the application is found to be incomplete, the Director shall inform the applicant in writing of the deficiencies. No further action shall be taken on an application determined to be incomplete until the specified deficiencies have been addressed to the satisfaction of the Director. If the applicant fails to address the deficiencies within thirty (30) days after the notice of incompleteness, the application shall be deemed withdrawn, unless the applicant notifies the Department in writing of the need for additional time. Notwithstanding the foregoing, upon the request of the applicant, the County will process an application that has been deemed incomplete as a standard development plan review application and the Director shall recommend denial of the standard development plan review application at any hearing before the Board of County Commissioners, unless the applicant satisfactorily remedies the application's deficiencies.

**2. Application Deemed Complete.** If the application is found to be complete, containing all documentation required by this Article, the Director shall date the application, inform the applicant of the finding of completeness, classify the application as expedited or standard, and then review the application for compliance with the applicable standards and requirements of this Article.

**F. Re-Classification.** At any time prior to administrative action on an expedited development plan review application, the Director may adjust the review process classification for the application. If an application is classified standard development plan review, at any point prior to the time the Department calendars the public hearing before the Board of County Commissioners for the standard development plan review application, the applicant may tender supplemental information and documentation and request the Director reconsider the classification decision for the application.

**G. Notice.**

**1.** The Applicant shall mail notice to surface owners, to surrounding landowners, and to residents as identified in this section no less than ten (10) days prior to the application being submitted to the Department.

**2.** Notice of the application shall be made as follows:

- a. To the surface owners of the parcels of land on which the oil and gas operation is proposed to be located; and
- b. To the owners of the parcels of land within five hundred (500) feet of a proposed gathering line; and
- c. To the owners of the parcels of land within one-half mile (2,640 feet) of the parcel on which the oil and gas operation is proposed to be located; and
- d. To the physical address of all parcels within one-half mile (2,640 feet) of the parcel on which the oil and gas operation is proposed to be located if Boulder County Assessor's records indicate a mailing address for the parcel owner that is different than the physical address.

The County Land Use Department shall provide the list of addresses of record for property owners within one-half mile (2,640 feet ) of the parcel on which the oil and gas operation is proposed to be located to the applicant at the pre-application conference.

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- 3. The notice shall contain the following:
  - a. A description of the proposed operation site location, including a legal description, as well as a street address for the site, if available from the County's rural addressing system; the identification of the applicant for the application; the current business address, telephone number, and email address for the applicant; a vicinity map; and a brief description and overview of the proposed operation including details of the drilling techniques (i.e., a detailed description of the type and extent of any proposed hydraulic fracturing).
  - b. information concerning the facilities and equipment proposed to be located at the site when operational, and proposed access roads and gathering lines. The anticipated submittal date of the application to the Department.
  - c. A statement that public comments on the application may be submitted to the County Land Use Department after the application submittal date.
  - d. A statement concerning the County's right to enter property that is the subject of the application as follows: "For the purpose of implementing and enforcing the County's development plan review for oil and gas operation regulations, County staff may from time to time need to enter onto the property that is the subject of a development plan review application."
  - e. A statement that the applicant will be contacting any entities that maintain any road used for access to the proposed operation to discuss the applicant's transportation needs and to discuss the applicant sharing in road improvement and maintenance necessitated by the proposed oil and gas operation through an agreement between the entity and the applicant.
  - f. A statement informing the recipients of the notice that they may request written notification by the operator of the commencement of construction and commencement of drilling operations, if the application is approved.
  - g. The current mailing address, website address, and telephone number for the County Land Use Department and the COGCC, as well as a statement that additional information on the application is available from the County Land Use Department.
- H. **Posting Sign Onsite.** The Applicant shall post a sign on the site of the proposed operation in a location visible to the public (i.e., visible from a public road) stating that a development plan review application has been applied for and providing the phone number of the County Land Use Department where information regarding the application may be obtained. The sign shall be provided to the applicant by the County and shall be posted within five (5) days after the application has been deemed complete.

1 **12-500 General Application Submittal Requirements for**  
2 **Expedited DPR and Standard DPR**

3  
4 The following information must be submitted with an expedited development review plan application or a  
5 standard development review plan application:  
6

- 7 **A. County Application Form.**  
8
- 9 **B. Mineral Owner.** Certification of ownership of the mineral estate or of all necessary lease  
10 interests in the mineral estate.  
11
- 12 **C. Date of APD Filing.** Anticipated or actual date of associated APD filing with the COGCC.  
13
- 14 **D. Pre-application Conference Checklist.** Completion of form provided by the Land Use  
15 Department at pre-application conference.  
16
- 17 **E. Proof of Notice.** Proof of notice as required by Section 12-400(G) in the form of a copy of the  
18 notice letter and a list of the landowners notified.  
19
- 20 **F. Verification of Legal Access and Use of Private Roads.** Information demonstrating that the  
21 applicant has the right to use private access roads which are necessary for the operation and that  
22 the applicant has entered into an agreement with the private road owner regarding maintenance,  
23 improvements necessitated by the proposed oil and gas operation, and reimbursement for  
24 damages. Recorded or historically used easements providing access to or across the parcel(s)  
25 shall be provided.  
26
- 27 **G. Proximity of Other Wells and Other Oil and Gas Operations.** A map showing the location of  
28 all producing, closed, abandoned, and shut-in wells and other oil and gas operations within one  
29 (1) mile of the site.  
30
- 31 **H. Site Plan and Parcel Information.** A map with north arrow and appropriate scale for the  
32 parcel on which the operation is proposed, indicating the following:  
33
- 34 **1. Well Siting.** The location of wellhead, pumping units, tanks, and treaters. Expedited  
35 development plan review applications shall also include information establishing  
36 compliance with the well siting criteria of Section 12-601(B).  
37
  - 38 **2. Dimensions of the Site.** Dimensions of the site, indicating area in square feet and acres,  
39 and the area of the site to be disturbed for permanent operations and temporary  
40 operations.  
41
  - 42 **3. Easements and Rights-of-Way.** Utility line easements and rights-of-way within 150 feet of  
43 the proposed site and access road.  
44
  - 45 **4. Improvements.** Existing improvements within 1,500 feet of the location on which the  
46 operation is proposed.  
47
  - 48 **5. Existing and Proposed Facilities.** Existing and proposed facilities such as structures,  
49 pipelines, tanks, wells, gathering lines, flow lines, staging and storage areas, equipment,  
50 temporary use area and permanent well pads.  
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- 6. **Existing and Proposed Roads.** Existing and proposed roads within the parcel and on the site as well as ingress and egress from public and private roads.
  
- 7. **Parcel and Site Features.** Parcel and site features such as floodplains, water bodies, drainage patterns, ditches, wetlands or aquatic habitat, vegetative cover, wildlife habitat and wildlife migration routes, and geologic features as defined in the Comprehensive Plan or identified onsite and within 1,500 feet of the location on which the operation is proposed.
  
- 8. **Topography.** Existing and proposed topography at five-foot intervals to portray the direction and slope of the area within 1,500 feet of the operation.
  
- I. **Agricultural Land Mitigation Plan.** An assessment of any agricultural lands potentially impacted by the proposed operation and a plan for mitigating said impacts in compliance with Section 12-602(E) (for expedited DPR applications) or Section 12-704(A) (for standard DPR applications).
  
- J. **Air Quality Plan.** A plan establishing compliance with the air quality provisions of either Section 12-602(A) (for expedited DPR applications) or Section 12-703(B) (for standard DPR applications).
  
- K. **Emergency Preparedness Plan.** A plan establishing compliance with the Emergency Response provisions of either Section 12-602(B) (for expedited DPR applications) or Section 12-703(D) (for standard DPR applications).
  
- L. **Land Disturbance Mitigation Plan.** An assessment of areas of land disturbance, an analysis of the species, character and density of existing vegetation on the site, a summary of the potential impacts to vegetation as a result of the proposed operation, and a plan, including proposed landscaping, revegetation, and other mitigation measures, demonstrating compliance with the standards of Section 12-602(F) (for expedited DPR applications) or Section 12-702(F) (for standard DPR applications).
  
- M. **Operations Plan.** A plan describing the proposed operations including the method and schedule for drilling, completion, transporting, production and post-operation activities.

N. Transportation, Roads, Access Standards, and Fees. ~~N.~~ The applicant shall submit a report with the following information:

- 1. Map indicating proposed trip routes for all traffic serving the oil and gas operation during all phases of well development and operations.
  
- 2. Indicate for each segment of the proposed route in Boulder County the types, sizes, weight, number of axles, volumes, and frequencies (daily, weekly, total) and timing (times of day) of all vehicles to be used for the proposed oil and gas operation.
  
- 3. Identify all measures necessary to ensure the safety and quality of life experience of other users of the county transportation system, adjacent residents, and affected property owners, including without limitation:
  - i. operational measures to minimize impacts to the public including, but not limited to, time of day, time of week, vehicle fuel and emissions

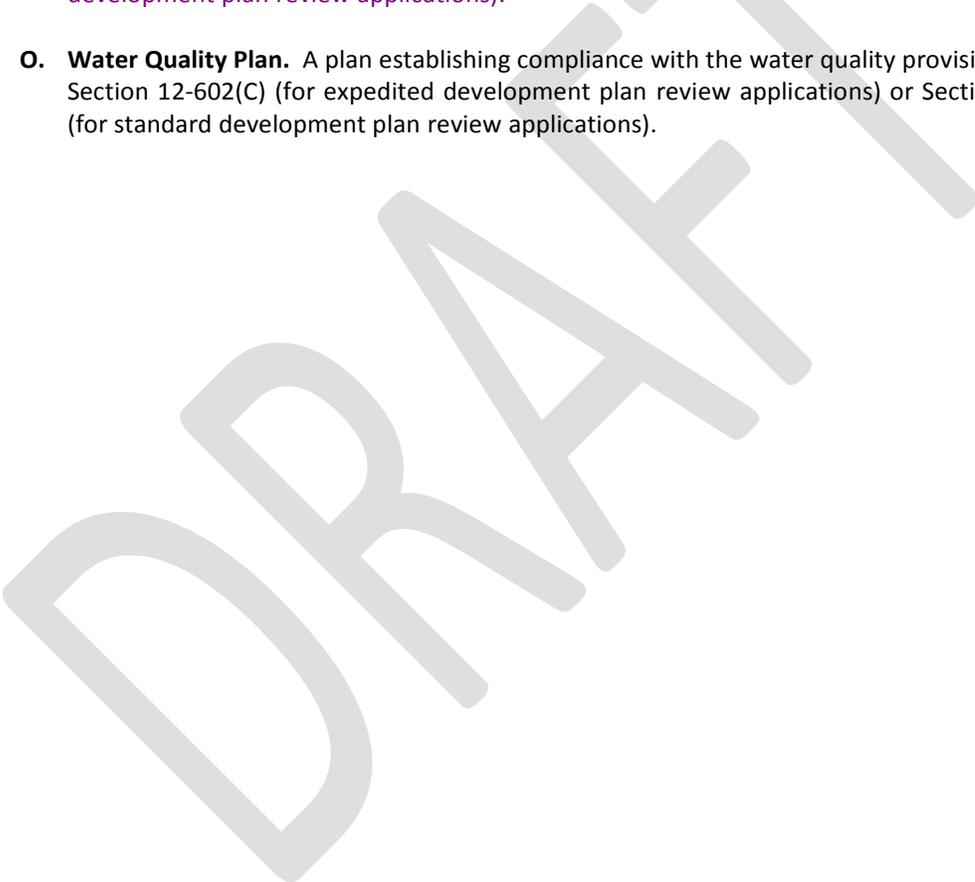
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reduction technology, noise minimization, and traffic control safety measures;

ii. maintenance practices on the proposed route, including without limitation grading of unpaved roads, dust suppression, vehicle cleaning necessary to minimize re-entrained dust from adjacent roads, snow and ice management, sweeping of paved roads/shoulders, and pothole patching, repaving, crack sealing, chip sealing necessary to maintain an adequate surface of paved roads along the proposed route; and

iii. any necessary physical infrastructure improvements to ensure public safety for all modes of travel along travel routes to and from the site.

- ~~N. A plan establishing compliance with the transportation provisions of either Section 12-602(D) (for expedited development plan review applications) or Section 12-703(K) (for standard development plan review applications).~~
- O. Water Quality Plan.** A plan establishing compliance with the water quality provisions of either Section 12-602(C) (for expedited development plan review applications) or Section 12-703(L) (for standard development plan review applications).



1 **12-600 Expedited Development Plan Review**

2  
3 **12-601 Expedited DPR Process**

4  
5 **A. Administrative Action.** An application that qualifies for the expedited development plan review  
6 process shall be reviewed and acted upon by the Director.  
7

8 **B. Eligibility for Expedited Development Plan Review.** A proposed operation will qualify for the  
9 administrative expedited development plan review process based upon a determination by the  
10 Director that it meets the following siting criteria:  
11

- 12 1. The wellhead, pumping units, tanks, and treaters are each at least [Planning Commission  
13 recommended language: "1000 feet from any occupied structure"; Staff recommended  
14 language: "500 feet from any occupied structure"].
- 15 2. The wellhead, pumping units, tanks, and treaters are each at least 150 feet from any  
16 property line, unless verified written consent is obtained from all affected property owners.  
17
- 18 3. The wellhead, pumping units, tanks, and treaters are each at least 500 feet from any surface  
19 water body including, but not limited to, ditches and reservoirs as identified and mapped on  
20 the County's Ditch and Reservoir Directory.  
21
- 22 4. The wellhead, pumping units, tanks, and treaters are each at least 500 feet from any  
23 domestic or commercial water wells or irrigation wells.  
24
- 25 5. The wellhead, pumping units, tanks, and treaters are not located within a platted subdivision  
26 or a mapped townsite.  
27
- 28 6. The wellhead, pumping units, tanks, and treaters are not located within a high hazard  
29 geologic area as defined in the Comprehensive Plan.  
30
- 31 7. The wellhead, pumping units, tanks, and treaters are not located within a floodway as  
32 defined in Article 4-400.  
33
- 34 8. The wellhead, pumping units, tanks, and treaters are not located within wetlands areas.  
35
- 36 9. The wellhead, pumping units, tanks, and treaters are not located within mapped significant  
37 natural communities, natural landmarks and natural areas, rare plant areas, significant  
38 riparian corridors, or critical wildlife habitat as each is defined in the Comprehensive Plan.  
39

40  
41 **C. Referral by Director.**

- 42 1. Following determination that an application for expedited development plan review is  
43 complete, the Director shall promptly forward one copy to: the County Transportation, and  
44 Parks and Open Space Departments; Boulder County Public Health; the appropriate fire  
45 district or County Sheriff; and any appropriate municipality for comment. The Director may  
46 also refer the application to other government agencies or entities for review and comment.  
47 Referral comments on the proposed development plan shall be returned to the Director  
48 within fifteen (15) days from the date of transmittal of the referral.  
49  
50

- 1           2. The Director shall notify the properties as identified in 12-400(G)(2) of the receipt of the  
2 complete application. The notice shall also identify the classification of the application. The  
3 notice shall indicate that a complete development plan review application has been  
4 received, include the phone number of the Land Use Department where information  
5 regarding the application may be obtained, and include a link to the County website for  
6 access to the complete application.  
7

8           **D. Review by Director.**  
9

- 10           1. The Director shall administratively review and make a determination within forty-five (45)  
11 days after it is deemed complete. The applicant shall have the ability to extend the  
12 foregoing time period. The Director may extend the foregoing time period if the applicant  
13 requests an operational conflict waiver hearing pursuant to Section 12-900(B). Failure to  
14 make a determination on the application within this time period shall result in the  
15 application being approved subject to the general oil and gas facility operation requirements  
16 and standard conditions of approval contained within this Article at Section 12-800.  
17  
18           2. As part of the review, the Director may conduct a site visit. Following review of the  
19 completed application within the time period in Section 12-601(D)(1), the Director may  
20 approve, approve with conditions necessary to ensure compliance with this Article, or deny  
21 the application based upon noncompliance with the expedited development plan review  
22 standards at Section 12-602. The Director shall provide its determination to the applicant in  
23 writing. The Land Use Department shall also provide public notice of the Director's decision  
24 by posting the Director's determination on the Boulder County website. If denied, the  
25 applicant may request the application be re-classified pursuant to the provisions of Section  
26 12-603.  
27  
28           3. After approval of a development plan review application, the applicant shall comply with the  
29 provisions of Section 12-1200(C), Effect of the Approved Development Plan.

30           **12-602 Expedited DPR Approval Standards**  
31

32 All expedited development plan review applications shall be reviewed in accordance with the following  
33 standards which the Director has determined to be applicable based on the nature and extent of the  
34 proposed development. The Director shall approve expedited DPR applications for oil and gas facilities  
35 that demonstrate compliance with the following.  
36

37           **A. Air Quality Standards.** Air emissions from wells shall be in compliance with the permit and control  
38 provisions of the Colorado Air Quality Control Program, Title 25, Section 7, C.R.S., and the fugitive  
39 dust regulations administered by Boulder County Public Health. In addition, proposed oil and gas  
40 operations shall implement an air quality mitigation plan which establishes compliance with the  
41 following mitigation measures of this Section.  
42

- 43           1. **General Duty to Minimize VOC Emissions.** All continuously operated equipment, including  
44 but not limited to, storage vessels, tanks, separators, pneumatic pumps, dehydrators, and  
45 compressors, shall route natural gas and VOC vapors to a capture or control device with at  
46 least a 98% VOC destruction efficiency, to the maximum extent practicable. The Applicant  
47 shall submit to the County manufacture test or other data demonstrating a 98% VOC  
48 destruction or control efficiency. Any flare, auto ignition system, recorder, vapor recovery  
49 device or other equipment used to meet the 98% VOC destruction or control efficiency  
50 requirement shall be installed, calibrated, operated, and maintained in accordance with the  
51 manufacturer's recommendations, instructions, and operating manuals.

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- 2. **Flares and Combustion Devices.** All flares shall be designed and operated as follows:
  - a. The flare shall be fired with natural gas and shall be operated with a 98% VOC destruction efficiency.
  - b. The flare shall be designed and operated in a manner that will ensure no visible emissions, pursuant to the provisions of 40 CFR 60.18(f), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.
  - c. The flare shall be operated with a flame present at all times when emissions may be vented to it, pursuant to the methods specified in 40 CFR 60.18(f).
  - d. The flare shall comply with the specifications detailed in 40 CFR 60.18(c)(3)-(6).
  - e. An automatic flame ignition system shall be installed.
  - f. If using a pilot flame ignition system, the presence of a pilot flame shall be monitored using a thermocouple or other equivalent device to detect the presence of a flame. A pilot flame shall be maintained at all times in the flare's pilot light burner. If the pilot flame goes out and does not relight, then if no telemetry alarm system is in place a visible alarm shall be in place on-site and activated.
  - g. If using an electric arc ignition system, the arcing of the electric arc ignition system shall pulse continually and a device shall be installed and used to continuously monitor the electric arc ignition system.
  - h. Any flare, auto ignition system, and recorder shall be installed, calibrated, operated, and maintained in accordance with the manufacturer's recommendations, instructions, and operating manuals.
- 3. **Fugitive Emissions.** The operator will develop and maintain a leak detection and component repair program, such as a leak detection and repair program, using most effective performance technologies and practices for equipment used on the well site for permanent operations.
- 4. **Use of Closed Loop Pitless Systems for the Containment and/or Recycling of Drilling and Completion Fluids.** Wells will be drilled, completed and operated using closed loop pitless systems for containment and/or recycling of all drilling, completion, flowback and produced fluids.
- 5. **Green Completions.** For each well completion operation with hydraulic fracturing, the operator must control emissions by the operational procedures set forth below.
  - a. For the duration of flowback, route the recovered liquids into one or more storage vessels or re-inject the recovered liquids into the well or another well, and route the recovered gas into a gas flow line or collection system, re-inject the recovered gas into the well or another well, use the recovered gas as an on-site fuel source, or use the recovered gas for another useful purpose that a purchased fuel or raw material would serve, with no direct release to the atmosphere.
  - b. If compliance with the prior paragraph is infeasible the operator must capture and direct flowback emissions to a completion combustion device equipped with a

1 reliable continuous ignition source over the duration of flowback, except in  
2 conditions that may result in a fire hazard or explosion, or where high heat  
3 emissions from a completion combustion device may negatively impact waterways  
4 or nearby structures. Non-flammable gas may be vented temporarily until  
5 flammable gas is encountered where capture or combustion is not feasible.  
6 Completion combustion devices must be equipped with a reliable continuous  
7 ignition source over the duration of flowback.  
8

- 9 c. Operators must maximize resource recovery and minimize releases to the  
10 atmosphere during flowback and subsequent recovery / operation.  
11  
12 d. For wildcat or delineation wells in a location without a pipeline, each well  
13 completion operation with hydraulic fracturing at a gas wellhead affected facility  
14 must reduce emissions by using a completion combustion device equipped with a  
15 reliable continuous ignition source over the duration of flowback.  
16  
17 e. The operator must maintain a log for each well completion operation at each gas  
18 wellhead affected facility. The log must be completed on a daily basis and must  
19 contain the records specified in 40 C.F.R. § 60.5420(c)(1)(iii).  
20  
21 f. The operator of a well must notify the Land Use Department at least 2 days prior to  
22 the commencement of well drilling and completion. The notification shall include  
23 contact information for the operator; the American Petroleum Institute (API) well  
24 number, the latitude and longitude coordinates for each well in decimal degrees to  
25 an accuracy and precision of five (5) decimals of a degree using the North American  
26 Datum of 1983; and the planned date of the beginning of drilling and completion /  
27 flowback. The notice may be submitted in writing or in electronic format.  
28

29 **6. Capture of Produced Gas from Wells.** Gas produced during production shall be captured  
30 and not flared or vented to the maximum extent practicable.  
31

32 **7. Pneumatic controllers.** The operator shall use only no bleed pneumatic controllers, where  
33 such controllers are available for the proposed application.  
34

35 **8. Maintenance During Well Blowdowns.** The operational plan shall require technologies or  
36 practices which minimize or eliminate natural gas emissions during well maintenance or  
37 blowdowns.  
38

39 **9. Maintenance of Gathering Lines and Pipelines.** The operational plan shall require  
40 technologies or practices which minimize or eliminate emissions or spills during  
41 maintenance of pipelines.  
42

43 **10. Rod-Packing Replacement.** Operators shall replace rod-packing from reciprocating  
44 compressors every 26,000 hours or 36 months, whichever comes first.  
45

46 **11. Certification.** An authorized representative for the operator must submit annual reports to  
47 the Director certifying compliance with these air quality requirements and documenting any  
48 periods of non-compliance, including the date and duration of each deviation and a  
49 compliance plan and schedule to achieve compliance. The reports must contain a  
50 certification as to the truth, accuracy and completeness of the reports.  
51

52 **B. Emergency Response Standards.** Oil and gas operations shall not cause unreasonable risks of  
53 emergency situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen

1 sulfide or other toxic gas or fluid emissions, and hazardous material vehicle accidents or spills. Each  
2 operator with an operation in the County is required to implement an emergency preparedness plan  
3 as described in Section 12-703(D).  
4

5 **C. Water Quality Monitoring and Well Testing.** Proposed oil and gas operations shall implement a  
6 water quality monitoring and well testing plan which establishes compliance with the criteria of this  
7 Section.  
8

9 **1. Abandoned Oil and Gas Well Assessment.** Assessment and monitoring of plugged and  
10 abandoned and dry and abandoned oil and gas wells (abandoned wells) within one-quarter  
11 ( $\frac{1}{4}$ ) mile of the projected track of the borehole of a proposed well is required.  
12

13 a. Based upon examination of COGCC and other publicly available records, operators  
14 shall identify all abandoned wells located within one-quarter ( $\frac{1}{4}$ ) mile of the  
15 projected track of the borehole of a proposed well. The operator shall assess the  
16 risk of leaking gas or water to the ground surface or into subsurface water  
17 resources, taking into account plugging and cementing procedures described in any  
18 recompletion or plugged and abandoned (P&A) report filed with the COGCC. The  
19 operator shall notify the Director and COGCC of the results of the assessment of the  
20 plugging and cementing procedures.  
21

22 b. ~~The operator shall contact each surface owners with who has an abandoned wells~~  
23 ~~to on their property to seek permission to access the property in order to test the~~  
24 ~~abandoned well. If a surface owner has not provided permission to access after~~  
25 ~~thirty (30) days notice from the operator, then the operator shall not be required to~~  
26 ~~test the abandoned well. provide each surface owner with an abandoned well to~~  
27 ~~be tested with at least thirty (30) days notice and opportunity to respond to said~~  
28 ~~notice in order to obtain permission to use reasonable good faith efforts to obtain~~  
29 ~~access to the abandoned well. For each abandoned well for which access is~~  
30 ~~granted, the operator shall~~ ~~abandoned wells identified under Section 12-~~  
31 ~~602(C)(1)(a) above to conduct a soil gas survey of the abandoned well at all~~  
32 ~~abandoned wells located within one-quarter (1/4) mile of the projected track of the~~  
33 ~~borehole of a proposed well~~ prior to production from the proposed well and again  
34 one (1) year and thereafter every three (3) years after production has commenced.  
35 Operators shall submit the results of the soil gas survey to the Director and the  
36 COGCC within three (3) months of conducting the survey or advise the Director that  
37 access to the abandoned wells could not be obtained from the surface owner.  
38

39 **2. Water Well Sampling.** Based upon records from the Colorado Division of Water Resources,  
40 the operator will identify and offer to sample all water wells located within one quarter mile  
41 ( $\frac{1}{4}$ ) mile of the projected track of the borehole of a proposed well. If a well owner desires  
42 the well be tested, the operator shall test the well prior to the start of heavy equipment  
43 operations at the site. The water well testing described in this Section shall include testing  
44 for the analytes listed in Table 1.  
45

46 Field observations such as damaged or unsanitary well conditions, adjacent potential  
47 pollution sources, odor, water color, sediment, bubbles, and effervescence shall also be  
48 included. The location of the water well shall be surveyed using a GPS with sub-meter  
49 resolution.  
50

51 a. If free gas or a dissolved methane concentration level greater than two (2)  
52 milligrams per liter (mg/l) is detected in a water well, gas compositional analysis  
53 and stable isotope analysis of the methane (carbon and deuterium) shall be

1 performed to determine gas type. If the test results indicate biogenic gas, no  
2 further isotopic testing shall be done. If the test results indicate thermogenic or a  
3 mixture of thermogenic and biogenic gas, then the operator shall submit to the  
4 Director and COGCC an action plan to determine the source of the gas. If the  
5 methane concentration increases by more than five (5) mg/l between sampling  
6 periods, or increases to more than ten (10) mg/l, the operator shall notify the  
7 Director, the COGCC and the owner of the water well immediately.  
8

- 9 b. If BTEX and/or TPH are detected as a result of testing the operator will notify the  
10 Director, the COGCC and the owner of the water well immediately.
- 11 c. Operators shall use reasonable good faith efforts to conduct initial baseline testing  
12 of the identified water wells prior to the start of heavy equipment operations at the  
13 site; however, not conducting baseline testing because access to water wells cannot  
14 be obtained shall not be grounds for denial of an application. Within one (1) year  
15 after completion of the proposed well, "post-completion" tests shall be performed  
16 for the same analytical parameters listed above and repeated three (3) and six (6)  
17 years after the completion of the well. If no significant changes from the baseline  
18 have been identified after the third test (i.e., the six-year test), no further testing  
19 shall be required, although, a final well test shall be conducted at time of final  
20 reclamation of oil and gas location. Additional "post-completion" test(s) may be  
21 required if changes in water quality are identified during follow-up testing. The  
22 Director may require further water well sampling at any time in response to  
23 complaints from water well owners.  
24  
25 d. Copies of all test results described above shall be provided to the Director, the  
26 COGCC and the water well owner within three (3) months after collecting the  
27 samples. The analytical data and surveyed well locations shall also be submitted to  
28 the Director and COGCC in an electronic data deliverable format.  
29  
30

31 **3. Qualified Independent Professional Consultant.** All abandoned well assessments and water  
32 well testing required herein shall be conducted either in-house by the operator or, if  
33 requested by a surface owner, by a qualified independent professional consultant or  
34 engineer approved by the Director.  
35

36 **D. Transportation, Roads, Access Standards, and Fees.**

37 1. The applicant's transportation plan must be designed and implemented to  
38 ensure public safety and maintain quality of life for other users of the county  
39 transportation system, adjacent residents, and affected property owners.  
40

41 2. Where available, existing private roads shall be used to minimize land  
42 disturbance unless traffic safety, visual or noise concerns, or other adverse surface  
43 impacts clearly dictate otherwise.  
44

45 3. Access roads on the site and access points to public roads as identified in the  
46 application materials shall be reviewed by the County Transportation Department and  
47 shall be built and maintained in accordance with the engineering specifications and  
48 access road standards defined in the Transportation Standards.  
49

50 4. All applicable transportation fees shall be paid prior to issuance of a  
51 development plan review construction permit, including without limitation:

- a. access permit fees;
- b. oversize/overweight permit fees;
- c. right of way construction permit fees; and
- d. fees to mitigate the cumulative impacts of heavy truck traffic on the county transportation system [derived from the Transportation RFP study]
- e. Oil and gas operations must minimize impacts to the physical infrastructure of the county transportation system. Any costs to improve county transportation system infrastructure necessitated by the proposed oil and gas operation shall be the responsibility of the operator. All transportation system infrastructure improvements and associated costs shall be determined by the County Transportation Department. The County shall perform the work or arrange for it to be performed. If the operator disagrees with the infrastructure improvements or associated costs as assessed by County Transportation, it may request that County Transportation approve a different route for its proposed oil and gas operation that avoids the need for such improvements. Alternatively, the applicant may engage a licensed civil engineering firm to perform a study to independently evaluate county transportation system infrastructure improvements necessitated by the proposed oil and gas operation.

5. If the applicant decides to perform a traffic engineering study, whether to challenge the amount of a fee or the cost of infrastructure improvements deemed necessary by the County, the applicant may either request the Director place the Expedited DPR application on hold until resolution of the issue or request the Director reclassify the application as a Standard DPR application.

~~D. Access roads on the site and access points to public roads as identified in the application materials shall be reviewed by the County Transportation Department and shall be built and maintained in accordance with the Transportation Standards. All proposed transportation routes to the site shall also be reviewed and approved by the County Transportation Department to minimize traffic hazards and adverse impacts on public roadways. Existing roads shall be used to minimize land disturbance unless traffic safety, visual or noise concerns, or other adverse surface impacts clearly dictate otherwise. All applicable transportation fees shall be paid prior to issuance of a development plan permit which fee shall be in lieu of the applicant having to create a public road transportation impact study and mitigation plan.~~

**E. Agricultural Land Mitigation.** Oil and gas operations are to be located primarily based upon the eligibility criteria of Section 12-601(B). Where possible, oil and gas operations shall also be located and conducted so as to use only as much of the surface as is reasonably necessary for the operation of the facility and to avoid the unreasonable loss of agricultural land, including farm or ranch land, or any other vegetated land.

**F. Land Disturbance Standards.** The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions of a minimum size necessary to accommodate operational needs while minimizing surface disturbance.
2. Structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
3. Oil and gas operations located in a manner that minimizes the amount of cut and fill.

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**G. General Oil and Gas Facility Operational Requirements.** The general oil and gas facility operational requirements set forth at Section 12-800 shall apply to each approved development plan in the form of conditions of approval.

**H. Pipelines.** Any newly constructed or substantially modified pipelines on site must meet the Additional Provisions listed at Article 4-514(E)(5)(a) – (f). Note: Any newly constructed or substantially modified pipelines off site may, at discretion of the Director, need to comply with all of Article 4-514(E).

**12-603 Reclassification of Expedited DPR Application to Standard DPR Application Following Administrative Denial or Conditional Approval**

Should the Director deny administrative approval or conditionally approve the application in a manner unacceptable to the applicant, upon written request of the applicant the Director shall reclassify the application as a standard development plan. The applicant must pay the additional fees associated with a standard application and file the additional application submittal requirements necessary for standard development plan review with the County. If the applicant fails to pay the additional fees and file the additional application submittal requirements with the County within ninety (90) days after the Director’s determination, the application shall be deemed withdrawn. The applicant has no right of judicial review of a denied or conditionally approved expedited development plan review and must exhaust the administrative remedy of processing the proposed operation through the standard development plan review process as a condition precedent to judicial review pursuant to Section 12-1100.

1

<b>Table 1. Water Quality Analytes</b>	
<b>GENERAL WATER QUALITY</b>	Alkalinity Conductivity & TDS pH Dissolved Organic Carbon (or Total Organic Carbon)
	Bacteria
	Hydrogen Sulphide
<b>MAJOR IONS</b>	Calcium Chloride Fluoride Magnesium Potassium Sodium Sulfate Nitrate + Nitrite (total)
<b>METALS</b>	Arsenic Barium Boron Chromium Copper Iron Lead Manganese Selenium Strontium
<b>VOLATILE ORGANIC COMPOUNDS</b>	Methane BTEX compounds (Benzene, Toluene, Ethylbenzene, Xylene)
	Total Petroleum Hydrocarbons (TPH)
<b>OTHER</b>	Water Level Stable isotopes of water (Oxygen-18 and Deuterium), carbon 13 and sulfur 34.

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1 **12-700 Standard Development Plan Review**

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3 **12-701 Additional Standard DPR Application Requirements**

4 A standard development plan review application shall contain all the general application requirements for  
5 the development plan review application at Section 12-500 plus the following assessment and mitigation  
6 plans. The assessment and mitigation plans shall be developed based upon the standards in Section 12-  
7 703 below and by reference to the Boulder County Comprehensive Plan.  
8

- 9 **A. Cultural and Historic Resources Mitigation Plan.** A cultural, historical and archeological survey  
10 of the parcel or parcels to be used for the proposed oil and gas operation which demonstrates  
11 compliance with the standards of Section 12-703(C).  
12
- 13 **B. Geologic Hazard Area Mitigation Plan.** A geologic hazard mitigation plan identifying hazard  
14 types and areas on the parcels demonstrating compliance with the standards of Section 12-  
15 703(E).  
16
- 17 **C. Natural Resources Mitigation Plan.** Information demonstrating compliance with Section 12-  
18 703(G).  
19
- 20 **D. Recreational Activity Mitigation Plan.** Information establishing any potential impacts to  
21 recreational activities by the proposed oil and gas operation and a plan demonstrating  
22 compliance with the standards of Section 12-703(H).  
23
- 24 **E. Scenic Attributes and Rural Character Mitigation Plan.** An assessment of scenic attributes and  
25 rural character potentially impacted by the proposed oil and gas operation and a plan for  
26 mitigating said impacts in compliance with Section 12-703(I).  
27
- 28 **F. Surrounding Land Uses Mitigation Plan** Information establishing surrounding land uses to the  
29 proposed oil and gas operation, an assessment of any potential impacts to the adjacent and  
30 near land uses, and a plan mitigating said impacts in compliance with Section 12-703(J) herein.  
31
- 32 **G. Water Quality Plan.** A plan establishing compliance with the water quality provisions of  
33 Section 12-703(L). The plan may include details such as the applicant's plans for water quality  
34 testing, prevention of illicit or inadvertent discharges, stormwater discharge management,  
35 containment of pollutants, and spill notification as required by federal and state agencies. The  
36 provisions of Article 12-602(C) may also be considered and used in the implementation of the  
37 plan.  
38
- 39 **H. Wetlands Protection Plan.** Information demonstrating compliance with the standards of Section  
40 12-703(M).  
41

42 **12-702 Standard DPR Process**

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44 Upon determination that an application is a standard permit review process and that the application is  
45 complete, the Director shall begin review of the application for compliance with this Article.  
46

- 47 **A. Applicant Neighborhood Meeting.** The applicant will be required to conduct a neighborhood  
48 meeting at a convenient public location with adjacent and surrounding land owners and other  
49 interested parties. The meeting must occur no earlier than 30 days in advance of an application  
50 being filed and must be held prior to the scheduling of the Board of County Commissioners' public  
51 hearing. The neighborhood meeting shall be noticed to the County and to all individuals entitled

1 to notice pursuant to Section 12-400(G)(2) at least ten days prior to the meeting. At the  
2 neighborhood meeting, the applicant shall provide an overview of its proposed oil and gas  
3 operation and allow those in attendance to provide input as to the proposed operation, including,  
4 but not limited to, well siting and well locations, issues that arise from application of this Article to  
5 the proposed operation, and suggested mitigation to adequately ensure compliance with this  
6 Article. A summary of the neighbor comments and any agreed upon mitigation measures shall be  
7 provided with the application.  
8

- 9 **B. Referral Agency Comments.** Following determination that an application is complete, the  
10 Director shall promptly forward one copy to the County Transportation and Parks and Open  
11 Space Departments; Boulder County Public Health; the appropriate fire district or County Sheriff;  
12 and any appropriate municipality for comment. The Director may also refer the application to  
13 other government agencies or entities for review and comment. Referral comments on the  
14 proposed development shall be returned to the Director no later than thirty-five (35) days after  
15 the date of application.  
16
- 17 **C. Consultant Review.** The Director may submit the application for review and recommendation by  
18 consultants retained by the County with the necessary expertise to review technical or other  
19 aspects of the application which are outside the expertise of the Land Use Department. The  
20 applicant shall reimburse the County any costs associated with this consultant review.  
21
- 22 **D. Site Visit.** The Department will conduct a site visit for standard development plan applications to  
23 allow the Director to determine compliance with these standards. When possible this site visit  
24 will be coordinated with site visits required by other governmental agencies.  
25
- 26 **E. Notice of Board of County Commissioner’s Hearing.** Not less than fourteen (14) days prior to  
27 the public hearing on the standard permit review, a legal notice of the public hearing before the  
28 Board shall be published in a newspaper of general circulation within the County, and written  
29 notice to the surface owner and adjacent property owners of the time and place of the Board's  
30 public hearing shall be provided pursuant to Section 12-400(G) herein.  
31
- 32 **F. Decision by Board of Commissioners.** The Board of Commissioners shall conduct a noticed public  
33 hearing(s) for review of a standard development plan review application. Any action taken by  
34 the Board of County Commissioners will be based on the entire record of proceedings on the  
35 matter, as that record is maintained by the Land Use Department Director and/or the Clerk of  
36 the Board of County Commissioners, including but not limited to: tape recordings or true  
37 transcripts of public hearings where the proposal was discussed; all written comments of  
38 referral agencies; the review and recommendations of the Land Use Department; and all  
39 written commitments, statements, or evidence made or submitted by or in behalf of the  
40 applicants, landowners or interest holders or their agents, and interested members of the  
41 public. The applicant shall have the burden of proof to show that the applicable criteria for  
42 approval have been met. On the basis of the evidence received at such public hearing(s), the  
43 Board shall make its determination to approve, approve with conditions necessary to ensure  
44 compliance with this Article, or deny the application. The Board’s action shall contain  
45 appropriate findings or reasons in support of its decision. The Board shall render its decision  
46 on the proposed development plan in writing as soon as practical following conclusion of the  
47 public hearing.  
48

## 49 **12-703 Standard DPR Approval Standards**

50 All standard development plan review applications shall be reviewed in accordance with the following  
51 standards which the Board, based upon advice of the Director, has determined to be applicable based on  
52 the nature and extent of the proposed development. When two or more of the standards listed below

1 conflict, the Board, based upon advice of the Director, shall evaluate the applicability and importance of  
2 each of the conflicting standards under the facts of the specific application and make a reasonable  
3 attempt to balance the conflicting standards in reaching a development plan decision. The Board's  
4 decision on a standard development plan review application for an oil and gas operation will be based  
5 upon its compliance with all development plan standards as determined to be applicable.  
6

7 **A. Agricultural Land Standards**  
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- 9
- 10 1. **Loss of Agricultural Land.** Oil and gas operations shall be located and conducted so as to  
11 use only as much of the surface as is reasonably necessary for the operation of the  
12 facility and to avoid the unreasonable loss of agricultural land, including farm or ranch  
13 land, or any other vegetated land.
  - 14 2. **Impact on Agricultural Operations.** Oil and gas operations shall be located and  
15 conducted in a manner to minimize the impact to agricultural operations.
  - 16 3. **Impact on Grazing.** Oil and gas operations shall be located and conducted in a manner  
17 so as to not cause significant impact to livestock, grazing permits or leases, or grazing  
18 permittees or lessees.  
19

20

21 **B. Air Quality Standards.** Air emissions from the wells shall be in compliance with the permit and  
22 control provisions of the Colorado Air Quality Control Program, Title 25, Section 7, C.R.S., and the  
23 fugitive dust regulations administered by the Boulder County Public Health Department.  
24

- 25 1. **General Duty to Minimize VOC Emissions.** All continuously operated equipment, including  
26 but not limited to, storage vessels and tanks, separators, pneumatic pumps, dehydrators,  
27 and compressors, shall route natural gas and VOC vapors to a capture or control device with  
28 at least a 98% VOC destruction efficiency, to the maximum extent practicable. Operators  
29 shall submit to the County manufacture test or other data demonstrating a 98% VOC  
30 destruction or control efficiency. Any flare, auto ignition system, recorder, vapor recovery  
31 device or other equipment used to meet the 98% VOC destruction or control efficiency  
32 requirement shall be installed, calibrated, operated, and maintained in accordance with the  
33 manufacturer's recommendations, instructions, and operating manuals.  
34
- 35 2. **Flares and Combustion Devices** All flares shall be designed and operated as follows:  
36
  - 37 a. The flare shall be fired with natural gas and shall be operated with a 98% VOC  
38 destruction efficiency.
  - 39 b. The flare shall be designed and operated in a manner that will ensure no visible  
40 emissions, as determined by 40 CFR 60.18(f), except for periods not to exceed a total  
41 of 5 minutes during any 2 consecutive hours.
  - 42 c. The flare shall be operated with a flame present at all times when emissions may be  
43 vented to it, as determined by methods specified in 40 CFR 60.18(f).
  - 44 d. The flare shall comply with the specifications detailed in 40 CFR 60.18(c)(3)-(6).
  - 45 e. An automatic flame ignition system shall be installed.
  - 46 f. If using a pilot flame ignition system, the presence of a pilot flame shall be monitored  
47 using a thermocouple or other equivalent device to detect the presence of a flame.  
48 A pilot flame shall be maintained at all times in the flare's pilot light burner. If the  
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1 pilot flame goes out and does not relight, then if no telemetry system is in place a  
2 visible alarm shall be in place on-site and activated.  
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4 g. If using an electric arc ignition system, the arcing of the electric arc ignition system  
5 shall pulse continually and a device shall be installed and used to continuously  
6 monitor the electric arc ignition system.  
7

8 h. Any flare, auto ignition system, and recorder shall be installed, calibrated, operated,  
9 and maintained in accordance with the manufacturer's recommendations,  
10 instructions, and operating manuals.  
11

12 **3. Fugitive Emissions.** The operator will develop and maintain a leak detection and component  
13 repair program, such as a leak detection and repair program, using most effective  
14 performance technologies and practices for equipment used on the well site for permanent  
15 operations.  
16

17 **4. Certification.** An authorized representative for the operator must submit annual reports to  
18 the Director certifying compliance with these air quality requirements and documenting any  
19 periods of non-compliance, including the date and duration of each deviation and a  
20 compliance plan and schedule to achieve compliance. The reports must contain a  
21 certification as to the truth, accuracy and completeness of the reports.  
22

23 **C. Cultural and Historic Resources Standards.** Oil and gas operations shall not cause significant  
24 degradation of cultural or historic or archaeological resources, sites eligible for County  
25 landmarking, or the National Historic Register.  
26

27 **D. Emergency Response Standards.**  
28

29 **1. In General.** Oil and gas operations shall not cause unreasonable risks of emergency  
30 situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen  
31 sulfide or other toxic gas or fluid emissions, and hazardous material vehicle accidents or  
32 spills.  
33

34 **2. Emergency Preparedness Plan.** Each operator with an operation in the County is required to  
35 implement an emergency preparedness plan for each specific operation site. The plan shall  
36 be referred to and approved by the Boulder County Sheriff, the Office of Emergency  
37 Management, and the applicable fire district and filed with the County and updated on an  
38 annual basis or as conditions change (responsible field personnel change, ownership  
39 changes, etc.). The emergency preparedness plan shall consist of at least the following  
40 information:  
41

42 a. Name, address and phone number, including 24-hour emergency numbers for at least  
43 two persons located in or near Boulder County who are responsible for emergency  
44 field operations.  
45

46 b. An as-built facilities map in a format suitable for input into the County's GIS system  
47 depicting the locations and type of above and below ground facilities including sizes,  
48 and depths below grade of all oil and gas gathering and transmission lines and  
49 associated equipment, isolation valves, surface operations and their functions, as well  
50 as transportation routes to and from exploration and development sites, for  
51 emergency response and management purposes. The information concerning  
52 pipelines and isolation valves shall be held confidentially by the County's Office of  
53 Emergency Management, and shall only be disclosed in the event of an emergency.

1 The County shall deny the right of inspection of the as-built facilities maps to the  
2 public pursuant to C.R.S. § 24-72-204.  
3

4 c. Detailed information addressing each potential emergency that may be associated  
5 with the operation. This may include any or all of the following: explosions, fires, gas,  
6 oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions,  
7 or hazardous material vehicle accidents or spills. For each potential emergency,  
8 threshold / trigger levels shall be pre-identified that govern when an emergency state  
9 is declared by the operator.  
10

11 d. The plan shall include a provision that any spill outside of the containment area or  
12 which has the potential to leave the facility or to threaten a water body shall be  
13 reported to the emergency dispatch and the Director immediately.  
14

15 e. Detailed information identifying access or evacuation routes, and health care facilities  
16 anticipated to be used.  
17

18 f. Project specific emergency preparedness plans are required for any project that  
19 involves drilling or penetrating through known zones of hydrogen sulfide gas.  
20

21 g. The plan shall include a provision that obligates the operator to reimburse the  
22 appropriate emergency response service providers for costs incurred in connection  
23 with any emergency.  
24

25 h. Detailed information that the operator has adequate personnel, supplies, and funding  
26 to implement the emergency response plan immediately at all times during  
27 construction and operations.  
28

29 i. The plan shall include a provision that obligates the operator to disclose to the County  
30 in table format the name, CAS number, volume, storage, containment and disposal  
31 method for all drilling and completion chemicals (solids, fluids, and gases) used on the  
32 proposed well site. The plan shall include a provision that obligates the operator to  
33 keep on each site and immediately available current Material Safety Data Sheets  
34 (MSDS) for all chemicals used or stored on a site. The MSDS sheets shall be provided  
35 immediately upon request to the Director, a public safety officer, or a health  
36 professional.  
37

38 j. The plan shall include a provision requiring the operator to have readily available  
39 information onsite identifying the chemicals used in hydraulic fracturing fluids to  
40 inform, if necessary, emergency providers of the chemicals in case of a spill requiring  
41 emergency response.  
42

43 k. The plan shall include a provision establishing a process by which the operator  
44 engages with the surrounding neighbors to educate them on the risks and benefits of  
45 the on-site operations and to establish a process for surrounding neighbors to  
46 communicate with the operator.  
47

48 **E. Geologic Hazard Area.** To the maximum extent practicable, oil and gas operations shall not be  
49 located in geologic hazard areas as mapped in the Comprehensive Plan. If an operation is located  
50 within a geologic hazard area, the applicant shall take all reasonable actions to mitigate impacts  
51 to the geologic hazard area.  
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53 **F. Land Disturbance Standards.** To the maximum extent practicable, the following mitigation  
measures shall be used to achieve compatibility and reduce land use impacts:

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1. Pad dimensions of a minimum size necessary to accommodate operational needs while minimizing surface disturbance.
2. Structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
3. Oil and gas operations located in a manner that minimizes the amount of cut and fill.
4. Oil and gas operations using and sharing existing infrastructure, minimizing the installation of new facilities, and avoiding additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.
5. Landscaping plans including drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. Where buffering is accomplished with vegetation, an irrigation plan is required.
6. An analysis of the existing vegetation on the site establishing a baseline for re-vegetation upon temporary or final reclamation or abandonment of the operation. The analysis shall include a written description of the species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operation. The application shall include any COGCC required interim and final reclamation procedures.

**G. Natural Resource Standards.** The installation and operation of any oil and gas operation shall not cause significant degradation to mapped significant natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat as defined in the Comprehensive Plan or identified on the site. Among other mitigation measures to achieve compliance with this standard, proposed oil and gas operations shall use the compatibility siting criteria of Section 12-703(J)(1) to prevent degradation of these important County attributes.

**H. Recreational Activity Standards.** Oil and gas operations shall not cause significant degradation to the quality and quantity of recreational activities in the County. Methods to achieve compliance with this standard include, but are not limited to, locating operations away from trails and from property used for recreational purposes.

**I. Scenic and Rural Character Standards.** Oil and gas operations shall not cause significant degradation to the scenic attributes and rural character of Boulder County. The following standards are methods to prevent degradation to the scenic attributes and rural character of Boulder County:

1. **Buffering from Sensitive Visual Areas.** The operation should be buffered from sensitive visual areas (i.e., roads, property lines, or residences) by providing landscaping along the perimeter of the site between the surface equipment and the sensitive visual area.
2. **Existing Vegetation.** The operation should be located in areas that maximize the amount of natural screening available for the facility. Natural screening includes, but is not limited to, the use of existing vegetation as a background, the construction of the operation near screening stands of vegetation, or placement in valleys allowing topographic screening. The operation should be constructed in a manner to minimize the removal of and damage to existing trees and vegetation. If the operation requires clearing trees or vegetation, the edges of the cleared vegetation should be feathered

1 and thinned and the vegetation should be mowed or brush-hogged while leaving root  
2 structure intact, instead of scraping the surface.

3  
4 3. **Compatibility Siting Criteria.** Use of the compatibility siting criteria of Section 12-  
5 703(J)(1) as necessary to prevent degradation to the scenic attributes and rural  
6 character of Boulder County.

7  
8 4. **Low Profile.** To the maximum extent practicable, oil and gas operations should use low  
9 profile tanks or less intrusive equipment.

10  
11 **J. Surrounding Land Uses Standards.** Oil and gas operations shall be sited and operated in a  
12 manner so that the operation is compatible with surrounding land uses to the maximum extent  
13 practicable. The following techniques or actions shall be used to achieve compatibility between  
14 the proposed oil and gas operation and surrounding land uses. Distance from surrounding land  
15 uses is a method deemed most effective to ensure compatibility between proposed oil and gas  
16 operations and existing land uses. In addition, locating the operation based upon the following  
17 site-specific characteristics will assist in creating a compatible operation:

18  
19 1. Oil and gas operations shall be located as far as possible from surrounding land uses.

20  
21 2. Oil and gas operations shall be sited away from prominent natural features such as  
22 distinctive rock and land forms, vegetative patterns, river and streams and other  
23 landmarks or other identified visual or scenic resources, designated environmental  
24 resources, trails, or distinctive vegetative patterns as identified in the Comprehensive  
25 Plan, or identifiable on or near the site.

26  
27 3. Oil and gas operations shall be located with consideration being given to prevailing  
28 weather patterns, including wind directions to mitigate compatibility concerns.

29  
30 4. Oil and gas operations shall avoid being located on or across hilltops and ridges, shall  
31 avoid silhouetting, and, where possible, should be located at the base of such slopes.

32  
33 5. Oil and gas operations should use acoustically insulated housing, a cover to enclose  
34 the motor or engine, or an acoustically insulated building to enclose the installation.

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36  
37 **K. Transportation.**

38 1. The applicant's transportation plan must be designed and implemented to  
39 ensure public safety and maintain quality of life for other users of the county  
40 transportation system, adjacent residents, and affected property owners.

41  
42 2. Where available, existing private roads shall be used to minimize land  
43 disturbance unless traffic safety, visual or noise concerns, or other adverse surface  
44 impacts clearly dictate otherwise.

45  
46 3. Access roads on the site and access points to public roads as identified in the  
47 application materials shall be reviewed by the County Transportation Department and  
48 shall be built and maintained in accordance with the engineering specifications and  
49 access road standards defined in the Transportation Standards.

50

1 4. All applicable transportation fees shall be paid prior to issuance of a  
2 development plan review construction permit, including without limitation:

- 3 a. access permit fees;  
4 b. oversize/overweight permit fees;  
5 c. right of way construction permit fees; and  
6 d. fees to mitigate the cumulative impacts of heavy truck traffic on  
7 the county transportation system [derived from the Transportation RFP study]  
8 e. Oil and gas operations must minimize impacts to the physical  
9 infrastructure of the county transportation system. Any costs to improve county  
10 transportation system infrastructure necessitated by the proposed oil and gas operation  
11 shall be the responsibility of the operator. All transportation system infrastructure  
12 improvements and associated costs shall be determined by the County Transportation  
13 Department. The County shall perform the work or arrange for it to be performed. If  
14 the operator disagrees with the infrastructure improvements or associated costs as  
15 assessed by County Transportation, it may request that County Transportation approve  
16 a different route for its proposed oil and gas operation that avoids the need for such  
17 improvements. Alternatively, the applicant may engage a licensed civil engineering firm  
18 to perform a study to independently evaluate county transportation system  
19 infrastructure improvements necessitated by the proposed oil and gas operation.

20  
21 5. If the applicant decides to perform a traffic engineering study, whether to  
22 challenge the amount of a fee or the cost of infrastructure improvements deemed  
23 necessary by the County, the applicant may either request the Director place the  
24 Expedited DPR application on hold until resolution of the issue or request the Director  
25 reclassify the application as a Standard DPR application.

26  
27 ~~1. **Transportation, Roads and Access Standards.** Access roads on the site and access~~  
28 ~~points to public roads as identified in the application materials shall be reviewed by the~~  
29 ~~County Transportation Department and shall be built and maintained in accordance~~  
30 ~~with the Transportation Standards. All proposed transportation routes to the site shall~~  
31 ~~also be reviewed and approved by the County Transportation Department to minimize~~  
32 ~~traffic hazards and adverse impacts on public roadways. Existing roads shall be used to~~  
33 ~~minimize land disturbance unless traffic safety, visual or noise concerns, or other~~  
34 ~~adverse surface impacts clearly dictate otherwise. All applicable transportation fees~~  
35 ~~shall be paid prior to issuance of a development plan review construction permit.~~

36  
37 ~~2.1. **Multi-Modal Transportation Standards and Applicable Fees.** The installation and~~  
38 ~~operation of any oil and gas operation shall not cause significant degradation to the~~  
39 ~~public roads within Boulder County and shall comply with the Multi-modal~~  
40 ~~Transportation Standards.~~

41  
42 **L. Water Quality Standards.** Oil and gas operations shall not cause significant degradation to  
43 surface or ground waters within Boulder County.

44  
45 **M. Wetlands Protection Standards.** Oil and gas operations shall not cause significant degradation to  
46 wetlands within Boulder County.

47  
48 **N. General Oil and Gas Facility Operational Requirements.** The oil and gas operations Conditions  
49 of Approval Applicable to All DPRs set forth at Section 12-800 shall apply to each approved  
50 development plan in the form of conditions of approval.

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- O. Pipelines.** Any newly constructed or substantially modified pipelines on site must meet the Additional Provisions listed at Article 4-514(E)(5)(a) – (f). Note: Any newly constructed or substantially modified pipelines off site may need to comply with all of Article 4-514(E).

DRAFT

## 12-800 Conditions of Approval Applicable to All DPRs

The following oil and gas facility operational requirements shall apply to all oil and gas operations in the form of conditions of approval applicable to each approved expedited or standard development plan review permit:

- A. Anchoring.** All mechanized equipment associated with oil and gas operations shall be anchored to minimize transmission of vibrations through the ground.
- B. Applications and Permits.** Copies of local, state and federal applications required for the operation, and permits, when issued, shall be provided to the Land Use Department.
- C. Burning of Trash.** No burning of trash shall occur in association with an oil and gas operation.
- D. Chains.** Traction chains from heavy equipment shall be removed before entering a County road.
- ~~**E.**~~ Planning Commission recommended language: "The plan shall include a provision that obligates the operator to disclose to the County in table format of the name, CAS number, volume, storage, containment and disposal method for all drilling and completion chemicals (solids, fluids, and gases) used on the proposed well site."; Staff recommends this language be stricken here because it is inserted at Section 12-703(D)(2)(I), Emergency Preparedness Plan]
- ~~**F.**~~ **Color.** Facilities shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.
- ~~**G.**~~ **Discharge Valves.** Open-ended discharge valves on all storage tanks, pipelines and other containers shall be secured where the operation site is unattended or is accessible to the general public. Open-ended discharge valves shall be placed within the interior of the tank secondary containment.
- ~~**H.**~~ **Dust Suppression.** Dust associated with on-site activities and traffic on access roads shall be minimized throughout construction, drilling and operational activities such that there are no visible dust emissions from access roads or the site to the extent practical given wind conditions. The operator shall comply with Boulder County Public Health best management practices for dust suppression.
- ~~**I.**~~ **Electrification.** All permanent operation equipment shall be electrified.
- ~~**J.**~~ **Exhaust.** The exhaust from all engines, motors, coolers and other mechanized equipment shall be vented up or in a direction away from the closest occupied structures.
- ~~**K.**~~ **Fencing.** Onsite fencing shall consist of basic, two-rung fence of welded iron pipe around the well heads unless safety or agricultural concerns require additional fencing around the operation.
- ~~**L.**~~ **Flammable Material.** All land near any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass, rubbish or other flammable materials.

1 | ~~L~~**M.** **Lighting.** Except during drilling, completion or other operational activities requiring  
2 | additional lighting, down-lighting is required, meaning that all bulbs must be fully shielded to  
3 | prevent light emissions above a horizontal plane drawn from the bottom of the fixture. A lighting  
4 | plan shall be developed to establish compliance with this provision. The lighting plan must  
5 | indicate the location of all outdoor lighting on the site and any structures, and must include cut  
6 | sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.  
7 |

8 | ~~M~~**N.** **Maintenance of Machinery.** Routine field maintenance of vehicles or mobile machinery  
9 | shall not be performed within three hundred (300) feet of any water body.  
10 |

11 | ~~N~~**O.** **Mud Tracking.** **Operators shall take all practicable measures to ensure that vehicles**  
12 | **do not track** mud or debris onto roads. Where such tracking occurs, the road shall be cleaned  
13 | immediately..  
14 |

15 | ~~O~~**P.** **Noise.** Any equipment used in drilling, completion, or production of a oil and gas operation must  
16 | comply with the maximum permissible noise levels set forth at C.R.S. § 25-12-103 .  
17 |

18 | ~~P~~**Q.** **Reclamation Plan.** Any DPR approval shall include any COGCC required interim and final  
19 | reclamation procedures.  
20 |

21 | ~~Q~~**R.** **Removal of Debris.** When an oil and gas operation becomes operational, all construction-related  
22 | debris shall be removed from the site for proper disposal. The site shall be maintained free of  
23 | debris and excess materials at all times during operation. Materials shall not be buried on-site.  
24 |

25 | ~~R~~**S.** **Removal of Equipment.** All equipment used for drilling, re-drilling and maintenance of the  
26 | facility shall be removed from the site within thirty (30) days after completion of the work, unless  
27 | otherwise agreed to by the surface owner. Permanent storage of equipment on well pad sites  
28 | shall not be allowed.  
29 |

30 | ~~S~~**T.** **Spills.** Chemical spills and releases shall be reported in accordance with applicable state and  
31 | federal laws, including the Emergency Planning and Community Right To Know Act, the  
32 | Comprehensive Environmental Response, Compensation and Liability Act, the Oil and Pollution  
33 | Act, and the Clean Water Act, as applicable.  
34 |

35 | ~~T~~**U.** **Stormwater Control Plan.** A stormwater control plan that establishes that all operations shall  
36 | use most effective performance techniques and practices and best management practices to  
37 | minimize impacts to surface waters from erosion, sediment, and other sources of nonpoint  
38 | pollution. The stormwater control plan required by COGCC Rule 1002(f) may be provided to  
39 | establish compliance with this provision.  
40 |

41 | ~~U~~**V.** **Temporary Access Roads.** Property subject to temporary access roads associated with oil and  
42 | gas operations shall be reclaimed and re-vegetated to its original state within sixty (60) days after  
43 | discontinued use of the temporary access roads.  
44 |

45 | ~~V~~**W.** **Transportation Permits.** Applicant shall obtain all applicable transportation permits,  
46 | including but not limited to County access, driveway, utility construction, and oversize and  
47 | overweight permits, as well as all appropriate Colorado Department of Transportation (CDOT)  
48 | access permits pursuant to the CDOT State Highway Access Code.  
49 |

50 | ~~W~~**X.** **Traffic Control Plan.** A Traffic Control Plan shall be provided to the County  
51 | Transportation Department prior to facility pad construction, drill rig movement commencement  
52 | of construction, mobilization, demobilization, or any other disruption of two-way traffic.  
53 |

1 | **X.Y. Weed Control.** The applicant shall be responsible for ongoing weed control at all locations  
2 | disturbed by oil and gas operations, pipelines, and along access roads during construction and  
3 | operation, until abandonment and final reclamation is completed per County or other applicable  
4 | agency regulations. The appropriate weed control methods and species to be controlled shall be  
5 | determined through review and recommendation by the County Weed Coordinator by reference  
6 | to the Boulder County Noxious Weed Management Plan and, where appropriate, in coordination  
7 | with the requirements of the surface owner.  
8 |

9 | **Y.Z. Well Abandonment.** The operator shall comply with any COGCC rules regarding well  
10 | abandonment. Upon plugging and abandonment of a well, the operator shall provide the County  
11 | with surveyed coordinates of the abandoned well and shall leave onsite a permanent physical  
12 | marker of the well location.  
13 |

14 | **Z-AA. Representations.** The approved development plan review application shall be subject to  
15 | all conditions and commitments of record, including verbal representations made by the  
16 | applicant, and in the application file, and without limitation shall encompass compliance with all  
17 | approved mitigation plans.  
18 |

## 19 | **12-900 Operational Conflict Waiver**

- 20 |
- 21 | **A.** Boulder County recognizes that the COGCC regulates oil and gas operations and that Colorado  
22 | courts have determined that a County regulation must yield to a state regulation where the  
23 | application of the County regulation to the oil and gas operation would conflict with a state  
24 | statute, regulation or other requirement and where the conflict results in the material  
25 | impediment or destruction of the state's interest in the responsible, balanced development,  
26 | production and utilization of oil and gas consistent with protection of public health, safety, and  
27 | welfare, including protection of the environment and wildlife resources.  
28 |
- 29 | **B.** The applicant may make a written request to the Land Use Department for an operational  
30 | conflict waiver hearing before the Board of County Commissioners at any time during the  
31 | development plan review process, but no later than ten (10) days following a final decision on  
32 | the development plan review application. An operational conflict waiver application shall be  
33 | heard in a noticed public hearing by the Board of County Commissioners. Notice of the hearing  
34 | shall be in accordance with Section 14-400(G). The Director may extend the forty-five (45) day  
35 | review process in Section 12-601(D)(1) in order to accommodate the operational conflict hearing.  
36 | The hearing shall allow the applicant the opportunity to develop a full evidentiary record  
37 | concerning the alleged operational conflict between the County regulation and the state  
38 | regulation. The County shall also provide notice of the hearing to the COGCC and request it to  
39 | provide information to the Board relative to its position as to the alleged operational conflict. At  
40 | the hearing, the applicant shall have the burden of pleading and proving an actual operational  
41 | conflict between the requirements of these regulations and those of the COGCC in the context of  
42 | the specific application. If the Board determines that an operational conflict exists, it will waive  
43 | the County requirement or standard to the extent necessary to negate the operational conflict.  
44 | The Board may also condition the approval of the operational conflict waiver as necessary to  
45 | protect the public health, safety and welfare and mitigate any adverse impacts arising from the  
46 | approval. Any such condition shall be designed and enforced so that the condition itself does not  
47 | operationally conflict with the requirements of the COGCC. If aggrieved by the decision of the  
48 | Board on the operational conflict waiver request, the applicant may seek review of that decision  
49 | based upon the fully developed evidentiary record pursuant to Rule 106 (a)(4) of the Colorado  
50 | Rules of Civil Procedure.  
51 |

1 **12-1000 Other Waivers**

- 2
- 3 **A.** At any time during the application process, the Director may waive one or more of these
- 4 regulations if the applicant demonstrates to the satisfaction of the County one of the following:
- 5
- 6 1. **No Economical Technology.** There is no technology commercially available at a reasonable
- 7 cost to conduct the oil and gas operation in compliance with the standard(s);
- 8
- 9 2. **Protection of Public Health, Safety, Welfare and the Environment.** Waiving the standard
- 10 will not adversely affect the public health, safety, welfare and the environment; or
- 11
- 12 3. **Alternate Approach Preferable.** Protection of public health, safety, welfare and the
- 13 environment will be enhanced by an alternate approach not contemplated by the standard.

14 **12-1100 Judicial Review**

15

16 A final decision by the Board of County Commissioners on a standard development plan application or a

17 operational conflict waiver request is subject to judicial review pursuant to Rule 106(a)(4) of the Colorado

18 Rules of Civil Procedure.

19

20 **12-1200 Procedures Following Approval of a DPR Application**

- 21
- 22 **A. Financial Guarantees.** Prior to the commencement of an approved oil and gas operation, the
- 23 applicant shall provide one (1) form of the following security (bond, irrevocable letter of credit or
- 24 equivalent financial security acceptable to the County) to ensure compliance with this Article in an
- 25 amount equal to the actual or estimated cost plus ten percent (10%) to implement the operation
- 26 consistent with the requirements of this Article and any applicable conditions of approval. The
- 27 amount of the financial guarantee shall be based upon a verified cost estimate of all applicable
- 28 plan requirements prepared by the applicant and approved by the Director. The Director shall
- 29 have the discretion to waive the financial guarantee for specific development plan requirements
- 30 based upon the past performance record of the applicant, particular circumstances of the
- 31 operations, or other demonstrable circumstances making a financial guarantee unnecessary or
- 32 redundant. In the discretion of the Director, operations may be released from the performance
- 33 security requirement provided that all conditions of approval have been met and the operation is
- 34 in compliance with this Article. This Section is not meant to address COGCC permitting
- 35 requirements (including, but not limited to, COGCC reclamation requirements) nor does it
- 36 replace the COGCC's financial assurance requirements.
- 37
- 38 **B. Right to Enter.** Any site under an approved development plan may be inspected by the County at
- 39 any time, to ensure compliance with the requirements of the approved development plan,
- 40 provided that twenty-four (24) hours prior notice is given to the contact person at the telephone
- 41 number supplied by the applicant. The applicant shall provide the telephone number of a contact
- 42 person who may be reached twenty-four (24) hours a day for purposes of being notified of any
- 43 proposed County inspection under this Section. Each approved development plan shall contain
- 44 the following statement: "Applicant hereby consents to allow the County the right of inspection
- 45 of this approved operation provided the County contacts the operator with twenty-four (24)
- 46 hours prior notice of such inspection."
- 47
- 48 **C. Effect of the Approved Development Plan.** After approval of a development plan and following
- 49 compliance with any applicable conditions of approval, the County Land Use Department shall
- 50 issue a development plan review construction permit for the proposed oil and gas operation.
- 51 Following receipt of the development plan review construction permit, the applicant shall be

1 entitled to have processed any necessary building, grading, access, floodplain, or other County  
2 permits and is authorized to otherwise proceed with the proposed oil and gas operation. The  
3 approval of a development plan review under this Article does not result in the vesting of  
4 development rights, nor does authorize the violation of any County or state regulations or  
5 preclude the County from refusing to issue any other permit or authorization if the plans and  
6 specifications do not comply with applicable County regulations.  
7

8 **D. Duration of the Approved Development Plan.** An approved development plan shall remain  
9 effective for a period of three (3) calendar years following the date of final plan approval. If the  
10 operation is not commenced within the effective period of the development plan, the permit  
11 shall expire and the applicant will have to reapply for a new permit prior to undertaking  
12 operations.  
13

14 **E. Amendments to Approved Development Plan.** Any proposal to change an approved  
15 development plan shall require an application to the Land Use Department to determine  
16 whether the proposed change constitutes a substantial modification to the approved  
17 development plan.  
18

19 1. In determining whether the proposed modification to a development plan approval is  
20 substantial, the Director shall consider the record of the development plan approval,  
21 including any express conditions, limitations, or agreements governing the approved  
22 development plan, in addition to the nature, character, and the extent of additional land use  
23 impacts of the proposed modification. The addition of a new well on an existing pad shall be  
24 considered a substantial modification to the entire pad and the entire pad shall be required  
25 to come into compliance with this Article, to the extent practical. Other changes shall be  
26 considered substantial if they significantly alter the nature, character, or extent of the land  
27 use impacts of the development plan approval.  
28

29 2. If the Director determines that the change constitutes a substantial modification, no such  
30 change shall be allowed to proceed until an application to amend the approved  
31 development plan, which shall be treated as a new application, is filed with the Director and  
32 approval granted in accordance with this Article. The applicant or its successor may appeal  
33 the Director's decision to require an amended development plan to the Board of County  
34 Commissioners, provided that any such appeal shall be in writing and shall be filed with the  
35 Director no later than thirty (30) days following the date of the Director's decision to require  
36 a development plan amendment. Any Board of County Commissioner's determination on an  
37 appeal shall not be considered a final decision subject to judicial review under Section 12-  
38 1100.  
39  
40

1 **12-1300 Enforcement**

2 If the County determines at any time that there is a violation of an approved development plan permit,  
3 the Director shall be entitled to commence one or more of the following enforcement measures and  
4 remedies.

- 5
- 6 **A. Written Order Suspending Development Plan.** The Director may issue a written order to the  
7 applicant (or owner, operator, or agent, as applicable) identifying the violation and suspending  
8 the approved development plan and all activity otherwise allowed by the development plan. If  
9 the violation presents an immediate threat to the health, safety or welfare of the public, the  
10 Director may immediately issue the written order to the applicant in writing and, upon receipt,  
11 the applicant shall cease all activities and operations immediately until the violation is remedied.  
12 In all other instances, prior to issuing a written order, the Director shall provide written notice to  
13 the applicant describing the violation, and stating a reasonable time within which the violation  
14 must be corrected. If, within that time period, the applicant has not either corrected the  
15 violation or filed a written appeal with the Board of County Commissioners, the written order  
16 shall be delivered to the applicant in writing and, upon receipt, the applicant shall cease all  
17 activities and operations immediately until the violation is remedied. Any appeal to the Board of  
18 County Commissioners of the threatened or actual issuance of the written order shall be acted  
19 upon pursuant to Section 12-1300(C) below.  
20
- 21 **B. Draw Against Financial Guarantee.** The Director may draw upon any financial guarantee  
22 provided by an applicant to enforce the provisions of this Article.. Prior to drawing upon a  
23 financial guarantee, the Director shall provide written notice to the applicant describing the  
24 violation, and stating a reasonable time within which the violation must be corrected. If, within  
25 that time period, the applicant has not either corrected the violation or filed a written appeal  
26 with the Board of County Commissioners, the Director shall be entitled to enter upon the site to  
27 take any reasonable measures to correct the violation, and may draw on the financial guarantee  
28 to cover the costs of corrective measures.  
29
- 30 **C. Appeal Hearing Before Board of County Commissioners.** If the applicant files a timely appeal  
31 with the Board of County Commissioners of the Director’s determination to issue a written order  
32 suspending the development plan or to draw upon a financial guarantee, the Board shall  
33 schedule a hearing on the appeal at the soonest possible time of which the applicant shall  
34 receive reasonable prior notice. If the Board confirms at the hearing that the violation has  
35 occurred and has not been corrected, the Board in its discretion may confirm issuance of a  
36 written order suspending the development plan or the determination to draw upon the financial  
37 guarantee. The Board, in its discretion, may also give the applicant additional time to correct the  
38 violation, or may specify the time at which the Director may take appropriate action to have the  
39 violation corrected and draw on the financial guarantee to cover the costs of corrective  
40 measures.  
41
- 42 **D. Timing of Release of Financial Guarantees.** To insure the Director's ability to enforce the  
43 provisions of any approved development plan, the Director shall not release any financial  
44 guarantee provided under this Article for an individual development plan, until the Director  
45 confirms that all operations have been completed and all provisions of the plan complied with.  
46
- 47 **E. Other Enforcement Remedies.** In addition to the foregoing enforcement measures, Boulder  
48 County has the right to any and all other enforcement measures and remedies provided by law,  
49 including but not limited to seeking relief through the courts to enforce an approved  
50 development plan review, or to stop or abate any oil and gas operations occurring or about to  
51 occur without the requisite development plan or other county approvals.  
52

1 **12-1400 Definitions**

2  
3 Terms used in this Article 12 are defined below. Any terms not specifically defined for purposes of Article  
4 12 may be defined in Article 18.

5  
6 **Abandonment.** The permanent abandonment of a well, which shall be determined at the time of the  
7 operator's filing of the appropriate abandonment form with the COGCC.

8  
9 **Agent.** One authorized to make binding representations on behalf of the applicant.

10  
11 **Adverse Effect or Adverse Impact.** The impact of an action, after mitigation, that is considerable or  
12 substantial, and unfavorable or harmful, including social, economic, physical, health, aesthetic, historical  
13 and/or biological impacts, including but not limited to, effects on natural resources, the structure or  
14 function of affected ecosystems, or persons, structures or communities.

15  
16 **Applicant.** Person, corporation or other legal entity possessing the legal right to develop the mineral  
17 resource who has applied for an oil and gas operation permit.

18  
19 **BTEX and/or TPH.** Benzene, Toluene, Ethylbenzene, Xylene and Total Petroleum Hydrocarbons.

20  
21 **Chemical(s).** Any element, chemical compound or mixture of elements and/or compounds.

22  
23 **Closed Loop Drilling Process or System.** A closed loop mud drilling system typically consists of steel  
24 tanks for mud mixing and storage, and the use of solids removal equipment, which normally includes  
25 some combination of shale shakers, mud cleaners and centrifuges sitting on top of the mud tanks. This  
26 equipment separates drill cutting solids from the mud stream coming out of the wellbore while retaining  
27 the water or fluid portion to be reused in the continued drilling of the well bore. The solids are placed  
28 in containment provided on the site. The system differs from conventional drilling where a reserve pit is  
29 used to allow gravitational settling of the solids from the mud which can then be reused. A Closed Loop  
30 Drilling System does not include use of a Conventional Reserve Drilling Pit.

31  
32 **COGCC.** The Colorado Oil and Gas Conservation Commission.

33  
34 **Completion combustion device.** Any ignition device, installed horizontally or vertically, used in  
35 exploration and production operations to combust otherwise vented emissions from completions.

36  
37 **Corridor.** Tracts of land within which a pipeline right-of-way is located.

38  
39 **County.** Boulder County, Colorado, and its officers, staff, employees and agents.

40  
41 **Degradation.** Lowering in grade or desirability; lessening in quality.

42  
43 **Delineation well.** A well drilled in order to determine the boundary of a field or producing reservoir.

44  
45 **Department.** Boulder County Land Use Department.

46  
47 **Drilling Operation.** Any work or actual operation undertaken for the purposes of carrying out any of the  
48 rights, privileges or duties of a lessee for drilling of an oil well, gas well, or cathodic protection well,  
49 including but not limited to the actual operation of drilling in the ground.

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**Equipment.** Machinery or structures located on well pads, rights-of-way, or other land uses in the oil and gas operation, including, but not limited to, wellheads, separators, dehydration units, heaters, meters, storage tanks, compressors, pumping units, internal combustion engines, and electric motors.

**Exploration and Production Waste or "E and P Waste":** Wastes associated with oil and gas operations to locate or remove oil or gas from the ground or to remove impurities from such substances and that are uniquely associated with and intrinsic to oil and gas exploration, development or production operations that are exempt from regulation under the Resource Conservation and Recovery Act (RCRA).

**Flow Line.** Pipeline connecting individual well sites to gathering lines.

**Gas Well.** Well capable of producing natural gas.

**Gathering Line.** Pipeline transporting produced gas, oil, or water from multiple well sites to a centralized facility.

**Grading Plan.** Plan view and cross-section of existing and proposed land contours, cuts and fills, topsoil storage location and stabilization methods, and maximum slopes.

**Ground Water.** Subsurface waters in a zone of saturation.

**Heavy Equipment.** Drilling rigs, completion rigs, construction equipment, and individual truck/trailer combination vehicles with a gross vehicle weight exceeding five tons.

**Improvement.** Any new construction activity, grading or land development, or addition of equipment or materials to a site.

**Mitigation.** One or more of the following actions which are prioritized in order of preference:

**Avoiding Impacts.** Avoiding an impact by not taking a certain action or parts of an action; or

**Minimizing Impacts.** Limiting the degree or magnitude of the action or its implementation, or by changing its location; or

**Rectifying or Remediating Impacts.** Repairing, rehabilitating, or restoring the impact area, facility or service; or

**Reducing or Eliminating Impacts.** Decreasing or removing the impact over time by preservation and maintenance operations; and

**Other Provisions for Addressing Impacts.** Using alternative means not contemplated by this Article to provide equivalent biological, social, environmental and/or physical mitigation effects.

**Most Effective Performance Techniques and Practices.** The application of proven and emerging techniques, technologies or other Best Management Practices used in conducting oil and gas exploration and development which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on and off-site impacts to public health and the environment, landowners, and natural resources, and which may reduce conflicts between potentially impacted landowners and the oil and gas industry.

1 **Occupied Structure.** Any building or structure that requires a certificate of occupancy or building or  
2 structure intended for human occupancy.  
3

4 **Oil and Gas Facilities.**

5  
6 The site and associated equipment used for the production, transportation, treatment, and/or  
7 storage of oil and gas and waste products; or  
8

9 An individual well pad built with one or more wells and operated to produce liquid petroleum  
10 and/or natural gas, including associated equipment required for such production; or  
11

12 Gathering lines, and ancillary equipment including but not limited to drip stations, vent stations,  
13 pigging facilities, chemical injection stations and valve boxes; or  
14

15 Temporary storage and construction staging yards in place for less than six months; or  
16

17 Any other oil and gas operation which may cause significant degradation.  
18

19 **Oil and Gas Operations.** Exploration for oil or gas, including but not limited to conventional oil and gas;  
20 the siting, drilling, deepening, recompletion, reworking, refracturing, closure or abandonment of an oil  
21 and gas well; oil and gas facilities; construction, site preparation, reclamation and related activities  
22 associated with the development of oil and gas resources.  
23

24 **Oil Well.** Well capable of producing crude petroleum oil.  
25

26 **Operation.** Oil and Gas Operations.  
27

28 **Owner or Operator.** Person who has the right to drill into and produce from a pool and to appropriate  
29 the oil or gas produced either for such owner or operator or others.  
30

31 **Permanent Equipment.** Equipment located onsite for a duration greater than six months effective one  
32 year after the drilling and completion of a well.  
33

34 **Person.** Any individual, partnership, corporation, association, company, or other public or corporate  
35 entity, including but not limited to the State or Federal governments, and any of their political  
36 subdivisions, agencies, or instrumentalities.  
37

38 **Pit.** Any natural or man-made depression in the ground used for oil or gas exploration or production  
39 purposes excluding steel, fiberglass, concrete or other similar vessels which do not release their contents  
40 to surrounding soils.  
41

42 **Platted Building Envelope.** Area of subdivided land within a buildable lot within which all site structures,  
43 buildings and other hardscape elements shall be contained, except driveways.  
44

45 **Regulation(s).** Article 12 of the Boulder County Land Use Code.  
46

47 **Referral Agency.** An agency, organization, or technical consultant deemed appropriate and necessary, by  
48 the County, to review an application and provide professional analysis and recommendations, including  
49 without limitation other County offices and departments, municipal, state, or federal agencies having an  
50 interest in or authority over all or part of the application or permit, and professional or legal consultants.  
51

1 **Residential.** All property within unincorporated Boulder County, Colorado.  
2  
3 **Right-Of-Way.** The legal right to pass through grounds or property owned by another, or land, property  
4 or interest therein, usually in a strip, acquired for or devoted to transportation or conveyance purposes.  
5  
6 **Security Fencing.** Six-foot chain link fence topped by three strands of barbed wire, or the equivalent, with  
7 a gate that can be secured.  
8  
9 **Setback.** Distance between the following, including but not limited to, a wellhead, intermediate line,  
10 gathering line or major facility structure boundary, and the closest projection of a residential, commercial,  
11 or industrial building structure, a lot or property line, a permitted facility, or a platted building envelope in  
12 a platted subdivision-  
13  
14 **Site.** Lands, including the surface of a severed mineral estate, on which exploration for, or extraction and  
15 removal of, oil or gas is authorized under a lease.  
16  
17 **Surface Owner.** Owner of the surface property on which the facility will be located or constructed.  
18  
19 **Surrounding.** Within one-half mile of a proposed oil and gas operation.  
20  
21 **Temporary Use Area.** Disturbed lands immediately adjacent to the well pad or right of way used by an  
22 operator during the construction or maintenance of a well, pipeline or other facility that will be reclaimed  
23 for permanent operations.  
24  
25 **Transmission Line.** Pipeline transporting oil, natural gas or any other products derived from oil and gas  
26 production, which is defined as a transmission line by the U.S. Department of Transportation regulations  
27 under the Natural Gas Pipeline Safety Act of 1968, as amended.  
28  
29 **VOC.** Volatile organic compounds.  
30  
31 **Water or Water Body.** Any surface waters which are contained in or flow in or through Boulder County,  
32 excluding ephemeral streams, roadway ditches, water in sewage systems, water in treatment works of  
33 disposal systems, water in potable water distribution systems, stock ponds or irrigation ditches not  
34 discharging to live streams, and all water withdrawn for use until use and treatment have been  
35 completed.  
36  
37 **Well or Wellhead.** Equipment attached to the casing of an oil, gas or injection well above the surface of  
38 the ground.  
39  
40 **Well Blowdown.** Maintenance activity designed to remove unwanted fluids from mature wells during  
41 which time gas is often vented to the atmosphere.  
42  
43 **Well Completion.** The process that perforates well casing, stimulates the reservoir using various  
44 techniques including but not limited to acid treatment and hydraulic fracturing, allows for the flowback of  
45 petroleum or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow  
46 characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.  
47  
48 **Well Pad.** Area in which permanent operations for the well take place including, at a minimum, that  
49 portion of the pad area occupied by permanent production equipment. Well pads may contain one or  
50 more wellheads and associated equipment.  
51

- 1 **Wildcat or Delineation Well.** A well outside known fields or the first well drilled in an oil or gas field
- 2 where no other oil and gas production exists.
- 3

DRAFT

# ATTACHMENT A.2

## Proposed Amendments to Article 4-500 (use definitions)

### 1. Amend Article 4-506 Industrial Uses to add new use category:

#### D. Major Oil and Gas Operations

1. Definition: Water injection wells and facilities, centralized water transfer stations, centralized water pump stations, storage yards and construction staging yards in place for longer than six months, and any other oil and gas operation the location of which is not dependent upon development of the mineral resource or subject to Article 12.
2. Districts Permitted: By Special Review in GI
3. Parking Requirements: None
4. Loading Requirements: None
5. Additional Provisions: None

Re-order remaining items and update cross-references as needed.

### 2. Amend Article 4-508 Mining Uses by deleting current Sections 4-508(B) and 4-508(C) and replacing with new Section 4-508(B):

#### B. Oil and Gas Operations

1. Definition: See Article 12-1400
2. Districts Permitted: By development plan review for oil and gas operations in all districts (Article 12)
3. Parking Requirements: None
4. Loading Requirements: None
5. Additional Provisions: None

Re-order remaining items and update cross-references as needed.

### 3. Amend Article 4-514 Utility and Public Service Uses:

Add a new use "Gas and/or Hazardous Liquid Pipelines":

#### E. Gas and/or Hazardous Liquid Pipelines

1. Definition: Pipelines for the collection and transmission of natural gas or other hazardous liquids.
2. Districts Permitted: In all districts by Limited Impact Special Review, or review under Article 8 (areas and activities of state interest), as applicable. Gathering lines and flow lines which are part of new oil and gas development and which are located on the same parcel or parcels as the well head, pumping units, tanks and/or treaters will be subject to Development Plan Review under Article 12 of this Code.
3. Parking Requirements: None
4. Loading Requirements: None
5. Additional Provisions:
  - a. This use is not required to be located on a building lot, or comply with the minimum lot size requirement for the district in which it is located.
  - b. Flow lines, gathering lines, and transmission lines shall be sited a minimum of fifty (50) feet away from general residential, commercial, and industrial buildings, as well as the high-water mark of any surface water body. This

1 distance shall be measured from the nearest edge of the pipeline. Pipelines and  
2 gathering lines that pass within 150 feet of general residential, commercial, and  
3 industrial buildings or the high water mark of any surface water body shall  
4 incorporate leak detection, secondary containment, or other mitigation, as  
5 appropriate.

- 6 c. To the maximum extent practicable, pipelines should be aligned with  
7 established roads in order to minimize surface impacts and reduce habitat  
8 fragmentation and disturbance.
- 9 d. To the maximum extent practicable, operators shall share existing pipeline  
10 rights-of-way and consolidate new corridors for pipeline rights-of-way to  
11 minimize surface impacts.
- 12 e. Operators shall use boring technology or alternative director-approved most  
13 effective performance techniques and practices when crossing streams, rivers or  
14 irrigation ditches with a pipeline to minimize negative impacts to the channel,  
15 bank, and riparian areas.
- 16 f. During pipeline construction for trenches that are left open for more than five  
17 (5) days and are greater than five (5) feet in width, install wildlife crossovers and  
18 escape ramps where the trench crosses well-defined game trails and at a  
19 minimum of one-quarter (1/4) mile intervals where the trench parallels well-  
20 defined game trails.
- 21 g. The Department may require an applicant for a pipeline to provide a risk-based  
22 engineering study for all or part of its proposed pipeline right of way that may  
23 require the implementation of more stringent construction or operation  
24 standards or space between the pipeline and other structures.

25  
26 Re-order remaining items and update cross-references as needed.

27  
28 Modify current section 4-514(P) "Utility Service Facility" as follows:

- 29 P. Utility Service Facility
- 30 1. Definition: Any electrical distribution lines, natural gas distribution lines, minor gas  
31 regulator stations, cable television lines, telegraph and telephone lines, ~~and gathering~~  
32 ~~lines~~, or other minor service facilities.
- 33 2. Districts Permitted: By right in all districts
- 34 3. Parking Requirements: None
- 35 4. Loading Requirements: None
- 36 5. Additional Provisions:
  - 37 a. This use is not required to be located on a building lot, or comply with the  
38 minimum lot size requirement for the district in which it is located.
  - 39 b. No buildings shall be associated with this use.
  - 40 c. This use is limited to the following sizes:
    - 41 i. gas lines less than 12 inches; and
    - 42 ii. electric lines of less than 115,000 volts.
  - 43

44

# ATTACHMENT A.3

## Proposed Amendment to Board of Adjustment provisions

Add New Section 4-1205 as follows:

No appeals to the Board of Adjustment or requests for variances before the Board of Adjustment are permitted for any matters under Article 12, Development Plan Review for Oil and Gas Operations.

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# ATTACHMENT A.4

## Proposed Amendments to Article 18 (Land Use Code Definitions)

1. Replace current text of 18-181 with the following:

**“Oil and Gas Operations.** Exploration for oil or gas, including but not limited to conventional oil and gas; the siting, drilling, deepening, recompletion, reworking, refracturing, closure or abandonment of an oil and gas well; production facility and operations including the installation of flow lines and gathering lines; construction, site preparation, reclamation and related activities associated with the development of oil and gas resources.”

2. Delete 18-196 “Site (Oil & Gas)” due to new definition of same in Article 12.
3. Amend any other definitions as necessary (e.g., 18-166 “Gas Transmission Pipeline”).

DRAFT

# ATTACHMENT A.5

## Clerical changes necessary to conform rest of Land Use Code to DC-12-0003

1. Delete Article 4-900 (current “Development Plan review for Oil and Gas Operations”)
2. Update Table of Contents and associated cross-references in Code as necessary.
3. Update use tables as necessary.
4. In all of the Article 4 zoning district regulations, for each district, under the listed Mining Uses: substitute “Oil and Gas Operations” for the two uses currently listed (Oil and Gas Drilling and Production, on subdivided land, and Oil and Gas Drilling and Production, on unsubdivided land).
5. Make current Article 4-900A (“Development Plan Review for Subsurface Mining”), Article 4-900. Change Table of Contents and associated cross-references in Code accordingly.
6. All other clerical amendments necessary to conform entire Land Use Code to primary text amendments approved in DC-12-0003 (Article 12, etc.).

## RESOLUTION 2012-16

A RESOLUTION IMPOSING A TEMPORARY MORATORIUM ON BOULDER COUNTY'S PROCESSING OF APPLICATIONS FOR PROPOSED OIL AND GAS DEVELOPMENT IN ALL OF THE UNINCORPORATED COUNTY PENDING CONSIDERATION OF AMENDMENTS TO COUNTY REGULATIONS

A. **WHEREAS**, oil and gas exploration and production is a rapidly developing and evolving industry nationwide, across Colorado, and within Boulder County, with both substantial advances in technology and significant modifications to the laws governing the industry occurring during the past few years; and

B. **WHEREAS**, the western edge of one of the most actively drilled oil and gas producing formations along the Front Range underlies the eastern portion of Boulder County; and

C. **WHEREAS**, oil and gas operations have the potential for significant and immediate impacts on the health, safety, and welfare of the citizens of Boulder County ("the County") through increased noise, odor, dust, traffic, noxious weeds, and other disturbance, as well as the potential to significantly impact the County's air, water, soil, biological quality, geology, topography, plant ecosystems, wildlife habitat, wetlands, floodplains, water, stormwater and wastewater infrastructure, drainage and erosion control, parks and open space lands, transportation infrastructure, emergency response plans, and other aesthetic values and community resources; and

D. **WHEREAS**, in its capacity as surface owner of lands managed as open space where oil and gas drilling development has occurred and continues to occur, the County Parks and Open Space Department has recently witnessed new areas not previously developed being developed by oil and gas companies, an increase in notices of intent to drill from oil and gas companies, technological changes in drilling operations that in some cases result in more land disturbance per well pad, differences in hours of operation, and associated increased impacts on plant ecosystems, wildlife habitat and migration corridors, among other environmental and natural resources; and

E. **WHEREAS**, in its role administering County floodplain regulations, the County Transportation Department is concerned about increased interest in developing oil and gas in mapped floodplain areas, posing potentially serious risks to public health and safety; and

F. **WHEREAS**, in its role managing the County transportation system under the duly adopted Boulder County Multimodal Transportation Standards, through issuance of access permits to ensure safe ingress and egress to the system, issuance of oversize/overweight vehicle permits, and other methods for managing the public rights-of-way, the County Transportation Department is concerned about a potential increase in impacts due to oil and gas development, including increased wear and tear on roads from heavy truck traffic resulting in greater need for road and bridge improvements and maintenance; and

G. **WHEREAS**, the Colorado Oil and Gas Conservation Act, C.R.S. §§ 37-60-101 et seq., declares that it is in the public interest to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a

manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources; and

H. **WHEREAS**, the Colorado Oil and Gas Conservation Act grants the Colorado Oil and Gas Conservation Commission (“COGCC”) authority to adopt statewide rules and regulations concerning the development and production of oil and gas resources and the COGCC has done so; and

I. **WHEREAS**, the Colorado Oil and Gas Conservation Act provides that it is not intended to establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations; and

J. **WHEREAS**, Colorado courts have recognized on several occasions that the Colorado Oil and Gas Conservation Act does not expressly or impliedly preempt all aspects of a county’s authority to enact land use regulations applicable to oil and gas development and operational activities within the county, and thus the County’s regulations pertaining to matters mentioned in the Colorado Oil and Gas Conservation Act are legal and valid as long as their express or implied conditions do not irreconcilably conflict with state law on the basis of operational conflicts that materially impede or destroy the state’s interest; and

K. **WHEREAS**, the County Planning Act, C.R.S. § 30-28-106, gives the County the authority to process and adopt a master plan for the physical development of the unincorporated territory of the County, and the duly adopted Boulder County Comprehensive Plan recognizes the potential impacts of oil and gas exploration, development, and production and all accessory activities and encourages such activities to be located and performed to minimize disturbance to land and water resource systems, with affected areas reclaimed and restored once the activities are completed and all other impacts minimized via all appropriate regulatory measures to the extent authorized by law; and

L. **WHEREAS**, the current Boulder County Comprehensive Plan sections addressing oil and gas activities have not been updated in many years and merit a review to determine whether amendments are necessary to reflect today’s industry, its practices, and impacts on land use, transportation, public health, parks and open space areas, and other environmental and natural resources across the County; and

M. **WHEREAS**, the Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101 et seq., provides the County with the broad authority to plan for and regulate the use of land in order to provide for orderly development and a balancing of basic human needs of a changing population with legitimate environmental concerns, all in a manner consistent with constitutional rights; and

N. **WHEREAS**, the Local Government Land Use Control Enabling Act authorizes each local government within its respective jurisdiction to plan for and regulate the use of land by, among other actions, regulating development and activities in hazardous areas; protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species; preserving areas of historical and archaeological importance; regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights; and

O. **WHEREAS**, the Board believes it has not only the right but the responsibility to plan for and regulate the use of land for the purposes laid out in the Local Government Land Use Control Enabling Act as well as those purposes specified in other applicable state and federal statutes and common law grants of authority, to best protect and promote the health, safety, and general welfare of the present and future inhabitants of Boulder County and to guide future growth, development, and distribution of land uses within Boulder County; and

P. **WHEREAS**, to that end, and pursuant to the Local Government Land Use Control Enabling Act, the County Planning Act, and various other state and federal statutory and common law grants of land use authority, the Board has from time to time adopted planning, zoning, and other regulations governing land use in the unincorporated territory of the County; and

Q. **WHEREAS**, the current regulations concerning oil and gas development in §§ 4-900 to 4-913 of the Boulder County Land Use Code were last updated years ago, prior to various changes in oil and gas production practices, prior to changes to state statutes and regulations, and prior to several relevant Colorado court decisions concerning local regulation of oil and gas activities, and therefore are ripe for review for potential amendments in light of the current significant concerns over the impacts of continuing oil and gas development activities within the County; and

R. **WHEREAS**, Boulder County staff have begun to analyze whether the existing zoning and other land use regulations pertaining to oil and gas activities are sufficient to protect the public health, safety, and welfare; and

S. **WHEREAS**, the Board estimates that the time needed to perform the prerequisite studies and planning and analyze regulatory amendments that may be necessary to mitigate the impacts of oil and gas exploration, development, and production activities, may take approximately six months to complete; and

T. **WHEREAS**, the Board reasonably anticipates that applications for additional oil and gas development may be filed in the coming months while the study is undertaken and before the County has had the opportunity to consider the outcome of the study and adopt appropriate regulatory changes; and

U. **WHEREAS**, the Board finds that it is inconsistent with its responsibilities to protect the local environment and population of the County to continue to process and review applications for oil and gas development in piecemeal fashion without thoroughly examining the current County regulations to reflect changes in state law and oil and gas production practices; and

V. **WHEREAS**, the Board is aware of the potential for further changes in state law during the 2012 legislative session, and that legislative proposals in the oil and gas regulatory area, if enacted this session, may further clarify the bounds of County regulatory jurisdiction; and

W. **WHEREAS**, if applications requesting approval to conduct oil and gas exploration, development, and production activities within the unincorporated County are submitted prior to the County having adequate time to conduct the appropriate studies, make necessary revisions to its Comprehensive Plan, be aware of any forthcoming 2012 legislative changes, and consider and process any indicated regulatory amendments, the Board believes irreparable harm may be done to the public health, safety and welfare; and

X. **WHEREAS**, the U.S. Supreme Court and the Colorado Supreme Court recognize that in the field of land use regulation, temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for development; indeed, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments and, therefore, pursuant to express and implied authority granted by the Colorado Revised Statutes and multiple Colorado and federal appellate decisions upholding temporary moratoria on land use applications while amendments are considered, the Board has the legal authority to adopt a temporary moratorium in this situation; and

Y. **WHEREAS**, in light of the foregoing recitals and findings, circumstances warrant the immediate enactment of this Resolution establishing a temporary moratorium to protect the public health, safety, and welfare, and to avoid development which, during the County's planning and land use regulation amendment process, may contravene the results of this study and process put the public at risk; and

Z. **WHEREAS**, the Board further determines that it will schedule and hold a public hearing on this temporary moratorium and related matters as soon as practicable after this Resolution's adoption, for the purposes of receiving public comment on the moratorium and considering whether to terminate, extend, or otherwise amend the moratorium.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County:

1. The submittal of notices of intent to drill and land use applications requesting approval to conduct oil and gas development activities within the unincorporated territory of the County limits is imminent. The County may not have updated regulations in place that adequately mitigate impacts of this activity or that incorporate the County's full ability to regulate in this area under evolving state statutes, regulations, and case law to protect and preserve the public health, safety and welfare. Therefore, a temporary moratorium on accepting applications is reasonable and necessary.
2. This temporary moratorium shall take effect immediately. The County Land Use Department is directed not to accept, process, or approve any applications under Article 4-900 of the Land Use Code after the effective date of this Resolution.
3. This temporary moratorium shall remain in place until August 2, 2012, unless earlier terminated or extended.
4. County staff is hereby directed to continue analyzing whether the existing County Comprehensive Plan and existing County regulations pertaining to oil and gas activities are sufficient to protect the public health, safety, and welfare, or whether an amended Comprehensive Plan and amended regulations will be necessary to adequately mitigate impacts.
5. The Board intends to hold a public hearing to take testimony on the merits of the temporary moratorium imposed by this Resolution and to determine whether the moratorium should be terminated, extended, or otherwise amended on Thursday, March 1, 2012, at 4:00 p.m., in the Board's public hearing room on the third floor of the Boulder County Courthouse, 1325 Pearl Street, Boulder, Colorado. Notice of this hearing shall be published in a newspaper of general circulation in Boulder County at

least 14 days prior to the hearing date. Should this hearing be rescheduled for any reason, the Board will publish notice of the new time, date, and location of the hearing in a newspaper of general circulation in Boulder County at least 14 days prior to the hearing date. If necessary, at the Board's discretion, this hearing may be continued one or more times.

6. The Board reaffirms that any oil and gas operations conducted without all necessary County approvals may be in violation of the Boulder County Land Use Code or other applicable County regulations.
7. This Resolution does not apply to the following:
  - a. Any complete application for oil or gas exploration, development, or production currently being processed by the Land Use Department, which may continue to be processed and reviewed as provided in the Land Use Code.
  - b. Any application for oil or gas exploration, development, or production already approved by the Land Use Department prior to the effective date of this Resolution where such approval is validly maintained thereafter.
  - c. Development which possesses either a statutory or common law vested right.
  - d. Minor modifications to existing permits.

A motion to approve the foregoing Resolution imposing a temporary moratorium was made at the duly noticed public business meeting held on February 2, 2012 by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

ADOPTED on this 2 day of February, 2012, effective immediately.

BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:



Cindy Domenico, Chair



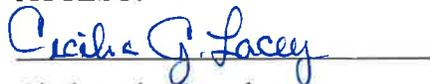
Will Toor, Vice Chair



Deb Gardner, Commissioner



ATTEST:



Clerk to the Board

**RESOLUTION 2012-46**

**A RESOLUTION CONFIRMING AND EXTENDING RESOLUTION 2012-16 IMPOSING A TEMPORARY MORATORIUM ON BOULDER COUNTY'S PROCESSING OF APPLICATIONS FOR PROPOSED OIL AND GAS DEVELOPMENT IN ALL OF THE UNINCORPORATED COUNTY PENDING CONSIDERATION OF AMENDMENTS TO THE COUNTY COMPREHENSIVE PLAN AND REGULATIONS**

**WHEREAS**, in Resolution 2012-16, adopted and effective on February 2, 2012, the Board of County Commissioners of Boulder County ("the Board") adopted a temporary moratorium for a period of six (6) months, until August 2, 2012, and directed the County Land Use Department during this period to not accept, process, or approve any Development Plan Review application for oil and gas operations under Article 4-900 of the Land Use Code ("the Temporary Moratorium"); and

**WHEREAS**, the Board approved the Temporary Moratorium to allow County staff the time to analyze whether the existing County Comprehensive Plan and County regulations pertaining to oil and gas activities are sufficient to protect the public health, safety, and welfare, and whether an amended Comprehensive Plan and amended regulations are necessary to adequately mitigate impacts; and

**WHEREAS**, the Board fully specified in Resolution 2012-16 the reasons why it undertook this immediate action to impose the Temporary Moratorium, including, without limitation, the accelerated development and evolution of the oil and gas industry nationwide and in the Wattenberg Basin in the eastern portion of Boulder County and neighboring Weld County; the rapidly changing technology surrounding oil and gas drilling, involving primarily the controversial method of hydraulic fracturing ("fracking") of horizontally drilled wells; and the widespread, growing public concern over the land use, environmental, and public health impacts of fracking focusing on deteriorating air and water quality, questionable waste disposal practices, noxious odor and dust generation, intensification of erosion and other land disturbance impacts, proliferation of industrial-style extraction developments in rural and agricultural areas, increased heavy truck traffic with consequent damage to public roads, aggravation of geologic hazards such as earthquakes, safety concerns related to development in floodplains and floodways, and accelerated consumption of natural resources such as water, open space, productive agricultural land, and plant and wildlife habitat; and

**WHEREAS**, in enacting Resolution 2012-16 the Board scheduled a follow-up public hearing on the Temporary Moratorium, to be duly noticed and held on March 1, 2012, at 4:00 p.m. ("the Public Hearing"), so that the Board could receive public comment on the appropriateness of the Temporary Moratorium, and consider whether to terminate, extend, or otherwise amend the Moratorium; and

**WHEREAS**, between the time of the Board adopting the Temporary Moratorium and the Public Hearing, County staff collected information and held numerous meetings to proceed with the study and analysis directed by the Board under the Moratorium, and worked diligently to prepare and compile substantial background materials for the Board's review at the Public Hearing; and

**WHEREAS**, at the Public Hearing the Board considered the staff materials and background testimony presented by representatives of the County Land Use Department, County Parks and Open Space Department, County Transportation Department, and County Public Health, as well as the comments of many concerned members of the public, and spokespersons for environmental groups, the Colorado Attorney General's Office, and the University of Colorado's Environmental Engineering program, and other speakers; and

**WHEREAS**, following several hours of testimony, the Board indicated the need for additional time to absorb the extensive information provided at the Public Hearing before it would be in a position to give direction to County staff regarding the nature and scope of the proposed oil and gas master planning and regulatory effort; and

**WHEREAS**, at the end of the Public Hearing the Board, by spoken consensus, confirmed the necessity of keeping the Temporary Moratorium in effect until the Board had the opportunity to reflect and act upon the information from the Public Hearing; and

**WHEREAS**, the Board scheduled a continuation of the Public Hearing, for purposes of deliberating on, and giving direction regarding, the Temporary Moratorium, to be held on April 16, 2012, at 4:00 p.m., which was denominated a public meeting as no additional public testimony was then to be taken; and

**WHEREAS**, at the April 16 public meeting the Board received updated information from County staff on certain topics raised at the Public Hearing, and proceeded to provide direction regarding how County staff should proceed with the study and analysis of the County's planning and regulatory efforts addressing future oil and gas operations in unincorporated Boulder County, and further, in light of that direction, confirmed and extended the duration of the Temporary Moratorium, all as set forth in this Resolution, below.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County, based upon the Public Hearing on the Temporary Moratorium, as follows:

1. The Public Hearing has amply demonstrated that serious and legitimate concerns exist regarding the land use, environmental, and public health impacts of future oil and gas operations in the unincorporated County. Based on the Public Hearing, the Board believes that the responsible state and federal agencies may not be adequately addressing these impacts. Moreover, the County's existing planning and regulatory efforts in this area appear outdated and may not be sufficiently protecting the public health, safety, and welfare within the scope of the County's legal authority.
2. In the land use planning context, County staff, with the assistance of outside consultants (who may be retained as deemed appropriate and approved by the Board), is directed to process: (a) appropriate amendments to the Boulder County Comprehensive Plan, subject to the authorization of the County Planning Commission which County staff shall request; *and* (b) appropriate amendments to the Boulder County Land Use Code, consistent with the County's legal authority, including but not limited to considering the amendments suggested in the County Land Use Director's March 1, 2012 background paper (pp. 14-15) prepared for the Public Hearing, as well as possible transportation infrastructure/road impact fees, setbacks from open water sources, zoning to allow oil and gas operations in areas that will have the least impact, and lighting and noise controls.

The Board also authorizes staff to schedule a joint public meeting or hearing between the Board and the Planning Commission, if staff determines that such a proceeding will facilitate this land use planning and regulatory amendment process.

3. The Board emphasizes the importance of addressing the environmental impacts of oil and gas operations on air, water, and soil quality, on odor production, and from waste disposal, as well as in the context of promoting “clean” or “green” energy. The Board directs staff to consider whether such impacts and concerns can, and should, be addressed through the Land Use Code, or through possible Public Health regulations, or through alternative County efforts such as coordinating with other governmental agencies’ regulatory efforts, entering into memoranda of understanding or intergovernmental agreements with other agencies, promoting state or federal legislation, performing public education or outreach, and/or partnering with other involved organizations in the public and private sectors.
4. The Board urges staff to consider the full range of tools and responses that may be available to the County to address legitimate concerns over the impacts of oil and gas operations, particularly in areas where the County may be legally preempted from exercising its regulatory authority, or where other governmental entities are in a significantly better position to exercise their regulatory authority.
5. The Board reserves the ability, based on forthcoming information, to add planning or regulatory areas related to oil and gas development in the unincorporated County that are not specified in this Resolution, should the Board or the Planning Commission determine that other issues are important to encompass within this effort.
6. In light of the extensive work that the Board envisions staff will need to undertake to implement this Resolution, the Board concludes that the Temporary Moratorium’s length of six months, initially imposed in Resolution 2012-16, is insufficient. The Board determines, based on present information, that another six months will be necessary to appropriately amend the County’s Comprehensive Plan and Land Use Code in light of the Board’s direction herein provided. *Therefore, the Board approves extending the duration of the Temporary Moratorium as stated in Resolution 2012-12, to and including February 4, 2013.*
7. In approving this extension of the Temporary Moratorium through February 4, 2013, the Board urges staff to move expeditiously on this project, so that the Board can end the Temporary Moratorium sooner if appropriate plans and regulations are in place. Conversely, the Board reserves the right to extend the Temporary Moratorium if forthcoming circumstances indicate that additional time is reasonably necessary to study, process, and enact appropriate plans and regulations. Any change in the duration or other terms of the Temporary Moratorium shall occur at a duly noticed public hearing of the Board.

A motion to provide direction to the County staff, as stated above, and to confirm the Temporary Moratorium and extend its duration through February 4, 2013, was made at the April 16, 2012 public meeting (convened to act on the information presented at the March 1, 2012 Public Hearing), by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

**ADOPTED** on this 1st day of May, 2012, nunc pro tunc the 16<sup>th</sup> day of April, 2012.

**BOARD OF COUNTY  
COMMISSIONERS OF BOULDER  
COUNTY:**



*Cindy Domenico*

Cindy Domenico, Chair

*Will Toor*

Will Toor, Vice Chair

*Deb Gardner*

Deb Gardner, Commissioner

ATTEST:

*Cecilia J. Lacey*

Clerk to the Board

*The Boulder County Planning Commission adopted the following policies as an amendment to the Boulder County Comprehensive Plan's Geology Element on August 15, 2012 (Docket BCCP-12-0001). **They are now in effect.** The next step will be to schedule a hearing before the Boulder County Commissioners to request their acknowledgement and acceptance of the Planning Commission's action. The Commissioners may ask the Planning Commission to reconsider, amend, and/or include additional language for the policies. If so, the staff will take that request back to Planning Commission for their consideration at a public hearing. Because Colorado statutes give authority over county comprehensive plans to county planning commissions, they may accept some, all, or none of the county commissioners' requests.*

*The policies are to provide guidance for the drafting of oil and gas regulations to be included into the Boulder County Land Use Code. However, it is important to keep in mind that there are a number of other ways to take action with the policies in addition to amending the Code, since not all of the policies can be easily translated into regulations. These other strategies include memorandums of understanding, intergovernmental agreements, lobbying, introducing legislative initiatives, working with stakeholders, impact fee agreements, and so on. Policies GE 4.01 and 4.08 provide some direction on a multi-prong approach the county may take in both the short term and over longer periods of time to advance the outcomes the policies address.*

## **Boulder County Comprehensive Plan Oil and Gas Policy Amendments**

**Adoption by Boulder County Planning Commission August 15, 2012**

### **Oil and Gas Exploration and Development**

The Boulder County Comprehensive Plan's Geology Element is amended to incorporate the following policies. These policies are consistent with the goals of the BCCP, the various Elements and maps that make up the body of the Plan – in particular the Transportation, Environmental Resources, Agriculture, Open Space and Sustainability Elements - the Boulder County Commissioners' Resolution 2005 – 137 Adopting a Sustainable Energy Path for Boulder County, and the authority granted counties under the County Planning Act (CRS 30-28-101 *et seq*) and Local Government Land Use Enabling Act (CRS 29-20-101 *et seq*). They are to be applied to the fullest extent allowable under current Colorado law.

The term **“oil and gas exploration and development”** as used in the following policies is synonymous with and encompasses all on and off-site activities related to oil and gas exploration, extraction, development, infrastructure, site closure, completion, reclamation and transportation.

The term **“most effective performance technologies and practices”** as used in the following policies refers to the application of proven and emerging techniques, technologies or other Best Management Practices used in conducting oil and gas exploration and development which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on and off- site impacts to public health and the environment, landowners, and natural resources, and which may reduce conflicts between the goals and policies of

the BCCP, potentially impacted landowners, and the oil and gas industry. These technologies and practices should be required at every level and stage of oil and gas exploration and development.

**OBJECTIVE:** Boulder County recognizes the existence of oil and gas mineral rights within its unincorporated areas. It is the county's objective to exercise its fundamental duty to protect public health, safety and welfare and the environment from adverse effects of oil and gas exploration and development, and to minimize potential land use conflicts between those activities and current or planned land uses.

All policies, procedures and regulations dealing with oil and gas exploration and development shall be based on the implementation of the "precautionary principle" so as to ensure the safety, public health and protection of Boulder County's residents, environment, infrastructure, and resources with respect to local and cumulative, short and long term considerations.

**Policy GE 4.01:** Boulder County is dedicated to promoting, requiring and implementing programs, policies and practices that provide benefit to the well-being of current and future residents as well as protecting the integrity of the air, water and ecosystems on which all life depends. Consequently, it is county policy to pursue the following actions regarding the exploration and development of oil and gas resources:

- a) Where oil and gas exploration and development is regulated by the federal and/or state government alone, both currently and in the future, advocate for requiring use of the most effective performance technologies and practices;
- b) For oil and gas exploration and development activities in areas of shared regulatory authority, provide direction, leadership and support for incorporating the most effective performance technologies and practices into the applicable jurisdiction's rules and regulations; and
- c) For those oil and gas exploration and development activities subject primarily or solely to county jurisdiction, establish and maintain a comprehensive planning basis for amending, revising and updating the Land Use Code as well as the full array of regulatory tools and procedures available to the county as they are identified and found to be consistent with the Objective of these policies.

**Policy GE 4.02:** Areas where the county has an interest in assuring that the most effective performance technologies and practices are applied include, but may not be limited to:

- a) Transportation impacts on roads and their users
- b) Development impacts on county open space lands and conservation easements
- c) Impacts on and consumption of environmental resources, including
  - Wildlife and wildlife/plant habitat
  - Wetlands
  - Riparian areas
  - Surface and subsurface water – sources, volumes, and consumptive vs. non-consumptive use
  - Aquifers – casing that isolates and protects aquifers, due diligence in finding abandoned wells, and protective setbacks from areas of outcropping aquifers
  - Air quality – greenhouse gas emissions, ozone precursors, and toxic air pollutants affecting local residents, visitors and users of nearby public facilities

- Water quality
  - Soil quality and productive integrity
- d) Geologic hazards
  - e) Wildfire mitigation
  - f) Storm water, drainage and erosion controls
  - g) Solid and liquid wastes management
  - h) Noise, lighting and odor controls
  - i) Land restoration and reclamation
  - j) Agricultural land preservation
  - k) Irrigation ditches, drain tiles, laterals, ponds and other water resource systems associated with agricultural operations
  - l) Fencing, both temporary and replacement
  - m) Noxious weed control
  - n) Floodplain and floodways
  - o) Visual impacts and preservation of scenic views
  - p) Access roads/facilities removal upon well closures/abandonment
  - q) Historic/archeological/cultural protection
  - r) Emergency response planning and capabilities
  - s) Adjacent landowner concerns
  - t) Other areas of public health, safety and welfare as they may be identified

**Policy GE 4.03:** Measures the county will look for in assessing whether an application for oil and gas exploration and development is adhering to most effective performance technologies and practices will include, but not be limited to, the following:

- use of closed loop systems for the containment and/or recycling of drilling and completion fluids;
- use of emissions controls, prevention capture/co-benefits producing systems, and other green completion or reduced emissions systems to minimize or eliminate the release of volatile organic compounds, hazardous air pollutants, and greenhouse gases;
- use of electric motors or muffled internal combustion engines in pumping and production operations;
- extensions of setbacks from adjacent land uses, water bodies, water courses, riparian areas and other important environmental resources as determined on a case-by-case and site-by-site basis;
- air quality baseline testing and monitoring at wellheads, condensate tanks, pipelines, compressor stations and other potential gaseous emissions sources;
- soil structure and condition baseline testing and documentation within and adjacent to the drill pad area prior to commencing pad preparation and construction;
- surface, groundwater, and well water quality and level baseline testing and monitoring within and adjacent to the drill pad area prior to commencing pad preparation and construction;
- extensions of setbacks to achieve public health, safety and welfare objectives as determined on a case-by-case and site-by-site basis;
- submittal of comprehensive drilling and phasing plans for oil and gas holdings within and adjacent to Boulder County;
- preparation of plugged and abandoned hydrocarbon well integrity surveys within an adequate distance along the full length of the bore hole and production casing for proposed new wells

and existing wells to be reopened for production, to identify potential integrity problems and remedies for improperly plugged wells or where plugs and well casings have failed over time;

- use of temporary, removable, low-impact “laydown” roads or similar methods for access to sites from local, county, state and/or federal roads;
- dark sky lighting measures;
- odor, dust and noise reduction/suppression measures;
- complete reclamation and restoration of all disturbed areas, including roads, to their pre-exploration and development conditions;
- sharing of transportation, drilling, production, transmission and access facilities among operators to minimize duplication of activities and potential impacts;
- use of existing easements and infrastructure where appropriate and allowed by easement holders for the surface and subsurface infrastructure necessary for drilling, extraction, production and transmission operations;
- “fair share” compensation for impacts on county roads, county open space lands and other county infrastructure or properties

**Policy GE 4.04:** In addition to the county’s expressed interest in eliminating methane and other greenhouse gas emissions from oil and gas development into the atmosphere, the county strongly supports all efforts at all levels to further study and ultimately eliminate such emissions resulting from oil and gas operations whether through legislative, regulatory, voluntary or other means.

**Policy GE 4.05:** The county shall consider requiring operators to use and share existing infrastructure, to minimize installation of new facilities, and to avoid additional disturbance to lands to the greatest extent possible in order to forego introducing significant new land use and cumulative impacts to the environment, landowners and natural resources.

**Policy GE 4.06:** Applicants for oil and gas exploration and development shall provide the Boulder Office of Emergency Management and affected emergency response agencies with as-built facilities maps in a format suitable for input into the county’s GIS system depicting the locations, sizes, and depths below grade of all oil and gas gathering and transmissions lines and associated equipment, surface facilities and their functions, as well as transportation routes to and from exploration and development sites, for emergency response and management purposes in case of an incident or accident involving transmission or transportation presenting an immediate or potential hazard to the public and environment.

4.06.01 Operators shall cooperate with local emergency response agencies in planning and conducting on-site emergency preparedness exercises that simulate industrial incidents and accidents that may, in the opinion of the emergency response agencies, take place on site.

4.06.02 Operators shall disclose all hazardous chemicals used in their operation to the Boulder Office of Emergency Management and all affected emergency response agencies.

4.06.03 All unintended releases of hazardous chemicals, shall be immediately reported to the Boulder Office of Emergency Management and all affected emergency response providers.

**Policy GE 4.07:** The county will encourage and provide appropriate assistance to landowners seeking expert advice for negotiating surface use agreements or leasing arrangements for oil and gas exploration and development.

**Policy GE 4.08:** Achieving the county’s Objective regarding oil and gas activities requires not only a thorough review of local regulations but also communication and cooperation between the county, other levels of government and organizations involved in the oil and gas industry and in the study of oil and gas development and exploration. To this end the county has appointed a Local Governmental Designee pursuant to Rule 214 of the Colorado Oil and Gas Conservation Commission. In addition, the county is committed to working with stakeholders, regulators and interested parties to:

- a) Identify and address deficiencies in regulating detrimental land use and surface impacts as well as environmental and health impacts;
- b) Continue review of studies, data and other information to ensure regulations and implementation measures are presently addressing or need revising to incorporate the most contemporary research on impacts and technological advances;
- c) Monitor state and federal legislation and policies, to be followed when deemed necessary by lobbying, letters of support and advocacy, and dissemination of information to enhance local protection for land use, surface impacts, public health and the environment;
- d) Investigate the feasibility and utility of entering into memoranda of understanding (MOUs), intergovernmental agreements (IGAs) or other accords with industry, the state, and other public or private sector interests where the outcome will help facilitate the implementation of these policies; and
- e) Consider addressing impacts of oil and gas development by acquiring and retiring mineral estates interests on a willing seller-willing buyer basis where appropriate.

**Policy GE 4.09:** The county will require that applicants for oil and gas exploration and development directly engage with local communities, residents and other stakeholders at each phase of a development plan, starting prior to exploration, in order to provide sufficient opportunity for comment on plans, operations and performance, listen to concerns, and respond appropriately and promptly.

**Policy GE 4.10:** Boulder County shall not lease or sell any of its current or future water rights for oil and gas exploration and development.

**Policy GE 4.11:** Agricultural land preservation and conservation is a core goal and value of the BCCP. Oil and gas operations will be required to restore and reclaim all on and off-site agricultural lands impacted by any activity related to exploration, development, infrastructure installation, closure, and transportation to the soil tilth, productivity, and/or drainage patterns that were in place prior to the initiation of oil and gas operations.

**Policy GE 4.12** Boulder County will require explicit commitments by applicants to accept responsibility and liability for compensation and/or mitigation of directly and indirectly related costs, nuisances, damages and adverse impacts as a condition for issuance of permits dealing with oil and gas resource exploration and production.

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## **ADDITIONAL AMENDMENT RECOMMENDATIONS**

\* **Retain Policy GE 2.06, Geology Element**, with the following revision:

GE 2.06 The county shall regulate the exploration for, development of, and production of geothermal resources as well as all accessory activities related thereto, to the extent permitted by state statutes.

\* **Retain, Policy AG 2.01 et seq, Agricultural Element**, with the following revision:

### **Infrastructure Development on Agricultural Land**

**AG 2.01** The county shall discourage the placement of new utility infrastructure upon agricultural lands. The county supports using existing easements or other public rights-of-way to minimize the impacts to agriculturally productive land.

- **AG 2.01.01** If a thorough analysis of alternatives concludes that routing/siting of facilities is necessary on or across agricultural lands, all construction activities will be located and performed so as to minimize disturbance to agricultural resources.
- **AG 2.01.02** If the infrastructure location is determined necessary, infrastructure construction activities across agricultural lands should not occur during the growing season.
- 
- **AG 2.01.03** Any agricultural lands and water resource systems disturbed by infrastructure construction shall be restored to their former productivity.

# Attachment D1 Development Plan Review as Proposed in Draft Regulations with 1000' Occupied Building Setback

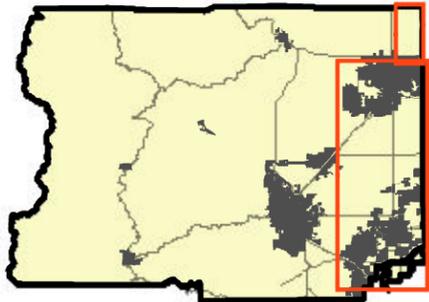
 Areas Eligible for Expedited Review

 Areas for Standard Review

**Siting Criteria**

1. 1000' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
8. Not within wetlands
9. Not within natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat

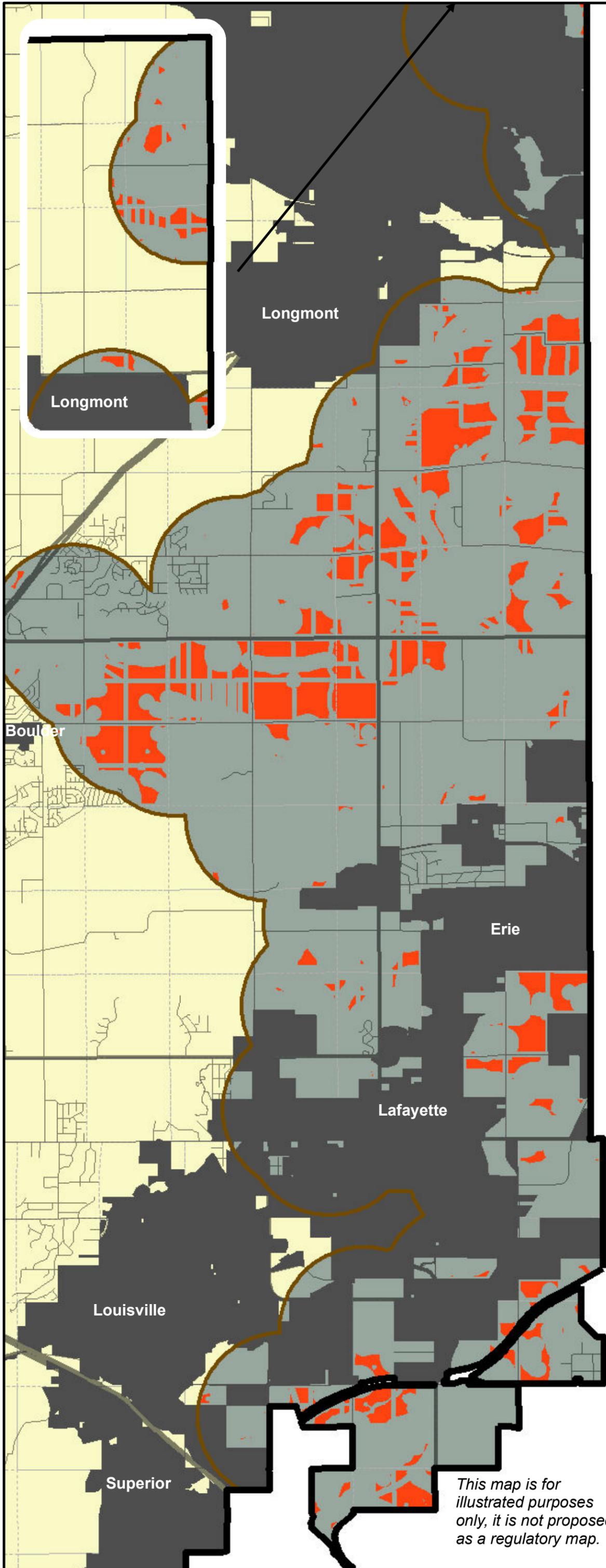
 Wattenberg Field  
 Municipalities



0 6,000  
| Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards  
 20 Football Fields  
10/23/2012



*This map is for illustrated purposes only, it is not proposed as a regulatory map.*



# Attachment D2 Development Plan Review as Proposed in Draft Regulations with 1000' Occupied Building Setback

 Areas Eligible for Expedited Review

 Areas for Standard Review

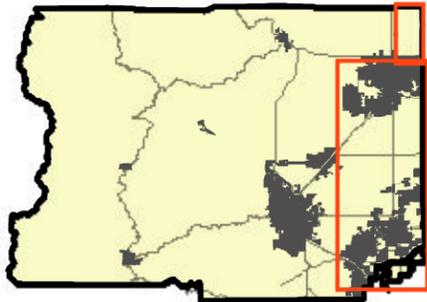
- Well: Producing (243)
- Well: Permit Location (38)

Number of wells includes only those wells located in unincorporated Boulder County and within the Wattenberg Field as retrieved from the COGCC website on 10/6/2012.

**Siting Criteria**

1. 1000' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
8. Not within wetlands
9. Not within natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife

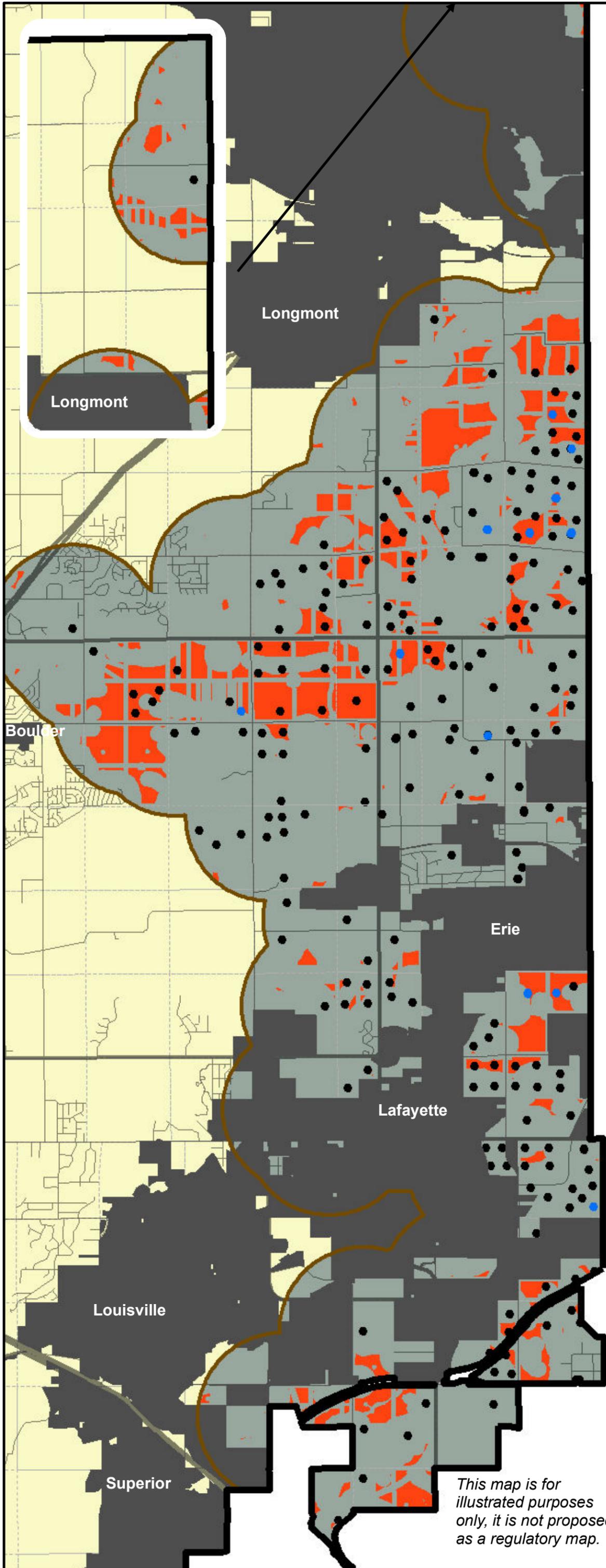
 Wattenberg Field  
 Municipalities



0 6,000 Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards  
 20 Football Fields  
10/23/2012



*This map is for illustrated purposes only, it is not proposed as a regulatory map.*



# Attachment D3 Development Plan Review by Quarter- Section as Proposed in Draft Regulations with 1000' Occupied Building Setback

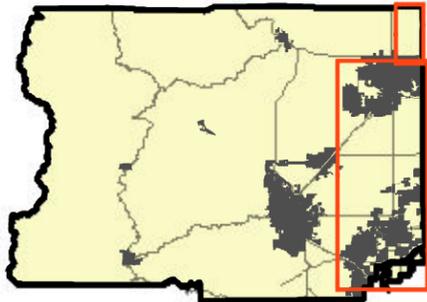
 **132 Quarter-Sections  
Eligible for Expedited  
Review (53%)**

 **119 Quarter-Sections  
Available For Standard  
Review (47%)**

**Siting Criteria**

1. 1000' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
8. Not within wetlands
9. Not within natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat

 **Wattenberg Field**  
 **Municipalities**

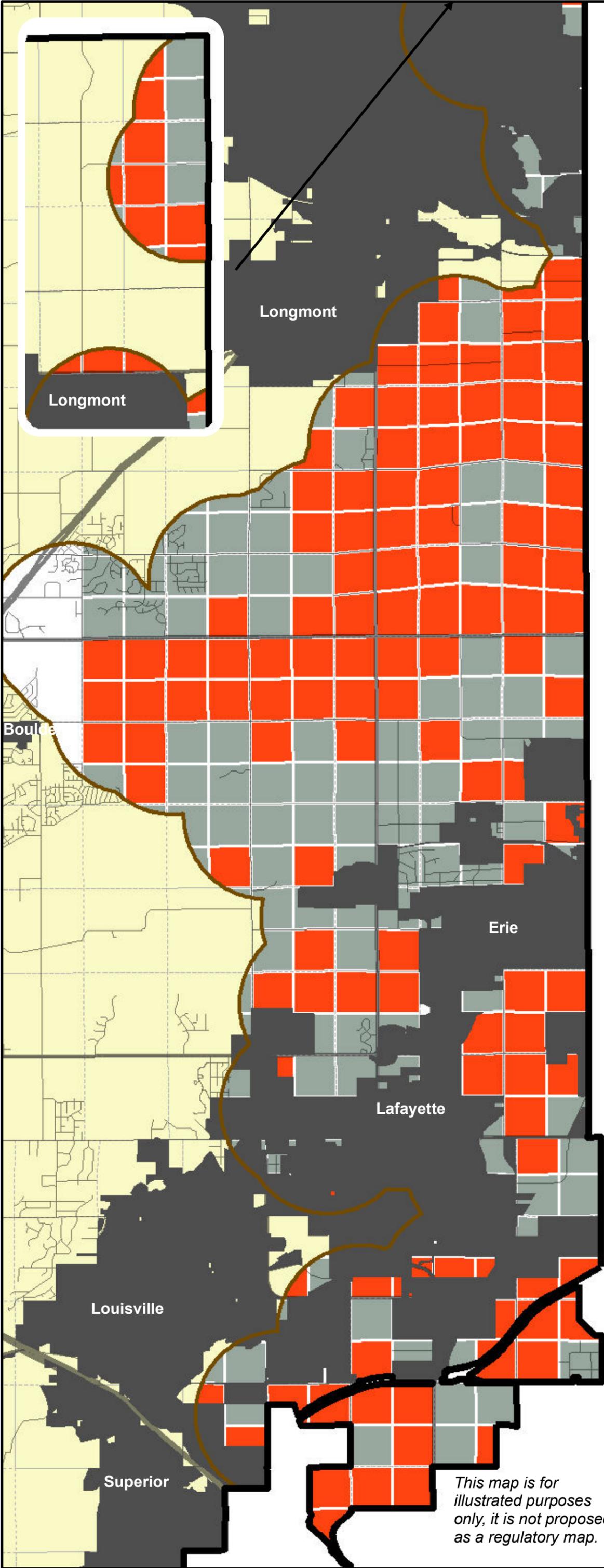


0 6,000  
| Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards



 20 Football Fields  
10/23/2012

*This map is for  
illustrated purposes  
only, it is not proposed  
as a regulatory map.*



# Attachment D4 Development Plan Review by Quarter- Section as Proposed in Draft Regulations with 1000' Occupied Building Setback

 **132 Quarter-Sections  
Eligible for Expedited  
Review (53%)**

 **119 Quarter-Sections  
Available For Standard  
Review (47%)**

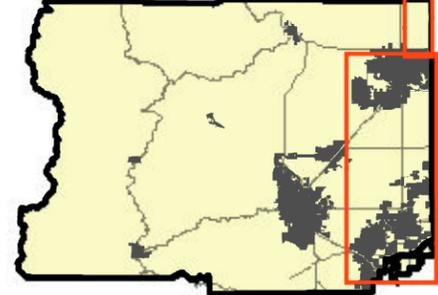
-  **Well: Producing (243)**
-  **Well: Permit Location (38)**

Number of wells includes only those wells located in unincorporated Boulder County and within the Wattenberg Field as retrieved from the COGCC website on 10/6/2012

**Siting Criteria**

1. 1000' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
8. Not within wetlands
9. Not within natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat

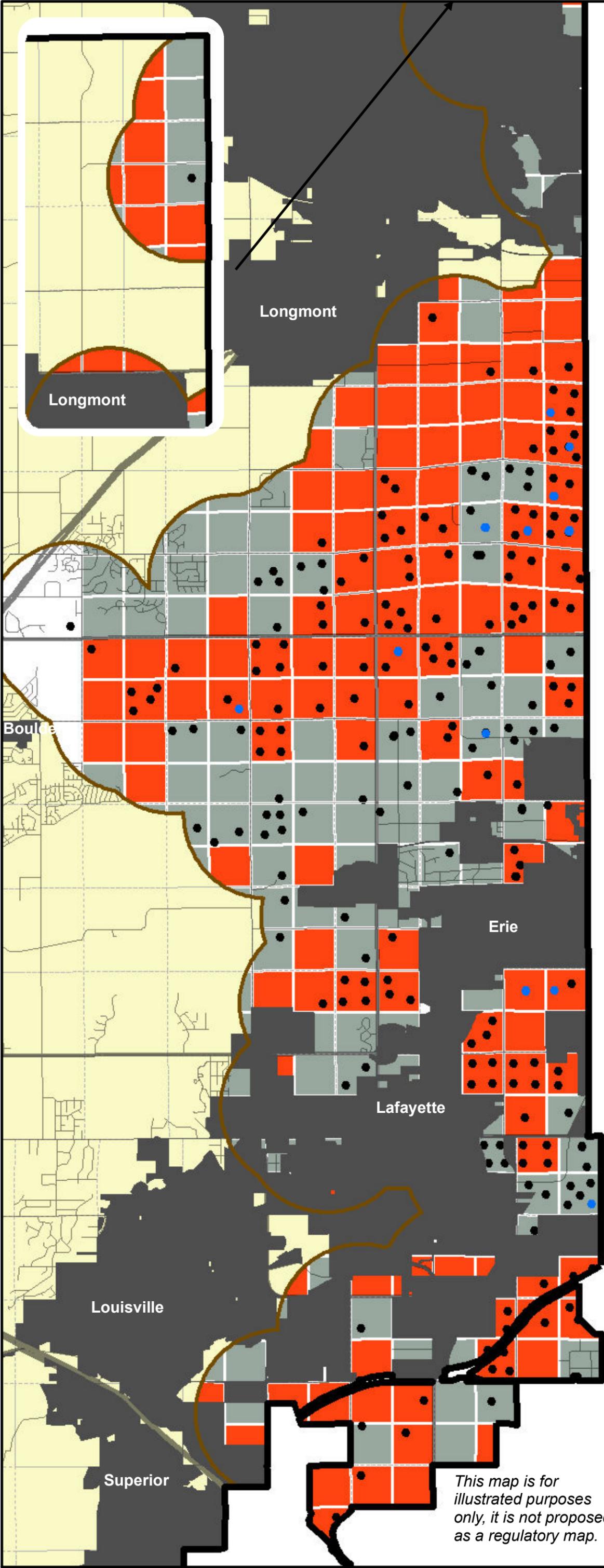
 **Wattenberg Field**  
 **Municipalities**



0 6,000  
|-----| Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards  
 20 Football Fields  
10/23/2012



*This map is for  
illustrated purposes  
only, it is not proposed  
as a regulatory map.*



# Attachment D5 Development Plan Review as Proposed in Draft Regulations with 500' Occupied Building Setback

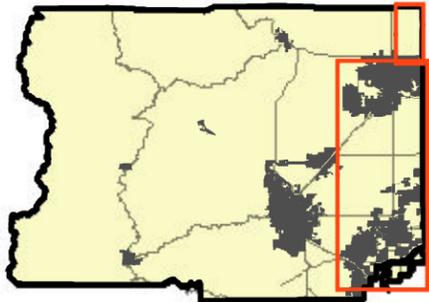
 Areas Eligible for Expedited Review

 Areas for Standard Review

**Siting Criteria**

1. 500' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
8. Not within wetlands
9. Not within natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat

 Wattenberg Field  
 Municipalities

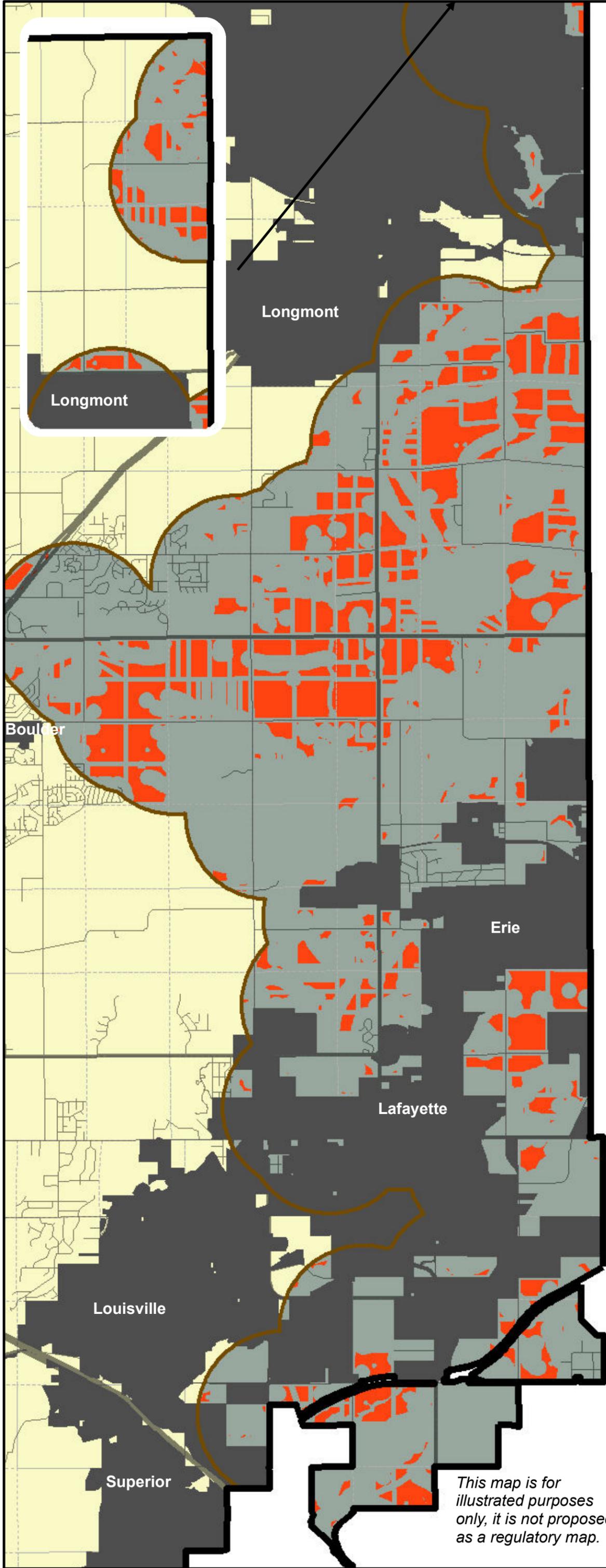


0 6,000  
| Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards



 20 Football Fields  
10/23/2012

*This map is for  
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as a regulatory map.*



# Attachment D6 Development Plan Review as Proposed in Draft Regulations with 500' Occupied Building Setback

 Areas Eligible for Expedited Review

 Areas for Standard Review

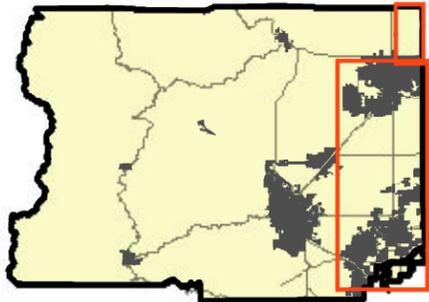
- Well: Producing (243)
- Well: Permit Location (38)

Number of wells includes only those wells located in unincorporated Boulder County and within the Wattenberg Field as retrieved from the COGCC website on 10/6/2012.

**Siting Criteria**

1. 500' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
8. Not within wetlands
9. Not within natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife

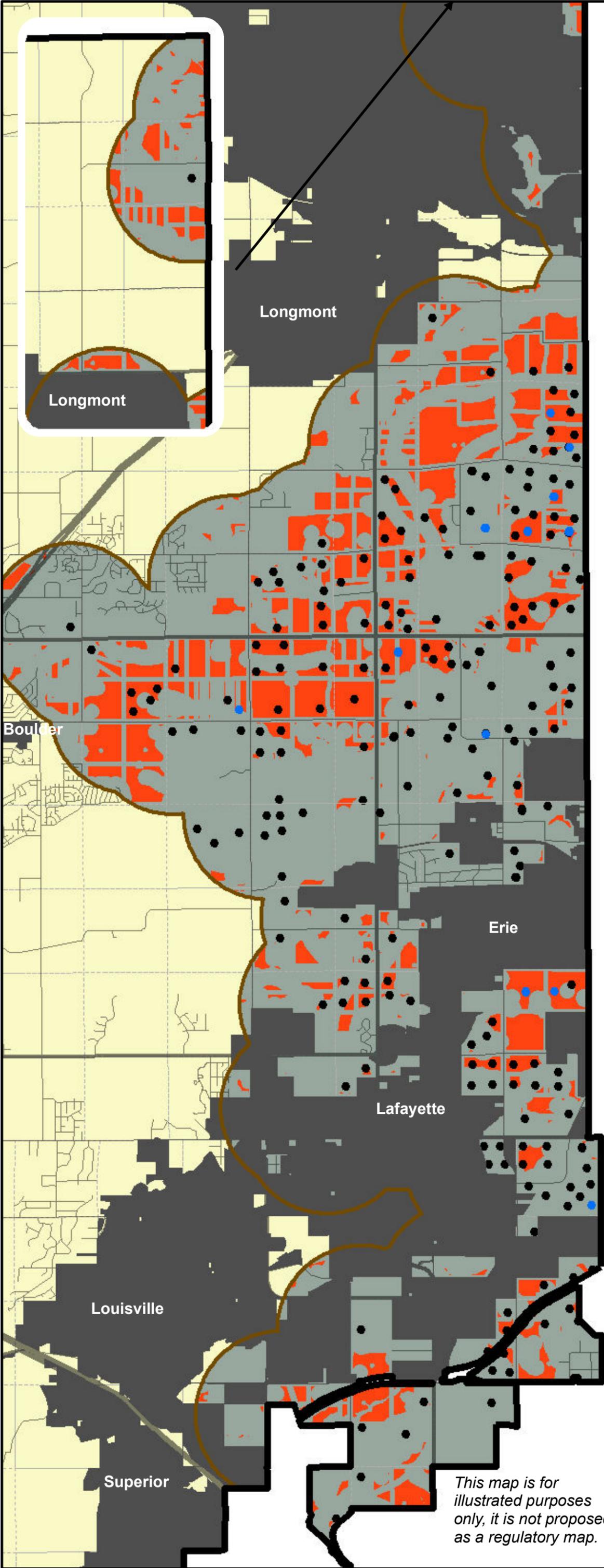
 Wattenberg Field  
 Municipalities



0 6,000  
| Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards  
 20 Football Fields  
10/23/2012



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# Attachment D7 Development Plan Review by Quarter- Section as Proposed in Draft Regulations with 500' Occupied Building Setback

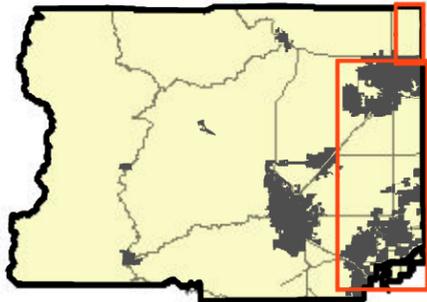
 171 Quarter-Sections  
Eligible for Expedited  
Review (68%)

 80 Quarter-Sections  
Available For Standard  
Review (32%)

**Siting Criteria**

1. 500' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
8. Not within wetlands
9. Not within natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, or critical wildlife habitat

 Wattenberg Field  
 Municipalities

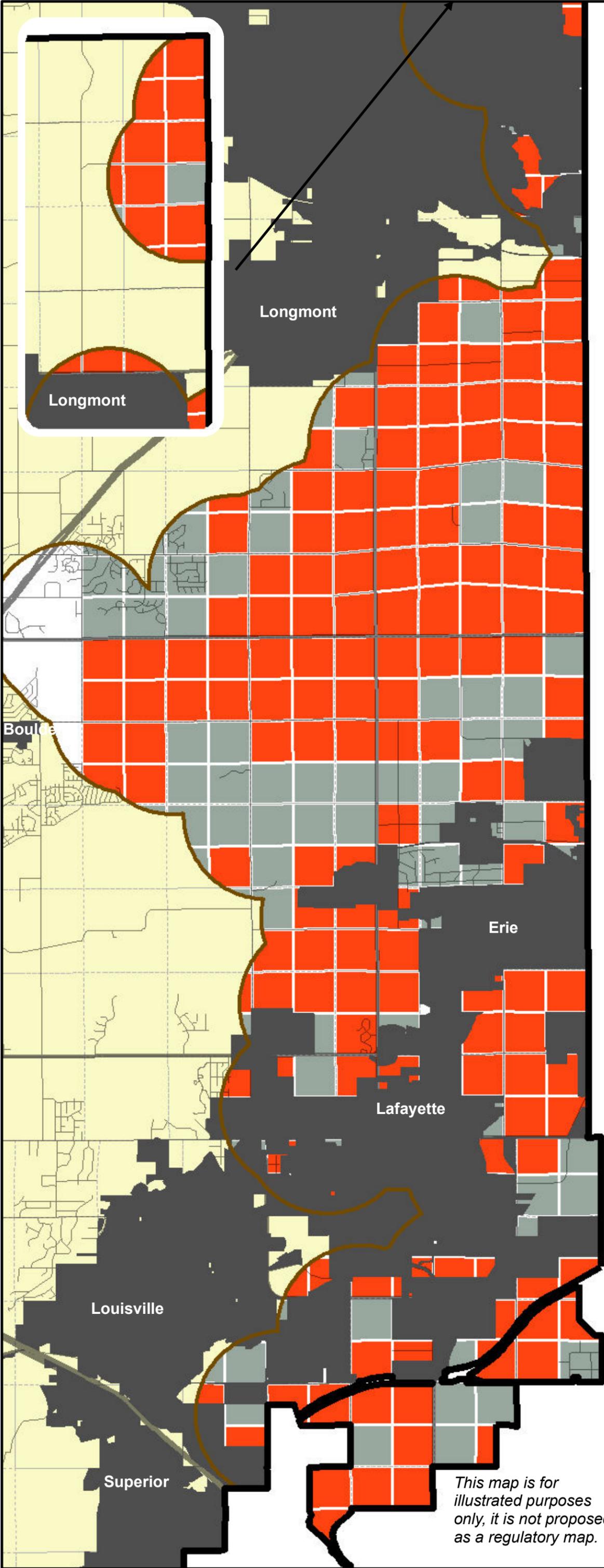


0 6,000  
|-----| Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards



 20 Football Fields  
10/23/2012

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illustrated purposes  
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as a regulatory map.*



# Attachment D8 Development Plan Review by Quarter- Section as Proposed in Draft Regulations with 500' Occupied Building Setback

 **171 Quarter-Sections  
Eligible for Expedited  
Review (68%)**

 **80 Quarter-Sections  
Available For Standard  
Review (32%)**

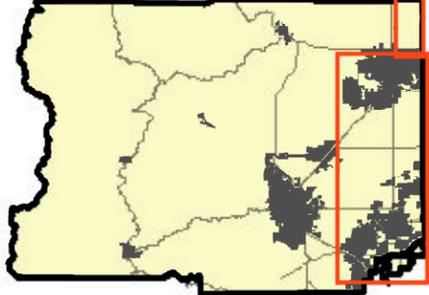
-  **Well: Producing (243)**
-  **Well: Permit Location (38)**

Number of wells includes only those wells located in unincorporated Boulder County and within the Wattenberg Field as retrieved from the COGCC website on 10/6/2012

**Siting Criteria**

1. 500' from occupied structures
2. 150' from property lines
3. 500' from surface water
4. 500' from water wells
5. Not within platted subdivisions
6. Not within high hazard geologic area
7. Not within floodway
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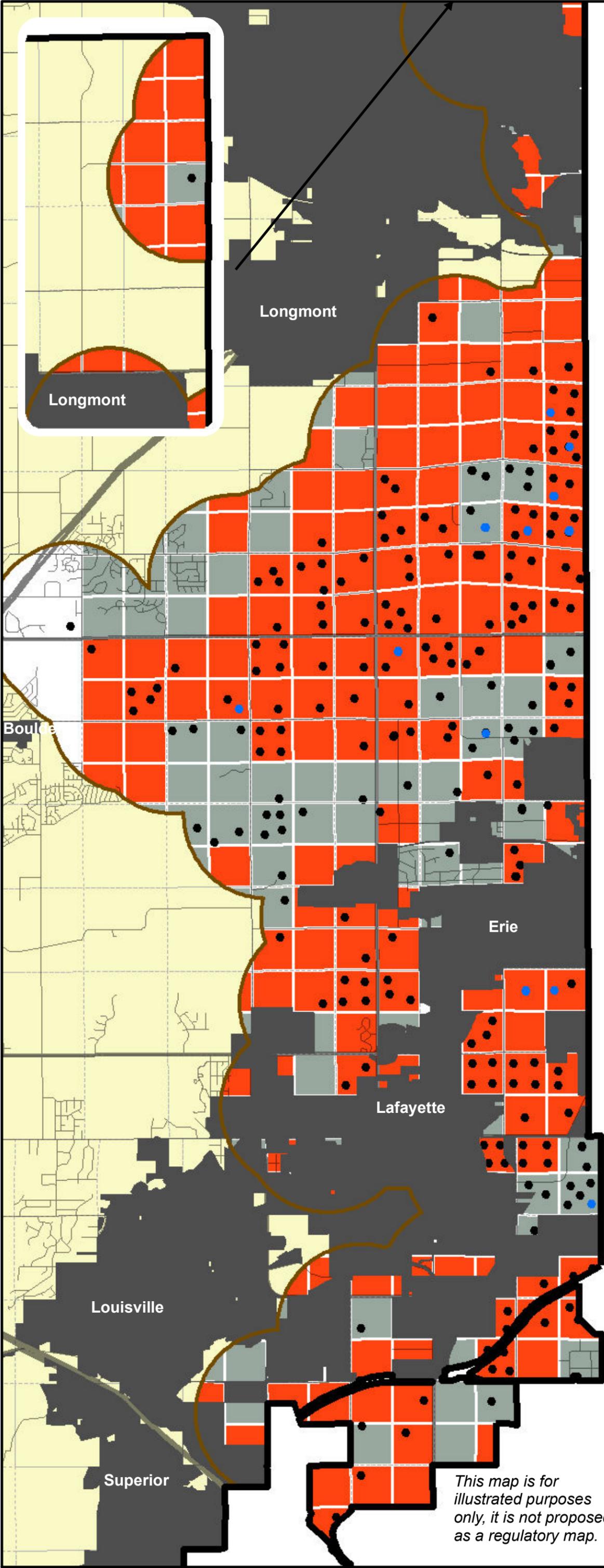
 **Wattenberg Field**  
 **Municipalities**



0 6,000  
|-----| Feet  
1 inch = 6,000 feet  
1 inch = 2,000 yards  
 20 Football Fields  
10/23/2012



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illustrated purposes  
only, it is not proposed  
as a regulatory map.*





October 9, 2012

**Via Email:** [commissioners@bouldercounty.org](mailto:commissioners@bouldercounty.org)  
Boulder County Commissioners  
Boulder County Courthouse, Third Floor  
1325 Pearl Street  
Boulder, Colorado 80302

Dear Honorable Commissioners:

Encana Oil & Gas (USA) Inc. submits the following comments regarding the initial draft of Boulder County's Proposed Oil and Gas Regulations ("Proposed Regulations") which were made public on September 17, 2012. General comments are set forth below and specific detailed comments are set forth in the attached Appendix I and Appendix II.

## **I. Introduction**

Encana Oil & Gas (USA) Inc. ("Encana") engages in the exploration, development, production and marketing of natural gas, oil and natural gas liquids in the United States, including the State of Colorado. Encana and its predecessors-in-interest have drilled and operated oil and gas wells in unincorporated Boulder County ("County") for over 30 years. Encana currently operates over 100 wells and currently has oil and gas lease rights in several thousand acres in the County.

Encana recognizes that the County has a legitimate interest in addressing real issues caused by oil and gas activities within its borders and shares the County's desire to identify and meaningfully address these issues. However, it is clear from the nature of the Proposed Regulations that Encana and the County differ on the appropriate route to achieve these goals. Encana respectfully requests that the County reconsider moving forward with the Proposed Regulations and explore alternative approaches, including utilizing the State's local government designee process and negotiating individual agreements with operators that plan to develop oil and gas in the County. Many of the Proposed Regulations are impermissible under Colorado law and would create unnecessary, duplicative, and incompatible regulatory obligations which would impede the orderly development of Colorado's oil and gas resources. Furthermore, Encana believes the Proposed Regulations as drafted would effectively prevent the development of oil and gas interests in the County, substantially jeopardizing the value of the oil and gas interests of Encana and multiple mineral owners in the County, and possibly result in an actionable taking of property rights.

**Encana Oil & Gas (USA) Inc.**  
Republic Plaza  
370 – 17 Street, Suite 1700  
Denver, Colorado  
United States 80202  
t 303.623.2300  
f 303.623.2400  
[www.encana.com](http://www.encana.com)

The State of Colorado (“State”) has some of the strongest, most progressive, and transparent statewide rules and regulations governing oil and gas operations in the United States. Further, Colorado continues to refine and improve its regulatory structure by initiating frequent rulemaking procedures that solicit the input of local governments, industry, environmental groups, citizens, and other stakeholders. These statewide regulations, promulgated by the Colorado Oil and Gas Conservation Commission (“Commission” or “COGCC”), the Colorado Department of Public Health and Environment (“CDPHE”) and other authorized state agencies, foster the responsible development of Colorado’s oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including the protection of environment and wildlife. Responsible development requires uniform regulations. A patchwork of local regulations, such as the Proposed Regulations, will inhibit what the State has recognized as a necessary activity and will impede the orderly development of Colorado’s oil and gas resources.

The Commission’s regulations provide local governments, such as the County, with the opportunity to initiate and participate in planning processes, hearings and public forums. Through its local government designee (“LGD”) process, the Commission works with local governments to ensure that permitting decisions consider and address local concerns. Local governments can submit comments regarding, and recommend conditions on, permit applications, consult with Commission staff and applicants, seek input from the CDPHE, and request a hearing before the full Commission panel to ensure their concerns are addressed prior to the approval of any permit to drill in the County. The State has strongly encouraged Boulder County and other local governments to use the LGD process to address local concerns instead of attempting to pass regulations which conflict with statewide regulations. Encana also respectfully requests that the County use the LGD process instead of attempting to adopt the Proposed Regulations, many of which would be impermissible under Colorado law as they conflict with statewide regulations.

Encana also encourages the County to explore utilizing mutual agreements with operators, such as a Memorandum of Understanding, to address local concerns instead of impermissible regulation. The Town of Erie and Encana successfully addressed local concerns very similar to those of the County in a collaborative manner by entering into a Memorandum of Understanding which identified certain best management practices for operations. A copy of the Memorandum of Understanding between the Town of Erie and Encana is attached as Appendix III. As Encana has previously indicated to County staff, Encana is willing to pursue a similar Memorandum of Understanding with the County.

These alternatives proposed by Encana were also recommended by a task force convened in early 2012 by Governor Hickenlooper to clarify and better coordinate the regulatory jurisdiction between state and local government. The task force recommended, among other things, increased local participation in the LGD process and using memoranda of understanding with operators to address issues of local concern.<sup>1</sup>

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<sup>1</sup> For a full explanation of the task force’s recommendations, please see [www.colorado.gov](http://www.colorado.gov) (April 18, 2012 press release).

## **II. Legal Background**

In Colorado, the General Assembly has given the State primary authority to regulate the development, production, and utilization of oil and gas.<sup>2</sup> Although counties have authority to regulate matters of local concern within their borders, their authority to regulate oil and gas operations is limited. Traditional local government land use concepts cannot necessarily be applied to oil and gas operations. Unlike conventional surface development options (e.g., residential, commercial, industrial), which allow for location flexibility or alternative uses of the property, alternative subsurface uses are not available for oil and gas operators. Denying or frustrating an operator's ability to develop the underlying oil and gas removes the economic value of the resource, and may ultimately result in a taking of the property. As a result of this and other unique regulatory factors associated with oil and gas operations, the General Assembly gave regulatory authority for the development of oil and gas to the State.

The legal issues associated with county regulation of oil and gas activity center predominantly around the doctrine of preemption. While a full analysis of the preemption doctrine is beyond the scope of this letter, it is important to note that the four Colorado cases decided since 1992 and described on the attached Appendix IV are precedential on the matter of preemption and clearly hold that local governments have limits in their authority to regulate oil and gas development within their borders. Among other matters, the courts in these cases have established that local governments may not pass regulations concerning the technical aspects of oil and gas development.

The Attorney General has very recently addressed similar preemption issues with various counties and cities within Colorado and has initiated a preemption lawsuit against the City of Longmont over its adoption of oil and gas regulations similar to the Proposed Regulations. Three letters, dated January 10, 2012, January 26, 2012 and February 8, 2012 to El Paso County, a letter dated December 28, 2011 to Arapahoe County, a letter dated April 27, 2012 to the City of Longmont, and the Complaint in COGCC v. Longmont are attached to this letter as Appendix V.

## **III. Comments to the Proposed Regulations**

As an initial matter, Encana's comments do not differentiate between the Expedited Development Plan Review ("Expedited DPR") and the Standard Development Plan Review ("Standard DPR"). Encana believes that the Proposed Regulations essentially force operators to agree to the more restrictive Expedited DPR standards to ensure certainty and timely permit approval or face the Standard DPR process that is subjective, ambiguous and without timing certainty. This structure presents a false choice and is merely a mechanism to impose even more duplicative, burdensome and impermissible regulation.

### **A. Many of the Proposed Regulations are preempted.**

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<sup>2</sup>C.R.S. § 34-60-101 *et seq.*; C.R.S. § 34-60-102.

Significant portions of the Proposed Regulations operationally conflict with and/or are preempted by COGCC regulations, as well as other state laws and agency regulations. The table in the attached Appendix I identifies many of these Proposed Regulations which conflict and/or are preempted.

**B. Many of the Proposed Regulations are not operationally feasible or are vague.**

In addition to significant portions of the Proposed Regulations being preempted as discussed above, many of the Proposed Regulations are not operationally feasible or are vague. The table in Appendix II identifies many of these Proposed Regulations which Encana deems not operationally feasible and/or vague.

**C. County Operational Conflict Waiver Procedure**

The County's operational conflict waiver procedure in Section 20-900 of the Proposed Regulations is an illusory process designed to purportedly alleviate the unlawfulness of the Proposed Regulations. It evidences the County's recognition that some or all of the Proposed Regulations operationally conflict, or are likely to operationally conflict, with State rules and regulations. Simply establishing a procedure for an applicant to challenge unlawful regulations does not alleviate their unlawfulness. Furthermore, the County has no authority to identify the State's interest and determine how its own regulations might impede that interest. The resolution of such a dispute is for the District Courts of Colorado, not the Board of County Commissioners. In addition, the LGD process in the COGCC rules already provides an extensive process to address local concerns and avoid such conflicts.

**D. Failure to Use the LGD Process.**

As discussed above, the COGCC rules establish the LGD process under which the COGCC will work with the County to ensure that permitting decisions consider and address local concerns. The County's goal of responsible development of oil and gas within its borders should be addressed via active participation in the LGD process and not through unauthorized and conflicting regulations. The County has not demonstrated that the LGD process, when used properly and to the fullest extent possible, is ineffective or insufficient to address the County's local concerns.

**IV. Conclusion.**

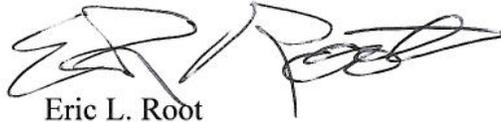
The State of Colorado has some of the most comprehensive and rigorous statewide rules and regulations concerning oil and gas in the country. Encana respectfully requests that the County reconsider moving forward with the Proposed Regulations as they would create unnecessary, duplicative, and incompatible regulatory obligations which would impede the orderly

development of Colorado's oil and gas resources. Furthermore, the County can accomplish its objectives through the Commission's LGD process as well as through agreements with individual operators that address oil and gas operations within the County.

Encana looks forward to meeting with the County to further discuss the Proposed Regulations and Encana's comments. Please contact us at your earliest convenience to schedule a meeting.

Please be advised that due to the length and complexity of the Proposed Regulations, this letter is not a complete list of Encana's comments and Encana does not waive any item not mentioned. Encana may supplement its comments from time to time.

Sincerely,  
ENCANA OIL & GAS (USA) INC.



Eric L. Root  
Team Lead, DJ Basin

MB

Attachments:

- Appendix I - Table of Conflicting and/or Preempted Regulations
- Appendix II - Table of Items Not Operationally Feasible or Vague
- Appendix III - Memorandum of Understanding between the Town of Erie and Encana
- Appendix IV - Colorado Doctrine of Preemption Case Law
- Appendix V - Attorney General Letters and Longmont Lawsuit Complaint

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Beatty & Wozniak, P.C., Jamie Jost ([jjost@bwenergylaw.com](mailto:jjost@bwenergylaw.com))

**APPENDIX I**

**Table of Conflicting and/or Preempted Regulations**

Please see attached.

**APPENDIX I**

**Table of Conflicting and/or Preempted Regulations**

<b><u>Boulder County Regulation</u></b>	<b><u>Description of Boulder County Regulation</u></b>	<b><u>State Regulation or Statute Which Preempts and/or Conflicts</u></b>	<b><u>Description of State Regulation or Statute</u></b>	<b><u>Encana Comment</u></b>
20-400(D)	Timing of pre-application conference shall be held 30 days prior to submission of APD with COGCC.	COGCC Rule 305, 306	Provides timing on notice, comment, and approval process for APD filings.	Proposed Regulation causes unnecessary delays as related to state permitting process and APD process and should remain independent from County permitting process with respect to timing.
20-400(F)	The Director shall determine whether an expedited development plan review application is complete within ten (10) days after receipt of the application or twenty (20) days if outside consultants or staff other than the Land Use Department assist the Director with the completeness determination.	C.R.S. 34-60-106(15)	No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission.	If an applicant is required to pay fees to cover additional staff time and/or outside consultants, these fees are expressly preempted if they are assessed for reviewing matters that are regulated by the COGCC.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-400(H)	Pre-Application Notice to Surface Owners and Surrounding Landowners	COGCC Rule 305.e; C.R.S. 34-60-106(14)	<p>COGCC Rule provides for advance notice to LGD and landowners within 500 feet of location that shall be made upon receipt of completeness determination on Form 2A, except in GWA. Rule also sets forth the information required in the notice.</p> <p>Statute provides that before commencing drilling operations, operator shall give written notice to surface owner and LGD not less than 30 days prior to estimated date of commencement of operations with heavy equipment.</p>	Proposed Regulations require notice to parties in addition to that required by statute and COGCC Rule. Proposed Regulations also require information in excess of that required by statute and COGCC Rules. County's noticing provisions frustrate the noticing scheme contemplated by COGCC.
20-500(H)(7)	Site Features – Operator must identify various features within 1,500 feet of proposed location	COGCC Rule 1201; COGCC Rule 303(d)(3)(D)	Requires operator review of Sensitive Wildlife map and Restricted Occupancy map to determine if location falls within COGCC sensitive areas; Operator must submit map showing all surface waters and riparian areas within 1,000 feet of proposed location.	Proposed Regulation is duplicative and attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-500(H)(8)	Topography – Operator must show existing and proposed topography for 5 foot intervals within 1,500 feet of the proposed location.	COGCC Rule 303(d)(3)(F)(ii)(aa)	Requires operator to submit a topographic map showing the location of the site and location of the reference area only when the final land use includes rangeland, forestry, recreation, or wildlife habitat.	Proposed Regulation is duplicative and attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-500(M)	Water Quality Plan			See Comments to 20-602 set forth below.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-601(B) Generally	Provides that well "is located" according to certain siting criteria.	COGCC Rules 300 Series, 600 Series, and 800 Series	Rules address well location.	<p>Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i></p> <p>Further, the COGCC is currently in the process of conducting a setback rulemaking. The final rule that emerges from this process will preempt the Proposed Regulations.</p>
20-601(B)(1)	Provides that wellhead, pumping unit, tanks, and treaters are at least 500 feet from any "occupied structure".	COGCC Rules 603.a., 604	Statewide setbacks for a wellhead are 150 feet or one and one-half times the derrick height from any building unit, public road, major above ground utility line, or railroad; and 150 feet from surface property line.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
		COGCC Rule 603.b.	High density area setbacks for wellheads are 350 feet from building unit, educational facility, assembly building, hospital, nursing home, board and care facility, or jail. For production equipment, setbacks are 350 feet from building unit and 500 feet from educational facility, assembly building, hospital, nursing home, board and care facility, jail or designated outside activity area.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
		COGCC Rule 604.b	Fired vessels and heater treaters shall be a minimum of 200 feet away from residences, building units, or well defined normally occupied outside areas.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-601(B)(3) and (4)	Provides that wellhead, pumping unit, tanks, and treaters are at least 500 feet from any surface water body and any domestic or commercial water wells.	COGCC Rule 317B	Rules provide public water system protection and include detailed regulations that define applicable buffer zones and permissible operational activities in those buffer zones.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-602(A)	Air Quality generally	C.R.S. § 25-7-128	Local government authority with respect to air quality	<p>C.R.S. § 25-7-128(1) indicates that that a resolution or ordinance must provide for “hearings, judicial review, and injunctions consistent with sections 25-7-118 to 25-7-121 . . . .” The County has not indicated how this requirement has been met.</p> <p>C.R.S. § 25-7-128(1) expresses a priority to “assure coordination of efforts to control and abate air pollution”. By the statute’s plain language, the statute ensures that a local government’s regulations are consistent with those of the CDPHE and/or the federal government.</p> <p>The CDPHE regulates air quality issues associated with oil and gas development. In addition to the CDPHE’s independent regulatory role over oil and gas operations, COGCC Rules establish notice and comment procedures that enable the CDPHE to request BMPs and COAs on an operator’s Form 2 and Form 2A, the Director of the CDPHE is a voting member</p>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
				<p>of the Commission, and it is generally recognized that the CDPHE is the regulatory authority for air quality issues. Although C.R.S. 25-7-128 purports to enable a county to enact local air pollution resolutions or ordinances, the statute has never been evaluated in a preemption context such as this where a state agency is charged with authority over air quality regulation. Further, if a county implements specific air quality regulations which are as stringent as or more stringent than the corresponding State regulations under the untested C.R.S. 25-7-128, it must pay the State's enforcement cost for those regulations under C.R.S. 25-7-114.7(2)(a)(I)(C).</p> <p>Additionally, Colorado has some of the most stringent state air quality regulations in the country. The County is located in the 8 hour Ozone Non-attainment area for which the CDPHE has developed and implemented rigorous emission control</p>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
				<p>requirements for sources which emit ozone precursors. The EPA has also recently developed a New Source Performance Standard (NSPS) specific to the oil and gas industry which also sets numerous control requirements for oil and gas sources. Between the State and EPA, oil and gas air emissions are thoroughly regulated. Regulations above and beyond these existing requirements as proposed by the County will in many cases be preempted by existing state and federal law.</p>
20-602(A)	Requires compliance with permit and control provisions of Regulation 7 and imposes a general duty to minimize emissions.	CDPHE Regulation 3	Allows for up to 90 days to submit APEN and construction permit application to obtain the associated air permit.	Proposed Regulation is in excess of CDPHE Regulation and is arguably preempted.
20-602(A)(1)	Requires a 98% VOC destruction efficiency.	CDPHE Regulation 3		Section 20-602(A)(1) requires a general duty to route natural gas and VOC vapors from all continuously operated equipment to a control device with a 98% destruction efficiency. Control device operability can be problematic and not technically

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
				<p>feasible for some sources of natural gas or VOC emissions. Under CDPHE regulations, there are specific emission thresholds and corresponding requirements for control efficiencies or emission rates that must be met for oil and gas equipment. The CDPHE has invested a significant amount of time in stakeholder meetings to identify areas and equipment for which emission reductions are viable when developing air regulations to ensure that compliance is achievable. Also, the 98% destruction efficiency is inconsistent with the CDPHE's typical control requirements. This could lead to operational conflicts with respect to permitting requirements and is arguably preempted.</p>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-602(A)(2)	Requires flares to be designed in accordance with 40 CFR 60.18(f).	CDPHE Regulation 7		40 CFR 60.18(f) are requirements for open-top flares that require a flame to be present when emissions are vented to it. The CDPHE requires enclosed combustors so that the flames cannot be visible. Further, subsection (f) requires a visible alarm if the pilot goes out which is more stringent than CDPHE requirements. This provision is in direct conflict with the State requirements, creates an operational conflict and is arguably preempted.
20-602(A)(2)	Regulation of flares and combustion devices.	COGCC Rule 912	Regulates the venting or flaring of natural gas.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-602(A)(3)	Requires a fugitive emissions leak detection program.	CDPHE Regulation 7		Section 20-602(A)(3) requires that a fugitive leak detection and repair program be developed for permanent operations. Fugitive leak detection and repair programs are typically only required of large sources with numerous potential fugitive emission points such as gas processing plants. This type of a program is beyond what would typically be required by the CDPHE and is arguably preempted.
20-602(A)(4)	Requires pitless drilling systems.	COGCC Rule 317B		Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-602(A)(5)	Green completions	NSPS OOOO;		Section 20-602(A)(5) specifies requirements for drilling and completions. The COGCC and now the EPA through NSPS OOOO require the use of Green Completions or Reduced Emissions Completions. These requirements are already in place, do not need to be reiterated in a local regulation, and are arguably preempted.
		COGCC Rule 805.b.(3)	Sets forth green completion practices and requirements.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-602(A)(5) and (10)	Green Completions, Rod-Packing Replacement	40 C.F.R. Part 60, Subpart OOOO (2012).	Environmental Protection Agency's New Source Performance Standard	These requirements are redundant to the Environmental Protection Agency's New Source Performance Standard, OOOO which was recently adopted by the State. The County may permissibly recite these standards, but has no authority to monitor or enforce compliance with them.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-602(A)(11)	Certification	CDPHE Reg. 7		Section 20-602(A)(11) requires the submittal of an annual compliance report. This is redundant to the reporting and record keeping already required by the CDPHE.
20-602(C)(1)(a) & (b)	Abandoned Well Assessment	COGCC Rules 311 and 319; 700 Series	Well abandonment report; requirements for abandoning wells; and COGCC financial assurance requirements and environmental response fund.	The Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-602(C)(2)	Water Quality Monitoring and Well Testing	COGCC Rule 318A	Requires water well sampling in GWA.	As related to the portions of the County located within GWA, the Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
		COGCC Rule 908.a(9)	Provides ground water monitoring provisions for centralized E&P waste management facilities	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
		COGA Voluntary Baseline Water Sampling Program	Water samples collected from two closest groundwater features with reasonable access, located within ½ mile of the surface location of newly developed oil and gas well pads or new expansions of existing oil and gas well pads. A second sample will be collected within one year of well completion.	The COGA Program has been developed in cooperation with the COGCC. Encana participates in the COGA Program.
		Current Rulemaking	The COGCC is currently conducting the rulemaking process to implement statewide baseline water sampling rules that are likely to track the COGA program.	When the rulemaking is concluded, the resulting rule will preempt the Proposed Rule as supported by Colorado case law. <i>See Appendix IV.</i>
20-602(D)	Transportation, Roads, Access Standards and Fees – requires payment of transportation fees in lieu of a public transportation impact study and mitigation plan	C.R.S. 34-60-106(15)	No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission. Nothing in subsection (15) shall affect the ability of a local government	Any fee associated with a transportation plan is preempted if it is relating to reviewing matters that are regulated by the COGCC or for which the exceptions in C.R.S. 34-60-106(15) do not apply.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
			to charge a reasonable and nondiscriminatory fee for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and local building codes.	
Table 1	Water Quality Analytes Table	COGCC Rule 318A		Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-701(A) - (H)	Various plan requirements for Standard DPR, including agricultural land mitigation plan, cultural and historic resources mitigation plan, geologic hazard mitigation plan, land disturbance mitigation plan, natural resources mitigation plan, recreational activity mitigation plan, scenic attributes and rural character mitigation plan, and/or surrounding land uses mitigation plan, require the applicant to assess and mitigate the effects of oil and gas operations in those respective areas.	COGCC Rules 300 Series, 600 Series, and 800 Series	Rules address well location.	To the extent that mitigation requires applicant to modify well location or engage in operational practices that conflict with COGCC requirements, the mitigation measure associated with the plan is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-702(A)	Applicant Neighborhood Meeting	COGCC Rule 305	Rule provides generally for notice, comment and approval. Subsection e. provides for notice to landowners within 500 feet and LGD, upon receipt of completeness determination on Form 2A, except in GWA.	Proposed Regulations require notice to parties in addition to that required by the statutes and COGCC Rule. Proposed Regulations also require information in excess of that required by statute and COGCC Rules. County's noticing provisions frustrate the noticing scheme contemplated by COGCC.
20-702(C)	The applicant shall reimburse the County any costs associated with a consultant's review of the Standard DPR application.	C.R.S. 34-60-106(15)	No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission.	If an applicant is required to pay fees to cover outside consultants, these fees are expressly preempted if they are assessed for reviewing matters that are regulated by the COGCC.
20-703(A)	Agricultural Land Standards	C.R.S. 34-60-127	Reasonable Accommodation Doctrine	Encana strives to leave a minimal footprint on the land utilized for oil and gas operations, however, the County has no authority to establish required agricultural land standards.
20-703(B)	Air Quality Standards			See all comments to 20-602(A)

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-703(D)	Emergency Response Standard			Subsection c is onerous and the County does not have authority to require an operator to reimburse it for costs incurred by an emergency response.
20-703(F)(5)	Landscaping financial guarantee.	C.R.S. 34-60-106(15)	No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-703(J)(1)(v)	Noise regulations	COGCC Rule 802	Detailed rules on noise abatement.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-800(E)	Chemical Disclosure	COGCC Rule 205A.b(2)	Hydraulic Fracturing Chemical Disclosure rule.	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-800(X)	Weed Control	COGCC Rule 1003(f)	Weed control requirements	Proposed Regulation attempts to regulate the technical aspect of oil and gas operations and is preempted under Colorado case law. <i>See Appendix IV.</i>
20-1000	Other Waivers			Waiver provisions of the Proposed Regulations create possibility that the COGCC could grant a waiver or variance for a matter while the County would not provide a similar waiver. For example, the COGCC could grant a setback variance under COGCC Rule 502.b while County would not provide a waiver to the County setback. This scenario will result in an operational conflict.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-1200 (A) 20-1300 (A) – (D)	Financial guarantees	C.R.S. 34-60-106(13), (15), and (17); COGCC Rules 700 Series	<p>Commission shall require every operator to provide assurance it is financially capable of fulfilling any obligation under subsection (17) via security or escrow. C.R.S. 34-60-106(13). Commission has exclusive authority to regulate the public health, safety, and welfare aspects, including protection of the environment. C.R.S. 34-60-106(17). No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission. C.R.S. 34-60-106(15).</p> <p>COGCC Rules – 700 series govern all financial assurances requirements for an operator to conduct oil and gas operations in Colorado.</p>	Proposed Regulations require fees and financial guarantees in areas where the Colorado legislature has restricted such fees, or the COGCC regulates the financial assurances for operations. These proposed regulations are preempted under Colorado state law.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>State Regulation or Statute Which Preempts and/or Conflicts</u>	<u>Description of State Regulation or Statute</u>	<u>Encana Comment</u>
20-1400	Definition of Gathering Line: Pipeline transporting produced gas, oil, or water from multiple well sites to a centralized facility	COGCC Rules 1100 Series, FERC, National Pipeline Safety Act, DOT Regulations	Gathering lines are comprehensively regulated by numerous state and federal agencies.	Addition of "water" to definition in Proposed Regulation is in excess of COGCC-provided definition. In addition, comprehensive regulation of gathering lines by state and federal regulations may preempt County regulation.
20-1400	Mitigation Priorities	C.R.S. 34-60-102, 105.	Legislative declaration and powers of the Commission	Mitigation provisions of the Proposed Regulations generally have no reasonableness and/or feasibility standards. COGCC has obligation to balance resource development and ensure that regulations are both effective and feasible. As a whole, the Proposed Regulations do not address this balancing obligation and may therefore be preempted as a whole because they frustrate the State's regulatory scheme.

**APPENDIX II**

**Table of Items Not Operationally Feasible or Vague**

Please see attached.

**APPENDIX II**  
**Table of Items Not Operationally Feasible or Vague**  
(all comments are subject to preemption and/or conflict objections)

<b><u>Boulder County Regulation</u></b>	<b><u>Description of Boulder County Regulation</u></b>	<b><u>Encana Comment</u></b>
General		The Proposed Regulations generally do not distinguish between drilling and production operations. While drilling operations may be more visible and land-use intensive, production operations may be relatively low profile and thus less likely to cause visual or other impacts to particular areas. Proposed Regulations may be overbroad if they are equally restrictive throughout all phases of operations.
20-400(F)	Application shall include documentation establishing that proposed operation is in compliance with all applicable requirements of this Article.	Nature and scope of "documentation" is vague.
20-400(H)(2)(d)	County's right to enter property.	The ability for County staff to enter a wellsite or associated operations at any time poses a safety hazard and creates liability concerns for operators. Encana suggests including language providing that the operator will be notified in advance of any such entrance onto the property, the operator may have representatives present, the County will have adequate insurance, and the County personnel will comply with the operator's safety requirements.
20-601(B)(5)	Wellhead, pumping units, tanks, and treaters are not located within a platted subdivision or mapped townsites.	Operators endeavor whenever possible to locate new wells on or adjacent to existing wells to minimize surface disturbance and maximize efficiency through collocated facilities, shared pipelines, and shared access roads. This Proposed Regulation essentially disqualifies both existing and new well pads and facilities in these areas. As a result, operators would have to seek new surface locations outside of those areas, which is not acceptable.  This provision may also operate as a de facto denial of a County permit when an operator's COGCC permit was otherwise approved by the COGCC. To the extent that this provision is inconsistent with the COGCC permitting regime it may operationally conflict with State law.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>Encana Comment</u>
20-601(B)(6) and (9)	Siting Criteria	There are no qualifying criteria for designating or mapping lands as significant natural communities, natural landmarks and natural areas, rare plant areas, significant riparian corridors, critical wildlife habitat or high hazard geologic areas. Lands can be added at the County's sole discretion causing significant uncertainty.
20-601(B)(8)	Wellhead, pumping units, tanks, and treaters are not located within wetlands area.	Definition of wetlands is unclear. Additionally, COGCC does not impose prohibition on activities in wetlands (see COGCC Rules 303.f. and 1002.e).
20-602(A)(1)	Requirement to route "all" natural gas and VOC vapors to control device.	Routing 100% of natural gas and VOC vapors to a control device is not feasible.
20-602(A)(5)	Green Completions	Reinjection of gas produced on initial flow back cannot be simultaneously injected back into the well. Gas injection into another offset well is custody transfer of the minerals produced and would require the owners of the offset well to purchase the gas. This is not advised nor feasible. Use of gas onsite as a fuel source is not viable as processing onsite is not available. The BTU content of the separator gas is high and has high potential to drop out additional liquids upon further reduction of pressure and temperature. Hydrocarbon liquids entering the fuel line and the engine, designed to run on natural gas, will cause a catastrophic failure. The best practice for green completions is to send the gas to the sales pipeline once the fluid flowing from the well has enough gas to safely operate the separator and liquid control valves.
20-602(A)(5)(c)	Operators' general duty to safely maximize resource recovery and minimize releases to atmosphere.	This "general duty" standard is vague. It is also unclear who will monitor compliance with this general duty, who enforces this general duty, and what the consequences will be if this duty is not met.
20-602(A)(6)	Capture of Produced Gas from Wells	While operators strive to capture all gas produced, 100% capture is not feasible.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>Encana Comment</u>
20-602(A)(7)	Pneumatic Controllers	This is not operationally feasible as no bleed pneumatic controllers are not available in certain situations.
20-602(A)(8) and (9)	Maintenance During Well Blowdowns	While operators strive to eliminate emissions during well maintenance or blowdowns, complete elimination is operationally infeasible.
20-602(C)(1)	Abandoned Well Assessment	This requirement is not feasible because operators may not have sufficient rights to assess or monitor abandoned wells. Additionally this could lead to significant potential liability.
20-602(C)(2)	The Proposed Regulations require testing of all wells within 1/4 mile of "proposed track of the borehole of proposed well."	In the case of a horizontal well, this could require testing of numerous wells because the lateral length of a horizontal well can be thousands of feet long. This language is vague.
20-602(C)(2)	Field observations such as damaged or unsanitary well conditions, adjacent potential pollution sources, odor, water color, sediment, bubbles, and effervescence shall also be included in inspection.	The COGCC inspection protocol is better suited to addressing these types of issues.
20-602(C)(2)(c)	Operators may cease groundwater monitoring if no "significant changes from the baseline have been identified after the third test" and the Director may require further water well sampling at any time in response to complaints from water well owners.	"Significant changes" is vague and it is unclear how the complaints would be reviewed and substantiated before additional testing would be required.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>Encana Comment</u>
20-702(A)	Applicant Neighborhood Meeting	The Proposed Regulations provide for extensive pre-application noticing procedures to surrounding landowners as well as a neighborhood meeting. It is unclear however, what happens once these individuals are noticed. Adjacent landowners have no standing or veto power to influence an applicant's activity. To the extent that noticed parties identify concerns or raise issues, the procedure to resolve these concerns and/or issues is unclear. Operators sometimes cannot disclose operational details to third parties because of contractual restrictions. While public communication is important, the Proposed Regulations need additional clarity regarding the procedure and forum to address concerns raised by noticed parties.
20-702(F)	Reference to "entire record of proceedings"	All information, "evidence," and/or submissions can be used to substantiate a permit decision. The Proposed Regulation has no minimal requirements for relevance, credibility, standing of person asserting, timeliness, authenticity, or reliability.
20-703(C)	Cultural and Historic Resource Standards	It is unclear what criteria make a site "eligible" for County landmarking.
20-703(H)	Recreational Activity Standards	This provision does not distinguish between drilling and production operations. While drilling operations may be more visible and land-use intensive, production operations may be relatively low profile and thus less likely to cause visual or other impacts to particular areas. Proposed Regulations may be overbroad if they are equally restrictive throughout all phases of operations.
20-703(L)	Water Quality Standards	The term "significant degradation" is not defined and is ambiguous.
20-703(M)	Wetland Protection Standards	The term "significant degradation" is not defined and is ambiguous.
20-800(A)	Anchoring	The anchoring specifications are unclear and should be defined.

<u>Boulder County Regulation</u>	<u>Description of Boulder County Regulation</u>	<u>Encana Comment</u>
20-800(F)	Color of facilities	This standard is vague and Encana suggests that one color should be specified.
20-800(H)	Dust Suppression	Operators endeavor to minimize dust, but operations with no dust are not feasible. It would be more appropriate to refer to dust mitigation instead.
20-800(I)	Electrification	Electrification is not feasible. Operators generally do not have rights to bring electrical lines across property owned by others.
20-800(M)	Down lighting	Safety of the personnel on location is of the utmost importance. Light shrouding and shielding is possible, however, to ensure safe operations it is not possible to fully prevent light emissions above a horizontal plane drawn from the bottom of the fixture.
20-800(O)	Mud Tracking	Complete avoidance of mud and debris tracking is not achievable. However, mitigation measures significantly reduce the likelihood of mud tracking and any residual tracking is quickly cleaned from the roadways. It would be more appropriate to refer to mud and debris tracking mitigation.
20-1200(D)	Duration of Approved Development Plan	Limiting the effective period of the approved development plan to two years without the ability to request an extension is overly burdensome. Due to the changing nature of operations, an operator should have the ability to request an extension of, at a minimum, one year to the development plan expiration date.

20-1400	<p>Definition of Adverse Effect or Adverse Impact: The impact of an action, after mitigation, that is considerable or substantial, and unfavorable or harmful; includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.</p>	<p>This is a broad discretionary standard. The term "unfavorable" in particular, is overbroad and vague.</p>
20-1400	<p>Definition of Oil and Gas Facilities: (various provisions) including any other oil and gas operation which may cause significant degradation</p>	<p>This definition is overly broad and vague.</p>

**APPENDIX III**

**Memorandum of Understanding between the Town of Erie and Encana**

Please see attached.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU") is made and entered into this 29<sup>th</sup> day of AUGUST, 2012 by and between the Town of Erie, a Colorado municipal corporation ("Erie"), whose address is 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, and Encana Oil & Gas (USA) Inc., a Delaware corporation ("Encana"), whose address is 370 17<sup>th</sup> Street, Suite 1700, Denver, Colorado 80202. Encana and Erie may be referred to individually as a "Party" or collectively as the "Parties."

### BACKGROUND

**A.** Encana is the owner of oil and gas leasehold and mineral interests within Erie's town limits. Encana currently operates oil and gas wells within Erie's town limits and has the right to develop its current and future oil and gas leasehold and mineral interests by drilling additional wells within Erie's town limits.

**B.** Erie and Encana value a balanced approach to oil and gas development that is protective of human health, safety and welfare, as well as the environment and wildlife. To that end, in order to achieve such goals in a cooperative manner, Erie and Encana enter into this MOU to identify best management practices for Encana's future operations within Erie's town limits ("BMPs").

NOW THEREFORE, the Parties agree as follows:

**1. Effective Date.** On March 7, 2012, by Ordinance 09-2012, the Board of Trustees of Erie imposed a temporary 180 day moratorium on the acceptance, processing, and approval of any land use applications, including special review use applications and site plan applications, related to mining and mineral extraction. This MOU shall not be effective unless and until such moratorium (including any extensions) expires or is terminated in its entirety. The date of such expiration or termination shall be the "Effective Date" of this MOU.

**2. Intent to Supplement Commission Rules and Regulations.** The Parties recognize that pursuant to the Colorado Oil and Gas Conservation Act, Colo. Rev. Stat. §34-60-101 et seq. (the "Act"), the Colorado Oil and Gas Conservation Commission (the "Commission") regulates the development and production of oil and gas resources in Colorado, and the Act authorizes the Commission to adopt statewide rules and regulations, which the Commission has done. The BMPs identified in this MOU are intended to supplement and are in addition to Commission rules and regulations.

**3. Encana's Best Management Practices within Erie Town Limits.** Encana shall include the BMPs listed in Appendix A on all Forms 2, Application for Permit to Drill and Forms 2A, Oil and Gas Location Assessment (for new wellsites only) submitted to the Commission for new wells Encana drills after the Effective Date within Erie's town limits. For purposes of this MOU, Erie's "town limits" shall mean the legal corporate limits of Erie. If, after the Effective Date, Erie annexes into its town limits lands on which Encana has then-existing operations, then this MOU shall also apply to new wells Encana drills on such lands after annexation is completed.

4. **Encana's Hydraulic Fracturing Responsible Products Program.** Encana has developed and is implementing a company-wide Responsible Products Program to manage the fluid products used in its hydraulic fracturing operations. This Responsible Products Program helps Encana evaluate the hydraulic fracturing fluid products it uses in its operations for safety, effectiveness and potential environmental impacts. As part of this program, Encana has informed all of its hydraulic fracturing fluid products suppliers that any product containing diesel, 2-Butoxyethanol (2-BE) or benzene cannot be used in hydraulic fracturing at Encana operations. Encana will continue to conduct its hydraulic fracturing operations within the Erie town limits in accordance with its Responsible Products Program.

5. **Water Supply.** In an effort to reduce truck traffic, Erie and Encana will continue their discussions to identify a water resource close to the wellsite location to be utilized by Encana and its suppliers, which may include Erie municipal water, when determined feasible by Encana.

6. **Erie Regulatory Approvals.** Erie will endeavor to process any and all permits, licenses, applications and other approval requests ("Filings") properly submitted by Encana within thirty (30) days or the time period required by applicable law, code, rule, regulation or ordinance, whichever is shorter, including those Filings for which the corresponding Form 2, Application for Permit to Drill and/or Form 2A, Oil and Gas Location Assessment is pending approval with the Commission. In all cases, Erie shall process Filings within the time period required by applicable law, code, rule, regulation or ordinance. In addition, Erie shall not include any conditions of approval, best management practices or similar conditions or requirements on any Filings submitted by Encana to Erie related to operations within Erie's town limits, including site plan applications and special review use applications, provided Encana has included the BMPs listed in Appendix A on the corresponding Form 2, Application for Permit to Drill and/or Form 2A, Oil and Gas Location Assessment (for new wellsites only).

7. **Applicability.** This MOU shall apply only to new wells which Encana drills after the Effective Date within Erie's town limits. This MOU shall not apply to any wells or operations: (i) not within Erie's town limits, (ii) in which Encana may have an interest but for which Encana is not the operator, or (iii) drilled by Encana prior to the Effective Date or during any period this MOU is suspended. Further, this MOU shall not apply to any successor owners/operators of any wells initially drilled and operated by Encana, nor shall this MOU be binding upon Encana's successor or assigns.

8. **Term.** This MOU is effective upon the Effective Date and shall remain in effect for three (3) years from the Effective Date, at which time this MOU shall terminate. If, after the Effective Date, Erie passes, adopts or imposes an additional moratorium related to oil and gas operations or any ordinances, rules or regulations having the effect of a moratorium or which would restrict or prevent Encana from receiving approval of Filings in accordance with Section 6 of this MOU, then the applicability of this MOU shall be suspended until the expiration or termination of such moratorium or ordinances, rules or regulations. If this MOU is suspended for more than thirty (30) days, then Encana shall have the right to immediately terminate this MOU upon written notice to Erie. Portions of this MOU directly affected shall immediately terminate if (i) the Commission implements any rules, regulations, ordinances or best management practice guidelines regarding oil and gas development specifically in Erie town limits or in an area that includes Erie town limits which provide for higher standards than the

BMPs or (ii) Erie and the Commission enter into any agreements binding on Encana regarding oil and gas development specifically in Erie town limits or in an area that includes Erie town limits. Those portions of this MOU not directly affected by such Commission actions or agreements shall remain in effect. Notwithstanding the foregoing, the terms of Section 6 of this MOU shall not terminate and shall continue to apply and remain in effect even if directly affected by such Commission actions or agreements.

9. **No Waiver of Rights.** Encana does not waive the rights it has pursuant to its current and future oil and gas interests to explore for, drill and produce the oil and gas underlying Erie's town limits. Except as set forth in this MOU, Erie does not waive the rights it has pursuant to the laws of the State of Colorado or the Town of Erie Municipal Code.

10. **Force Majeure.** Neither Party will be liable for any delay or failure in performing under this MOU in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, or any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

11. **Authority to Execute MOU.** Each Party represents that it has the full right and authority to enter into this MOU.

12. **Governing Law.** This MOU shall be governed and construed in accordance with the laws of the State of Colorado without reference to its conflicts of laws provisions.

13. **No Third Party Beneficiaries.** Except for the rights of enforcement by the Commission with respect to the BMPs, this MOU is not intended to, and does not, create any right, benefit, responsibility or obligation that may be enforced by any non-party. Additionally, nothing in this MOU shall entitle any third party to any claims, rights or remedies of any kind.

14. **Notices.** All notices and other correspondence related to this MOU shall be in writing and shall be delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), (iii) fax transmission if verification of receipt is obtained, or (iv) email with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

Erie:                   Town of Erie  
                          645 Holbrook Street  
                          P.O. Box 750  
                          Erie, Colorado 80516  
                          Attn: Town Administrator  
                          Telephone: 303.926.2710  
                          Fax: 303-926-2706  
                          Email: ajkrieger@erieco.gov

Encana:               Encana Oil & Gas (USA) Inc.

370 17<sup>th</sup> Street, Suite 1700  
Denver, CO 80202  
Attn: Team Lead, DJ Basin  
Telephone: 303-876-3005  
Fax: 303-876-4005  
Email: eric.root@encana.com

With copy to: Encana Oil & Gas (USA) Inc.  
370 17<sup>th</sup> Street, Suite 1700  
Denver, CO 80202  
Attn: General Counsel  
Fax: 303-623-2300

**15. Default.** If a Party defaults in the performance under this MOU, the defaulting Party shall have thirty (30) days to cure the default after receipt of written notice of such default from the non-defaulting Party, provided the defaulting Party shall be entitled to a longer cure period if the default cannot reasonably be cured within thirty (30) days and the defaulting Party commences the cure within such thirty (30) day period and diligently pursues its completion. If the defaulting Party fails to cure the default within the applicable cure period, then the non-defaulting Party shall have the right to immediately terminate this MOU upon written notice to the defaulting Party.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by a duly authorized representative on the day and year first above written.

ERIE:

THE TOWN OF ERIE

By: Joseph A Wilson

Name: Joseph A Wilson

Title: Mayor

ENCANA:

ENCANA OIL & GAS (USA) INC.

<sup>Name</sup> By: Eric L. Root

<sup>By</sup> Name: Eric L. Root

Title: Attorney in Fact

## APPENDIX A

### **BEST MANAGEMENT PRACTICES FOR LOCATIONS WITHIN ERIE TOWN LIMITS**

Pursuant to the terms of this MOU, Encana shall include the best management practices listed below on all Forms 2, Application for Permit to Drill, and Forms 2A, Oil and Gas Location Assessment (for new wellsites only), submitted to the Commission for new wells Encana drills after the Effective Date within Erie's town limits.

1. Maximize equipment and wellhead setbacks from occupied buildings and residences to the extent feasible and practicable, as determined by Encana.
2. Prior to commencement of any new drilling or completion operations, provide notification to landowners within one-half (1/2) mile of the wellsite.
3. Prior to commencement of any new drilling or completion operations, provide to an Erie designated staff member the following for the wellsite for informational purposes only, which Encana may revise from time to time during operations:
  - (a) a summary of planned operations, including identified access points and operational timeline, for posting to a local community information web-page;
  - (b) a site plan for site preparation, mobilization and demobilization;
  - (c) a plan for interim reclamation and revegetation of the site and final reclamation of the site;
  - (d) a plan for noise, light and dust mitigation, to the extent feasible;
  - (e) a traffic management plan; and
  - (f) updates of this information if any plans change during operations.
4. Utilize steel-rim berms around tanks and separators instead of sand or soil berms.
5. Utilize closed-loop systems for drilling and completion operations to minimize the need for earthen pits.
6. Utilize a high-low pressure vessel (HLP) and vapor recovery unit (VRU) for new wells drilled. Encana may remove the VRU system at such time Encana determines that the VRU system is no longer necessary due to reduced emission recoveries and/or efficiencies, but no earlier than one (1) year after the new well is drilled.

## APPENDIX IV

### Colorado Doctrine of Preemption Case Law

- In *County Commissioners of La Plata County v. Bowen/Edwards Associates, Inc.* (“*Bowen*”), the Court established the operational conflict standard. 830 P.2d 1045 (Colo. 1992). The Court explained that a local law was preempted by “operational conflict” when enforcement “would materially impede or destroy a state interest,” and held that the state has an interest in the “uniform regulation of all technical aspects of oil and gas operations”. *Id.* at 1058. The Court further held that the state’s interest in responsible resource development supports the uniform regulation of all “technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, environmental restoration . . . well location and spacing of wells.” *Id.*
- In *Voss v. Lundvall Bros. Inc.* (“*Voss*”), the Court applied the analysis set forth in *Bowen*, and invalidated a city ordinance imposing a total ban on drilling and noted that “the regulation of oil and gas development has traditionally been a matter of state rather than local control.” 830 P.2d 1061, 1067 (Colo. 1992).
- In *Town of Frederick v. North Amer. Res. Co.* (“*Town of Frederick*”), the Court held as a matter of law that the Town of Frederick’s attempt to pass more stringent setback, noise abatement, and visual impact rules conflicted, on their face, with the COGCC’s regulatory scheme. 60 P.3d 758,765 (Colo. App. 2002). The Court, applying *Bowen*, invalidated the local ordinance purporting to regulate oil and gas development; rejected Frederick’s argument that it was entitled to “go further” than the rules and regulations passed by the COGCC; and cautioned that although certain local regulatory provisions did not regulate “technical aspects” of oil and gas operations, they may nonetheless be preempted if they address the same subject as state regulation. *Id.* at 764.
- In *Bd. of County Comm’rs of Gunnison County v. BDS Int’l LLC* (“*BDS*”), the Court invalidated the Gunnison County ordinances regulating oil and gas development. 159 P.3d 773 (Colo. App. 2006). The Court held that, as a matter of law, regulations concerning financial assurance, fines, and examination of records conflicted with COGCC’s regulatory scheme. *Id.* at 779.

**APPENDIX V**

**Attorney General Letters and Longmont Lawsuit Complaint**

Please see attached.

January 10, 2012  
Letter to El Paso County



**JOHN W. SUTHERS**  
Attorney General

**CYNTHIA H. COFFMAN**  
Chief Deputy Attorney General

**DANIEL D. DOMENICO**  
Solicitor General

**STATE OF COLORADO  
DEPARTMENT OF LAW**

**OFFICE OF THE ATTORNEY GENERAL**

**STATE SERVICES BUILDING**  
1525 Sherman Street - 7th  
Floor  
Denver, Colorado 80203  
Phone (303) 866-4500

January 10, 2012

George N. Monsson, Esq.  
Sr. Asst. County Attorney, El Paso County  
200 S. Cascade  
Colorado Springs, Colorado  
Via Email: [George.Monsson@elpasoco.com](mailto:George.Monsson@elpasoco.com)

RE: *El Paso County's proposed oil and gas regulations*

Dear Mr. Monsson:

I am writing to express the Colorado Oil and Gas Conservation Commission's ("COGCC") concerns regarding El Paso County's proposed oil and gas regulations. In its correspondence dated November 14, 2011, the COGCC noted some of its general concerns with the proposed regulations and also expressed its interest in working collaboratively with El Paso County to address local oil and gas issues through the COGCC's state program. This letter supplements the general comments and concerns raised in the COGCC's prior letter, and also reiterates the COGCC's desire for El Paso County to work with the COGCC to address local concerns through the COGCC's existing state program.

**I. The COGCC's Statutory Charge**

Under the Colorado Oil and Gas Conservation Act ("Act"), the General Assembly charged the COGCC with fostering the responsible development of Colorado's oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including protection of the environment and wildlife. C.R.S. § 34-60-102. The COGCC has broad powers to further the state's interest in oil and gas development, including the power to pass regulations governing all aspects of development. The Commission Rules of Practice and Procedure, 2 CCR 404-1, are available at <http://cogcc.state.co.us/>. Any person can petition the Commission at any time to modify its regulations. *See* Commission Rule 529.a.

## II. Local Land Use Regulations Affecting Oil and Gas Operations

### A. State Preemption Under *County Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045 (Colo. 1992) and *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

In 1992, the Colorado Supreme Court issued two decisions on the same day addressing state preemption of local oil and gas regulations.

In *County Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045 (Colo. 1992), the Colorado Supreme Court explained that “[t]he purpose of the preemption doctrine is to establish a priority between potentially conflicting laws enacted by various levels of government.” *Id.* at 1055. The court further explained that local regulation may be expressly or impliedly preempted by state law, and that local regulations may also be preempted by virtue of being in operational conflict with state regulations. The court held that operational conflicts arise where a local rule, if enforced, “would materially impede or destroy a state interest.” *Id.* at 1059. The court further held that the state’s interest in responsible resource development supports the uniform regulation of all technical aspects of oil and gas operations and that conflicting county regulations create operational conflicts and must yield to the state’s interest:

There is no question that the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, and environmental restoration. Oil and gas production is closely tied to well location, with the result that the need for uniform regulation extends also to the location and spacing of wells.

...

[T]here may be instances where the county’s regulatory scheme conflicts in operation with the state statutory or regulatory scheme. For example, the operational effect of the county regulations might be to impose technical conditions on the drilling or pumping of wells under circumstances where no such conditions are imposed under the state statutory or regulatory scheme, or to impose safety regulations or land restoration requirements contrary to those required by state law or regulation. To the extent that such operational conflicts might exist, the county regulations must yield to the state interest.

*Bowen/Edwards Assocs.*, at 1059-1060.

In the companion case of *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992), the Colorado Supreme Court applied the analysis set forth in *Bowen/Edwards* and invalidated a city ordinance imposing a total ban on drilling of any oil or gas wells within the City of Greeley. In doing so, the court analyzed the COGCC's powers and obligations under the 1992 version of the Act and noted that "the regulation of oil and gas development and production has traditionally been a matter of state rather than local control." *Id.* at 1068.

In 2002, the Colorado Court of Appeals applied *Bowen/Edwards* and invalidated various local ordinances geared toward oil and gas development. In *Town of Frederick v. North Amer. Res. Co.*, 60 P.3d 758 (Colo. App. 2002), the Court of Appeals held, as a matter of law, that the Town of Frederick's attempt to pass more stringent setback, noise abatement and visual impact rules conflicted, on their face, with the COGCC's regulatory regime and were therefore preempted. The Court of Appeals rejected the town's argument that it was entitled to "go farther" than the rules and regulations passed by the COGCC because "the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations, as well as the imposition of safety regulations or land restoration requirements contrary to those required by state law, gives rise to operational conflicts and requires that the local regulations yield to the state interest." *Id.* at 766. Further, the Court of Appeals observed that operational conflict preemption can occur where state and local governments attempt to regulate the "same subject" irrespective of whether the activity concerns purely technical aspects of development:

Certain provisions of the Town's ordinance do regulate technical aspects of drilling and related activities and thus could not be enforced. However, other provisions of the ordinance, such as those governing access roads and fire protection plans, do not purport to regulate technical aspects of oil and gas operations, even though they may give rise to operational conflicts with a state regulation addressing the same subject and thus be preempted for that reason.

*Id.* at 764.

In 2006, the Court of Appeals again applied *Bowen/Edwards* and invalidated various local ordinances geared toward oil and gas development. In *Bd. of County Comm'rs of Gunnison County v. BDS Int'l LLC*, 159 P.3d 773 (Colo. App. 2006), the Court of Appeals held, as a matter of law, that Gunnison County's regulations concerning financial assurance, fines and examination of records conflicted, on their face, with the COGCC's regulatory regime and were therefore preempted. The Court of Appeals also ordered that an evidentiary hearing was necessary to determine whether numerous other county rules, which touched on the same subjects as COGCC regulations, were preempted. *Id.* at 779. The evidentiary hearing contemplated by the Court of Appeals' opinion never occurred and the case was dismissed.

## **B. Post 1992 Statutory Amendments Expanding the COGCC's Jurisdiction**

The Supreme Court has not addressed state preemption of local oil and gas regulations since the *Bowen/Edwards* and *Voss* decisions in 1992. In the intervening years, the General Assembly has dramatically increased the scope of COGCC's statutory mandate. After each statutory change, the COGCC promulgated extensive regulations dealing with oil and gas operations.

### **i. 1994 Amendments to the Act**

In 1992, in *Bowen/Edwards*, the Supreme Court held that § 34-60-106(4) and (11) of the Act did not manifest a legislative intent to regulate all phases of oil and gas activity. Section 34-60-106(11), in its then-existing version, directed the COGCC to “promulgate rules and regulations to protect the health, safety, and welfare of the general public in the drilling, completion, and operation of oil and gas wells and production facilities.”

In 1994, the General Assembly amended § 34-60-106(11) via Senate Bill 94-177. The final phrase of § 34-60-106(11) now reads “in the conduct of oil and gas operations,” rather than “in the drilling, completion, and operation of oil and gas wells and production facilities.” In addition, a broad definition of “oil and gas operations” was added to the Act:

‘Oil and gas operations’ means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

C.R.S. § 34-60-103(6.5).

The 1994 amendments to the Act broadened the state's interest and authority beyond what they were when *Bowen/Edwards* and *Voss* were decided. Additionally, following the passage of Senate Bill 94-177, the COGCC promulgated extensive regulations dealing with oil and gas operations.<sup>1</sup>

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<sup>1</sup> The 1994 amendments to the Act, as well as the 1996 and 2007 amendments discussed below, contain statements to the effect that the amendments should not be construed to affect the existing land use authority of local governmental entities. Nonetheless, the Court of Appeals has recognized that the “expanded regulations” resulting from these statutory amendments “may give rise to additional areas of operational conflict with analogous local regulations.” *Town of Frederick*, at 763.

**ii. 1996 Amendments to the Act**

In 1996, the General Assembly amended C.R.S. § 34-60-106(15), which addresses the powers of the COGCC, by adding the following language:

No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission. Nothing in this sub-section (15) shall affect the ability of a local government to charge a reasonable and nondiscriminatory fee for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and local building codes.

In doing so, the General Assembly drew a distinction between local government land use permits and Commission rules, orders, and permit conditions, allowing local governments to assess a fee for inspections and monitoring associated with the former, but not the latter.

**iii. 2007 Amendments to the Act**

In 2007, the General Assembly passed House Bills 07-1298 and 07-1341, codified at C.R.S. §§ 34-60-106 and 34-60-128 (collectively, the “2007 Amendments”). The 2007 Amendments required the COGCC to pass new regulations to establish a timely and efficient procedure for reviewing drilling permit and spacing order applications, to protect public health, safety, and welfare and to minimize adverse impacts to wildlife resources. A major reason the General Assembly required such a rulemaking was to address concerns created by the recent increase in the permitting and production of oil and gas in Colorado. The 2007 Amendments also require the COGCC to consult with the Colorado Department of Health and Environment and the Colorado Division of Parks and Wildlife during the permitting process in appropriate cases.

Following the passage of the 2007 Amendments, the COGCC comprehensively updated its regulations. In adopting the new rules and amendments, the Commission conducted a lengthy rulemaking proceeding. The rulemaking record included thousands of pages of public comment, written testimony, and exhibits and 12 days of public and party testimony. The Commission spent another 12 days deliberating on the rules before taking final action. The resulting regulations have been heralded as a national model, balancing both conservation and responsible development. As with prior COGCC regulations promulgated in response to new statutory directives, “these expanded regulations may give rise to additional areas of operational conflict with analogous local regulations.” *Town of Frederick*, at 763.

### **III. El Paso County's Proposed Regulations**

The COGCC has no objection to many of El Paso County's proposed regulations, such as those dealing with transportation, transportation impact studies, maintenance, site access, fire protection and emergency management. However, other aspects of El Paso County's proposed oil and gas regulations create operational conflicts with the COGCC's regulations. The most significant conflicts are summarized below.

#### **A. The County's Proposed Setback Rules**

The County's proposed setback rules conflict with state law. Proposed County Rule 5.2.37(E)(2), if adopted, would require a minimum setback of 500 feet for minor facilities, such as a single well pad built and operated for the purpose of exploratory drilling, and 500 feet or more, on a "case by case basis," for major facilities, such as a single well pad built for production purposes. In contrast, COGCC Rule 603.a. provides that "the wellhead shall be located a distance of one hundred fifty (150) feet or one and one-half (1-1/2) times the height of the derrick, whichever is greater, from any building unit, public road, major above ground utility line, or railroad." In high density areas, COGCC Rule 603.e. extends setbacks to 350 feet. Proposed County Rule 5.2.37(E)(2) gives rise to operational conflicts under *Town of Frederick*.

#### **B. The County's Ban on Excavated Pits**

The County's ban on excavated pits conflicts with state law. Proposed County Rule 5.2.37(E)(3) would categorically ban the use of excavated storage pits. However, the COGCC authorizes such pits in appropriate circumstances and subject to stringent requirements. An outright ban gives rise to an unavoidable operational conflict because "the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations ... gives rise to operational conflicts and requires that the local regulations yield to the state interest." *Town of Frederick*, 60 P.3d at 766. *See also Colo. Mining Assoc. v. Bd. of County Comm'rs of Summit County*, 1999 P.3d 718 (Colo. 2009) (state's regulation of mining chemicals prohibited county from banning their use).

#### **C. The County's Proposed Water Quality Regulations**

Proposed Rule 5.2.37(D)(12) imposes numerous technical requirements on operators in order to "ensure the preservation and protection of those groundwater resources that could be affected by oil and gas operations."

The technical matters El Paso County seeks to regulate through proposed Rule 5.2.37(D)(12) are comprehensively regulated by the COGCC. By statute, the COGCC is required to regulate "oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources." C.R.S. § 34-60-106(2)(d). In order to carry out its statutory responsibility, the COGCC has passed numerous regulations for the

protection of water. In addition to technical regulations meant to ensure wellbore integrity and proper waste management, COGCC Rule 317B provides extensive regulations concerning “Public Water System Protection” and COGCC Rule 324A requires that any operation shall not degrade air, water, soil or biological resources.

The COGCC also has an extensive ground and surface water monitoring program. Various COGCC regulations (e.g., COGCC Rules 317B, 318, and 608) and orders (e.g., Causes 112-138, 112-156, and 112-157) require operators to collect baseline water samples in certain areas and for certain types of wells; the COGCC can and does add special permit conditions to require such sampling on a well-by-well basis; and the COGCC collects such data itself in response to landowner requests and where oil and gas development moves into new areas. In addition, the COGCC has worked with the oil and gas industry on a new initiative, through which oil and gas operators who drill new wells will collect groundwater samples before and after drilling and hydraulic fracturing. The data will be provided to the COGCC, who will manage it in a central database.

Under the circumstances, El Paso County’s attempt to regulate the technical aspects of water quality protection incident to oil and gas operations is preempted. *Oborne v. Board of County Comm’rs of Douglas County*, 764 P.2d 397, 401 (Colo.App. 1988) (“The Act grants to the Commission specific jurisdiction to prevent pollution of water supplies.... To the extent that plaintiffs’ drilling operations may present problems in these areas, the General Assembly has determined that it is the Commission, and not the counties, that should address those problems.”); *Bowen/Edwards Assocs.*, at 1060 n7 (reaffirming *Oborne*).

Although the “[p]rotection of public water supplies is a matter of both state and local concern and may be regulated by local governments,” *Bd. of County Comm’rs of Gunnison County v. B.D.S. Int’l, LLC*, 159 P.3d 773, 780 (Colo. App. 2006), proposed Rule 5.2.37(D)(12) nonetheless gives rise to operational conflicts under *Oborne* and *Bowen/Edwards Assocs.*

#### **D. The County’s Proposed Wildlife Impact Rules**

Proposed Rule 5.2.37(D)(2) requires applicants to consult with the Colorado Division of Parks and Wildlife (“CDPW”) in order to “ensure” that impacts to wildlife and wildlife habitat are avoided or mitigated to the “maximum extent practicable.” The proposed rules prohibit the issuance of a county permit absent “documented consultation” with CDPW.

The County’s proposed rules conflict with or are redundant of state law. The 2007 Amendments required the COGCC to pass comprehensive regulations to minimize adverse impacts to wildlife resources. In response, the COGCC developed five pages of new regulations in collaboration with CDPW. These regulations impose special operating requirements in all areas (Rule 1204), apply additional operating requirements in sensitive wildlife habitat and restricted surface occupancy areas (Rule 1203), mandate consultation with the CDPW in sensitive wildlife habitat (Rule 1202), and require operators to avoid restricted surface occupancy areas where feasible (Rule 1205). As a result of these new regulations, the COGCC consults with the CDPW where appropriate, but not in every single circumstance. See COGCC Rule 306.c. (Consultation with CDPW). The County’s attempt

to impose additional requirements for the protection of wildlife is unnecessary and the proposed rules conflict with COGCC requirements.

Proposed Rule 5.2.37(D)(2) gives rise to operational conflicts under *Town of Frederick* and *Bowen/Edwards Assocs.*

#### **E. The County's Proposed Visual Impact, Noise Emission and Lighting Rules**

Proposed Rules 5.2.37(D)(7), (10) and (11) address visual impact, noise emission and lighting. These rules have the potential to give rise to operational conflicts with the COGCC's 800-Series Rules, which regulate noise abatement, lighting, visual impact mitigation, and odors and dust.

In order to avoid or minimize some of these conflicts, El Paso County could avail itself of COGCC Rule 801. By doing so, El Paso County could pass its own aesthetic regulations so long as such regulations could be harmonized with the COGCC's regulatory regime. However, El Paso County could not adopt its own noise regulations without violating C.R.S. § 30-15-401(1)(m)(II)(B) ("Ordinances enacted to regulate noise on public and private property pursuant to subparagraph (I) of this paragraph (m) shall not apply to ... oil and gas production subject to the provisions of article 60 of title 34, C.R.S.").

For example, assuming El Paso County availed itself of COGCC Rule 801, proposed Rule 5.2.37(D)(7) would nonetheless give rise to operational conflicts. Proposed Rule 5.2.37(D)(7) addresses visual impacts and authorizes County officials to require "specific visual mitigation measures," including a "minor relocation of the facility." Proposed Rule 5.2.37(D)(7) gives rise to operational conflicts because "oil and gas production is closely tied to well location, with the result that the need for uniform regulation extends also to the location and spacing of wells." *Bowen/Edwards Assocs.*, at 1059. County officials have no authority to relocate a facility permitted by the COGCC.

#### **F. The County's Proposed 14-Step Permitting Process**

Some aspects of the County's proposed permitting process conflict with state law. Under the Act, the General Assembly charged the COGCC with the responsibility to implement timely and efficient procedures for the review of applications for permits to drill. C.R.S. § 34-60-106(11)(a)(I)(A). El Paso County's proposed regulations will materially impair the state's interest in the timely and efficient approval of drilling permits because the process requires compliance with the problematic provisions discussed above.

## CONCLUSION

The County should reject the proposed rules discussed above as being in operational conflict with the COGCC's regulatory regime. The County should reject the proposed rules discussed above for the additional reason that exhaustive local regulations are unnecessary. El Paso County can accomplish its objectives through the Local Governmental Designee program, through which the COGCC can impose permit-specific conditions of approval. See COGCC 305.d. ("[T]he Director may attach technically feasible and economically practicable conditions of approval to the Form 2 or Form 2A as the Director deems necessary to implement the provisions of the Act or these rules pursuant to Commission staff analysis or to respond to legitimate concerns expressed during the comment period.").

Additionally, the COGCC encourages El Paso County to consider whether a Memorandum of Understanding would be beneficial. Gunnison County and the COGCC recently entered into a MOU. As specified in the MOU, the COGCC and Gunnison County intend to enter into an intergovernmental agreement pursuant to C.R.S. §34-60-106(15) whereby the COGCC will assign its facilities inspection function to Gunnison County. Gunnison County believes such an assignment will promote public confidence and increase transparency concerning oil and gas development in the county. The COGCC can also address local concerns through area specific orders under COGCC Rule 503 and geographic area plans under COGCC Rule 513.

Sincerely,

FOR THE ATTORNEY GENERAL



JOHN E. MATTER, JR.  
Assistant Attorney General  
Natural Resources & Environment  
303-866-5041

cc: David Neslin, Director COGCC

January 26, 2012  
Letter to El Paso County



**JOHN W. SUTHERS**  
Attorney General

**CYNTHIA H. COFFMAN**  
Chief Deputy Attorney General

**DANIEL D. DOMENICO**  
Solicitor General

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January 26, 2012

George N. Monsson, Esq.  
Sr. Asst. County Attorney, El Paso County  
200 S. Cascade  
Colorado Springs, Colorado  
Via Email: [GeorgeMonsson@elpasoco.com](mailto:GeorgeMonsson@elpasoco.com)

RE: *El Paso County's proposed oil and gas regulations*

Dear Mr. Monsson:

Thank you for providing the Colorado Oil and Gas Conservation Commission ("COGCC") with a revised copy of El Paso County's proposed oil and gas regulations on January 25, 2012 ("Revised Draft"). The Revised Draft addressed some of the concerns raised in my prior letters. This letter addresses the most problematic remaining areas of concern.

Rule 5.2.37(E)(2), Setbacks The County is prohibited from imposing setbacks at odds with COGCC requirements under *Town of Frederick v. North Amer. Res. Co.*, 60 P.3d 758 (Colo. App. 2002). The County should therefore adopt the proposed alternative set forth in the Revised Draft: "The operator of all oil and gas facilities shall follow the Colorado Oil and Gas Conservation Commission (COGCC) requirements for setbacks."

Rule 5.2.37(E)(3), Excavated Pits The Revised Draft states that excavated pits "shall only be allowed by waiver approved by the Board of County Commissioners" after a public hearing. This revision is ineffective and will only impose additional requirements on the applicant where an operational conflict clearly exists. See Order on Motions for Summary Judgment dated April 27, 2004 in *Comm'rs of Gunnison County v. BDS Int'l, LLC*, (Dist. Ct. Gunnison County 03-CV-76) (Patrick, J.) (holding that a comparable local ordinance did not avoid operational conflicts).

Rule 5.2.37(E)(7), Visual Impact Analysis and Mitigation The Revised Draft contains a comment stating that "COGCC recognized that [the County's proposed visual impact and mitigation rule] does not conflict with COGCC Rule 804." This comment is inaccurate. As stated in my January 10 letter, County officials have no authority to relocate a facility permitted by the COGCC.

Rule 5.2.37(E)(11), Water Quality Assessment, Monitoring, and Mitigation Plan The Revised Draft does not address the COGCC's comments concerning the proposed water quality assessment, monitoring, and mitigation plan rules. Additionally, the Revised Draft added an entirely new section captioned "Financial Assurance for Groundwater Quality Monitoring Plan." This new section provides that "The applicant may be required to provide financial assurance in favor of El Paso County in an amount to be determined by the Development Services Department, in consultation with ECPH, which is sufficient to guarantee performance of any groundwater quality monitoring requirements."

As stated in my January 10 letter, the technical matters El Paso County seeks to regulate through its proposed water quality and water sampling rules are comprehensively regulated by the COGCC and the County is barred from imposing more stringent rules and regulations than those imposed by the COGCC. Moreover, the County's new financial assurance requirement is preempted. Under the Oil and Gas Conservation Act, the General Assembly authorized the COGCC to require financial assurance from operators:

(3.5) The commission shall require the furnishing of reasonable security with the commission by lessees of land for the drilling of oil and gas wells, in instances in which the owner of the surface of lands so leased was not a party to such lease, to protect such owner from unreasonable crop losses or land damage from the use of the premises by said lessee. The commission shall require the furnishing of reasonable security with the commission, to restore the condition of the land as nearly as is possible to its condition at the beginning of the lease and in accordance with the owner of the surface of lands so leased.

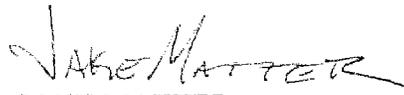
CRS § 34-60-106(3.5). *See also* COGCC 700 Series Rules (Financial Assurance). CRS § 34-60-106(3.5) excludes the County by omission as an entity authorized to require financial assurance incident to oil and gas operations. *See Board of County Comm'rs of Gunnison County v. BDS Int'l LLC*, 159 P.3d 773 (Colo. App. 2006) (invalidating county financial assurance requirements and stating "We conclude these County Regulations impose financial requirements on the oil and gas operator that are inconsistent with the state regulation's financial caps. ... Thus, the trial court properly concluded these County Regulations are preempted.").

Rule 5.2.37(E)(9), Noise Emissions and Special Mitigation The Revised Draft states that "Noise emissions shall, *at a minimum*, be in compliance with the standards outlined in the COGCC Rules..." The County is prohibited from imposing more stringent noise requirements than those established by COGCC regulations. *See* C.R.S. § 30-15-401(1)(m)(II)(B) ("Ordinances enacted to regulate noise on public and private property pursuant to subparagraph (I) of this paragraph (m) shall not apply to ... oil and gas production subject to the provisions of article 60 of title 34, C.R.S."). Additionally, the County cannot do indirectly that which it cannot do directly by imposing technical requirements on oil and gas operations, such as requiring electric motors and, effectively, banning internal combustion engines.

The County should reject the regulations of concern as being in operational conflict with the COGCC's regulatory regime. The COGCC renews its request that the County work collaboratively with the COGCC to address local issues, including those discussed above.

Sincerely,

FOR THE ATTORNEY GENERAL

A handwritten signature in black ink that reads "JAKE MATTER". The signature is written in a cursive, slightly slanted style.

JAKE MATTER  
Assistant Attorney General  
Natural Resources & Environment

cc: David Neslin, Director COGCC

February 8, 2012  
Letter to El Paso County



**JOHN W. SUTHERS**  
Attorney General

**CYNTHIA H. COFFMAN**  
Chief Deputy Attorney General

**DANIEL D. DOMENICO**  
Solicitor General

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February 8, 2012

George N. Monsson, Esq.  
Sr. Asst. County Attorney, El Paso County  
200 S. Cascade  
Colorado Springs, Colorado  
Via Email: [George.Monsson@elpasoco.com](mailto:George.Monsson@elpasoco.com)

RE: *El Paso County's water quality and water sampling regulations*

Dear Mr. Monsson:

I am writing to express the Colorado Oil and Gas Conservation Commission's concern that the water quality and water sampling rules adopted by the Board of County Commissioners on January 31, 2012 are preempted.

As stated in my prior letters, the COGCC is required to regulate "oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources." C.R.S. § 34-60-106(2)(d). In order to carry out its statutory responsibility, the COGCC has passed numerous regulations for the protection of water, including COGCC Rule 317B, which provides extensive regulations concerning "Public Water System Protection" and COGCC Rule 324A, which requires that any operation shall not degrade air, water, soil or biological resources.

El Paso County's attempt to regulate the technical aspects of water quality protection incident to oil and gas operations is preempted. *Oborne v. Board of County Comm'rs of Douglas County*, 764 P.2d 397, 401 (Colo.App. 1988) ("The Act grants to the Commission specific jurisdiction to prevent pollution of water supplies.... To the extent that plaintiffs' drilling operations may present problems in these areas, the General Assembly has determined that it is the Commission, and not the counties, that should address those problems."); *County Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1060 n7 (Colo. 1992) (reaffirming *Oborne*).

Sincerely,

FOR THE ATTORNEY GENERAL

A handwritten signature in black ink that reads "JAKE MATTER". The letters are slightly slanted and connected in a cursive-like style.

JAKE MATTER  
Assistant Attorney General  
Natural Resources & Environment

cc: David Neslin, Director COGCC

December 28, 2011  
Letter to Arapahoe County



JOHN W. SUTHERS  
Attorney General

CYNTHIA H. COFFMAN  
Chief Deputy Attorney General

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December 28, 2011

Ron Carl, Esq.  
Arapahoe County Attorney's Office  
Arapahoe County Government Administration Building  
5334 S. Prince Street  
Littleton, CO 80120-1136

RE: *Arapahoe County's proposed oil and gas regulations*

Dear Mr. Carl:

I am writing to express the Colorado Oil and Gas Conservation Commission's ("COGCC") concerns regarding Arapahoe County's proposed oil and gas regulations. The COGCC has previously noted its interest in working collaboratively with Arapahoe County to address local oil and gas issues through the COGCC's statewide program.

The COGCC is charged with fostering the responsible development of Colorado's oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including protection of the environment. Responsible development requires uniform regulation. Therefore, the courts recognize that local governments may not pass regulations concerning the technical aspects of development that conflict with COGCC regulations. Unfortunately, many aspects of Arapahoe County's proposed rules conflict with the COGCC's regulations, including:

### **The County's Proposed Setback Rules**

The County's proposed setback rules conflict with state law. Proposed County Rule 12-1910.10, if adopted, would require a minimum setback of 450 feet from the "well site." In contrast, COGCC Rule 603.a provides that "the wellhead shall be located a distance of one hundred fifty (150) feet or one and one-half (1-1/2) times the height of the derrick, whichever is greater, from any building unit, public road, major above ground utility line, or railroad." In high density areas, COGCC Rule 603.e. extends setbacks to 350 feet.

Similarly, proposed County Rule 12-1910.05(C), if adopted, would prohibit "activities associated with oil and gas development" within 500 feet of any water body. However, COGCC Rule 317B provides extensive regulations concerning "Public Water System Protection" and COGCC Rule 324A prohibits operations from degrading air, water, soil or biological resources. Moreover, COGCC Rule 1204(4) requires operators to "establish new

staging, refueling, and chemical storage areas outside of riparian zones and floodplains” and COGCC Rule 1002.e.(2) provides that “operators shall avoid or minimize impacts to wetlands and riparian habitats to the degree practicable.”

### **The County’s Proposed Permitting Rules**

The County’s proposed permitting process conflicts with state law. Under the Oil and Gas Conservation Act, the General Assembly charged the COGCC with the responsibility to implement timely and efficient procedures for the review of applications for permits to drill. C.R.S. § 34-60-106(11)(a)(I)(A). Arapahoe County’s proposed regulations will materially impair the state’s interest in the timely and efficient approval of drilling permits. The County’s proposed permitting process includes the following duplicative or conflicting provisions:

Site Maps The County’s proposed permitting process, if enacted, would require operators to submit a site-map identifying certain improvements within a 1,500 foot radius of the proposed development area or, in the case of water bodies, within a 1 mile radius. COGCC’s permitting process, however, requires operators to submit a site-map identifying certain improvements within a 400 foot radius, except surface water and riparian identification, which must be identified if within a 1,000 foot radius. *Compare* County Rule 12-19703.03(I) *with* COGCC Rule 303.d.(3).

Fencing Plan The County’s proposed rules would require operators to submit a fencing plan. However, the COGCC presently regulates fencing. *Compare* County Rule 12-19703.03(L) *with* COGCC Rule 603.e.(7).

Weed Management and Re-Vegetation Plan The County’s proposed rules would require operators to submit weed management and re-vegetation plans. However, the COGCC presently regulates the management of noxious weeds and imposes requirements for re-vegetation. *Compare* County Rule 12-19703.03(N) & (R) *with* COGCC Rule 603.j. (Statewide equipment, weeds, waste, and trash requirements); COGCC Rule 1002.c. (Protection of Soils); COGCC Rule 1003.e. (Re-vegetation of land); and COGCC Rule 1003.f. (requiring compliance with Colorado Noxious Weed Act, C.R.S. § 35-5.5-115).

Water Quality The County’s proposed Rule 12-1910.05 would require operators to identify all water bodies within a one-mile radius of the proposed development area, conduct a baseline water quality analysis of such sources, describe potential impacts from development and propose mitigation strategies for such potential impacts.

By statute, the COGCC is required to regulate “oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources.” C.R.S. § 34-60-106(2)(d). In order to carry out its statutory responsibility, the COGCC has passed numerous regulations for the protection of water. In addition to technical regulations meant to ensure wellbore integrity and proper waste management, COGCC Rule 317B, as stated

above, provides extensive regulations concerning “Public Water System Protection” and COGCC Rule 324A requires that any operation shall not degrade air, water, soil or biological resources.

The COGCC also has an extensive ground and surface water monitoring program. Various COGCC regulations (e.g., Rules 317B, 318, and 608) and orders (e.g., Causes 112-138, 112-156, and 112-157) require operators to collect baseline water samples in certain areas and for certain types of wells; the COGCC can and does add special permit conditions to require such sampling on a well-by-well basis; and the COGCC collects such data itself in response to landowner requests and where oil and gas development moves into new areas. In addition, the COGCC has worked with the oil and gas industry on a new initiative, through which oil and gas operators who drill new wells will collect groundwater samples before and after drilling and hydraulic fracturing. The data will be provided to the COGCC, who will manage it in a central database. Annually, the Colorado Oil and Gas Association and COGCC will prepare a joint report to the Commission summarizing participation and findings.

#### **The County’s Proposed Wildlife Impact Rules**

The County’s proposed rule for the protection of wildlife and wildlife habitat, County Rule 12-1910.03, is redundant of or conflicts with state law. In 2007, the General Assembly passed the Colorado Habitat Stewardship Act of 2007. The Act required the COGCC to pass comprehensive rules and regulations to minimize adverse impacts to wildlife resources. As a result of these new rules and regulations, the COGCC consults with the Division of Parks and Wildlife where appropriate. The County’s attempt to impose additional requirements for the protection of wildlife is unnecessary and has the potential to conflict with COGCC requirements.

#### **The County’s Proposed Floodplain Restrictions**

The County’s proposed regulations prohibit the location of oil and gas facilities in any floodplain. However, COGCC rules contemplate that facilities may, in some instances, be located within floodplains. *Compare* County Rule 12-1910.08 with COGCC Rule 603.k. (Statewide equipment anchoring requirements. All equipment at drilling and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence.”) and COGCC Rule 1003.d.(1). (Drilling pit closure on crop land and within 100-year floodplain.).

#### **The County’s Noise Regulation and Special Mitigation Measures**

The County’s proposed regulations authorize the Board of County Commissioners to require noise abatement measures as a condition to obtaining a permit. However, the COGCC comprehensively regulates noise from oil and gas operations to the exclusion of county regulation. *Compare* County Rule 121910.09 *with* COGCC Rule 802 (Noise Abatement). *See also*, C.R.S. § 30-15-401(1)(m)(II)(B) (“Ordinances enacted to regulate noise on public

and private property pursuant to subparagraph (l) of this paragraph (m) shall not apply to ... oil and gas production subject to the provisions of article 60 of title 34, C.R.S.”).

### Conclusion

Arapahoe County’s attempt to “go farther” than the COGCC’s regulations by creating different requirements in areas of concern is impermissible because such regulations would necessarily conflict with the COGCC’s regulatory regime. *See e.g., Town of Frederick v. North American Res. Co.*, 60 P.3d 758, 765 (Colo.App. 2002) (striking down conflicting setback, noise abatement, and visual impact provisions as preempted) (attached as **Exhibit A**).

Similarly, a duplicative permit approval process at the county level is impermissible for the reasons set forth above. One of the leading preemption cases summarizes the COGCC’s position succinctly:

There is no question that the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, and environmental restoration. Oil and gas production is closely tied to well location, with the result that the need for uniform regulation extends also to the location and spacing of wells.

*Bd. of County Com'rs, La Plata County v. Bowen/Edwards Assoc's, Inc.*, 830 P.2d 1045, 1058 (Colo. 1992) (attached as **Exhibit B**).

Arapahoe County’s proposed regulations either directly conflict with the COGCC’s regulatory regime or impose redundant obligations upon regulated parties. Therefore, the County Commissioners should reject the proposed rules and, instead, work with the COGCC to address local concerns through the State program.

Sincerely,

FOR THE ATTORNEY GENERAL



JOHN E. MATTER, JR.  
Assistant Attorney General  
Natural Resources & Environment  
303-866-5041

Page 5

cc: David Neslin, Director COGCC

April 27, 2012

Letter to the City of  
Longmont



**JOHN W. SUTHERS**  
Attorney General

**CYNTHIA H. COFFMAN**  
Chief Deputy Attorney General

**DANIEL D. DOMENICO**  
Solicitor General

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April 27, 2012

Eugene Mei  
City Attorney, City of Longmont  
Civic Center Complex  
408 3<sup>rd</sup> Avenue  
Longmont, CO 80501

VIA E-MAIL: Eugene.Mei@ci.longmont.co.us

RE: *City of Longmont's Proposed Oil and Gas Regulations*

Dear Mr. Mei:

I am writing to express the Colorado Oil and Gas Conservation Commission's ("COGCC") concerns regarding certain aspects of the City of Longmont's proposed oil and gas regulations ("Draft Regulations"). The COGCC believes some of the Draft Regulations conflict with the COGCC's regulatory regime and are preempted by the Colorado Oil and Gas Conservation Act ("Act"). The COGCC encourages the City to reconsider the Draft Regulations discussed herein and, after the City has had an opportunity to review the concerns set forth below, would like to have an opportunity to again meet with City officials to discuss these concerns in a cooperative and collaborative manner.

**I. Introduction**

Some local governments have recently considered promulgating oil and gas regulations. The COGCC believed some of the proposed regulations were redundant of the COGCC's regulatory regime and, in other instances, were preempted by the Act. I have written letters to some of these governments discussing the COGCC's statutory mandate and also identifying ways local governments can address local concerns through the COGCC's statewide program. The City made my letters available to the City Planning and Zoning Commission and to the public via its website. For brevity, the overview contained in those letters will not be repeated here and is instead incorporated by reference.

## II. The Draft Regulations

The COGCC has no objection to many of the Draft Regulations. However, others may give rise to operational conflicts. The most significant conflicts are discussed below.

### A. Water Sampling

The Draft Regulations state that applicants are required to comply with COGCC water sampling requirements. Draft Regulations, 15/3-4. With the exception of approximately one square mile on the western edge of the City, Longmont is located within the Greater Wattenberg Area (“GWA”) as defined by COGCC Rule 318A(I). Accordingly, the COGCC water sampling rule operators must comply with is set forth at COGCC Rule 318A(I)(e)(4) (the “GWA Water Sampling Rule”). The GWA Water Sampling Rule requires baseline water sampling in the GWA, prescribes the applicable testing methodologies and explains that “the Director may require further water well sampling at any time as a result of the laboratory results or in response to complaints from water well owners.” *Id. See also*, COGCC Rule 207.a. (“When deemed necessary or advisable, the Commission is authorized to require that tests or surveys be made to determine the presence of waste or occurrence of pollution.”).

In addition to operators complying with the GWA Water Sampling Rule, the Draft Regulations state that the City, in its sole discretion, may determine that additional water sampling is required. The Draft Regulations do not articulate any factors the City will consider to determine whether further sampling is required, but do prescribe certain requirements if such a determination is made. The Draft Regulations also state that periodic sampling will continue throughout the duration of operations and for a minimum of five years beyond plugging and abandonment of the well.

The City’s plan to go-farther than the GWA Water Sampling Rule is impermissible under *Town of Frederick* and will give rise to operational conflicts. *See Town of Frederick v. North Amer. Res. Co.*, 60 P.3d 758, 765 (Colo. App. 2002) (quoting *County Comm’rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1060 (Colo. 1992) for the proposition that “the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations, as well as the imposition of safety regulations or land restoration requirements contrary to those required by state law, gives rise to operational conflicts and requires that the local regulations yield to the state interest.”).

The City’s plan to require water sampling above and beyond the GWA Water Sampling Rule is analogous to Delta County’s attempt to impose local water sampling requirements above and beyond those imposed by the COGCC as a permit-specific condition of approval, which was the issue in *Roatcap Cattle Co. v. Griebing*, Colo. Dist. Ct. (02CV5735). Indeed, the state interest in promoting the primacy of an area-wide rule, such as a the GWA Water Sampling Rule, as a opposed to a permit-specific condition of approval, presents an even more compelling case for preemption than in *Roatcap Cattle* wherein the Denver District Court ruled:

I find that based on the nature of the state's regulations and statutory authority, that local entities are not authorized to impose additional requirements or additional standards relating to water quantity or quality concerns, because those are regulated by the state, and, therefore, that creates an operational conflict.

Transcript attached as **Exhibit A**. *See also, Osborne v. Board of County Comm'rs*, 764 P.2d 397, 401 (Colo.App. 1988) ("The Act grants to the Commission specific jurisdiction to prevent pollution of water supplies.... To the extent that plaintiffs' drilling operations may present problems in these areas, the General Assembly has determined that it is the Commission, and not the counties, that should address those problems."); *Bowen/Edwards*, 830 P.2d at 1060 n7 (reaffirming *Osborne*). Under the circumstances, the City's attempt to regulate water sampling is preempted.

The City should not adopt its own water sampling rules and, instead, should work cooperatively with the COGCC through its Local Governmental Designee Program to insure that local interests are addressed. Additionally, the COGCC is willing to consider an intergovernmental agreement with the City addressing further water sampling as a condition of approval for any well permit issued in the City. The COGCC is currently in the process of entering into such an agreement with El Paso County.

#### **B. Residential Development Ban**

The Draft Regulations broadly prohibit Oil and Gas Well Facilities and Oil and Gas Well Operations in residential zoning districts. Draft Regulations, 1/43-44. Operators may seek a "special exception" from the ban if they prove an operational conflict is present. *Id.* at 1/47-48 and 5/1-34.

A COGCC permit is a prerequisite to obtaining a City permit. Draft Regulations, 6/28-29. Since the Draft Regulations require successive rather than concurrent permitting, the only way an operator could run afoul of the City's residential ban would be if it had previously obtained a COGCC permit authorizing operations in a residential zoning district. Under such a circumstance, the City's ban would give rise to an operational conflict because "local governments generally may not forbid that which the state has explicitly authorized." *Colo. Mining Assoc. v. Bd. of County Comm'rs*, 199 P.3d 718, 725 (Colo. 2009) (holding that "local land use ordinances banning an activity that a statute authorizes an agency to permit are subject to heightened scrutiny in preemption analysis.").

The City's operational conflict waiver mechanism does not cure the operational conflicts arising out of the City's residential ban. Indeed, at least one Colorado trial court has invalidated an operational conflict waiver mechanism such as the one set forth in the Draft Regulations. In *Board of County Comm'rs v. BDS Int'l LLC*, 159 P.3d 773 (Colo. App. 2006), the trial court held that such a waiver mechanism was ineffective and ruled:

The framework in the County's [operational conflict waiver mechanism] vests ultimate determination in the county as to whether a conflict exists and, further, places additional requirements on the applicant where an operational conflict exists instead of simply precluding County regulation. [The waiver mechanism] 'off ramp' does not avoid the operation conflicts which otherwise exist.

The off ramp provision at issue in *BDS* was not subsequently addressed by the Court of Appeals and the trial court's decision is persuasive authority that the City's operational conflict waiver mechanism is invalid.

The City should refrain from passing a residential development ban and, instead, should work cooperatively with the COGCC through its Local Governmental Designee Program to insure that local interests are addressed.

**C. Riparian Setbacks and LMC § 15.05.020(E).**

The memo accompanying the Draft Regulations observes that "*Town of Frederick* held that local governments were preempted from imposing greater setbacks than COGCC standards." Memo, p. 5. However, the Draft Regulations impose a setback of "at least" 150 feet for river/stream corridors and riparian areas, and wetlands under LMC § 15.05.020(E). Although the COGCC takes great care in locating facilities near such areas, it does not impose a minimum setback. Accordingly, the City's attempt to impose greater riparian setback requirements than those required by the COGCC rules gives rise to operational conflicts under *Town of Frederick*.

Further, in order to make it clear that the City's "minimum standards" for all setbacks are consistent with COGCC regulations, the City should expressly state so in its regulations. This would be desirable because it is unclear whether the setback requirements contained at 12/31-48 of the Draft Regulations are recommended standards or minimum standards. Additionally, section 12/44-46 is unfinished and contains the placeholder of "x feet."

The City should not incorporate LMC § 15.05.020(E) into the Draft Regulations and, instead, should work cooperatively with the COGCC through its Local Governmental Designee Program to insure that local interests are addressed.

**D. Wildlife Protection and LMC § 15.05.030.**

The Draft Regulations, 17/39-41, require operators to comply with LMC § 15.03.030 (*sic*). LMC § 15.05.030 imposes nine-pages of regulations for the protection of wildlife and habitat, enables the City of Longmont Parks and Open Space Division to make recommendations as to appropriate mitigation, requires the City's planning director to determine whether the applicant must submit a wildlife/plant conservation plan prior to approval of any development application, and requires the City's planning director to submit all applications received to the Colorado Division of Wildlife ("DOW") for consultation.

LMC § 15.05.030 also provides that “when this section imposes a higher or more restrictive standard [than state or federal law], this section shall apply.”

Recent legislation required the COGCC to pass comprehensive regulations to minimize adverse impacts to wildlife resources. In response, the COGCC developed extensive new regulations in collaboration with DOW. These new regulations impose special operating requirements in all areas (Rule 1204), apply additional operating requirements in sensitive wildlife habitat and restricted surface occupancy areas (Rule 1203), mandate consultation with the DOW in sensitive wildlife habitat (Rule 1202), and require operators to avoid restricted surface occupancy areas where feasible (Rule 1205). As a result of these new regulations, the COGCC consults with the DOW where appropriate, but not in all instances. *See* COGCC Rule 306.c. (Consultation with DOW). As with prior COGCC regulations promulgated in response to new statutory directives, “these expanded regulations may give rise to additional areas of operational conflict with analogous local regulations.” *Town of Frederick*, at 763.

In adopting the new regulations, the COGCC conducted a lengthy rulemaking proceeding. The rulemaking record included thousands of pages of public comment, written testimony, and exhibits and 12 days of public and party testimony. The COGCC spent another 12 days deliberating the rules before taking final action. The resulting regulations have been heralded as a national model, balancing both conservation and responsible development. The State has a compelling interest in maintaining the appropriate balance struck as a result of the new rules and amendments and the City’s incorporation of LMC § 15.05.030 into its permitting regime will disrupt that balance and result in operational conflicts.

For example, incorporating LMC § 15.05.030 into the Draft Regulations by reference will *require* the City planning director to submit *all* applications to the DOW for consultation and will impose additional planning and mitigation obligations on operators not necessarily imposed by the COGCC. *See also*, Draft Regulations, 18/4-7. The City’s “go-farther” approach is impermissible under *Town of Frederick* because “local governments are prohibited from imposing . . . land restoration requirements contrary to those required by state law or regulation.” *Bowen/Edwards*, at 1059-60. Moreover, “a patchwork of county-level [regulations] would inhibit what the General Assembly has recognized as a necessary activity and would impede the orderly development of Colorado’s mineral resources.” *Colorado Mining Assoc.*, 730-31.

The City should not incorporate LMC § 15.05.030 into the Draft Regulations and, instead, should work cooperatively with the COGCC through its Local Governmental Designee Program to insure that local interests are addressed.

#### **E. Multi Well Sites and Directional / Horizontal Drilling; Relocation**

The Draft Regulations state the City has authority to determine whether development should proceed on multi-well sites using directional and horizontal drilling techniques, and state the City has the authority to require development to proceed only under such conditions. Draft

Regulations, at 8/16-24. The Draft Regulations also state the City has authority to relocate a well that was previously permitted by the COGCC. *Id.* at 12/10-17. These technical determinations lie within the province of the COGCC, not the City:

There is no question that the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, and environmental restoration. Oil and gas production is closely tied to well location, with the result that the need for uniform regulation extends also to the location and spacing of wells....

[T]here may be instances where the county's regulatory scheme conflicts in operation with the state statutory or regulatory scheme. For example, the operational effect of the county regulations might be to impose technical conditions on the drilling or pumping of wells under circumstances where no such conditions are imposed under the state statutory or regulatory scheme, or to impose safety regulations or land restoration requirements contrary to those required by state law or regulation. To the extent that such operational conflicts might exist, the county regulations must yield to the state interest.

*Bowen/Edwards*, at 1059-60. Sections 8/16-24 and 13/12-17 of the Draft Regulations should be removed.

#### **F. Hazardous Materials**

The City's proposed chemical disclosure rule conflicts with state law and potentially conflicts with applicable Department of Transportation regulations. The Draft Regulations provide that "Full disclosure, including material safety data sheets, of all hazardous materials that will be transported on any public or private roadway within the City for the oil and gas operation shall be provided to the Longmont hazards prevention officer. This information will be treated as confidential and will be shared with other emergency response personnel only on an as needed basis." Draft Regulations, 9/33-39.

The City's proposed rule conflicts with CRS § 34-60-106(1)(e) and COGCC Rules 205 and 205A. Under CRS § 34-60-106(1)(e), the COGCC has exclusive statutory authority to require operators to maintain certain books and records, has the sole authority to inspect those records and has the sole authority to require operators to make "reasonable reports" to the COGCC concerning oil and gas operations. Under COGCC Rules 205 and 205A, operators are required to compile MSDS sheets and chemical inventories for any chemicals brought to a well site and are required to report chemicals used in hydraulic fracturing operations. COGCC Rules 205 and 205A also authorize the COGCC to immediately obtain any information from vendors, suppliers and operators necessary to respond to a spill, release or complaint. COGCC Rules 205 and 205A also provide specific protections for trade

secrets and recognize Colorado's public policy of protecting legitimate trade secrets by incorporating Colorado's Uniform Trade Secrets Act by reference, CRS § 7-74-101.

In *BDS*, the Court of Appeals invalidated county regulations requiring operators "to keep appropriate books and records and keep those records available for inspection by the County." 159 P.3d at 780. The Court of Appeals held CRS § 34-60-106(1)(e) and COGCC Rule 205 "exclude the County by omission as an entity authorized to inspect the records."

The proposed rule's reporting requirement, like the inspection requirement invalidated in *BDS*, will give rise to operational conflicts because CRS § 34-60-106(1)(e) excludes the County by omission as an entity authorized to require such disclosures. As a result, the City's effort to impose reporting requirements on operators is in operational conflict with the COGCC's comprehensive record-keeping, inspection and reporting regime.

Moreover, COGCC Rule 205A (Hydraulic Fracturing Chemical Disclosure) was not in existence when *BDS* was decided and provides an additional basis for finding that the City's proposed hazardous materials reporting rule is preempted. Rule 205A provides specific protections for information claimed to be a trade secret, but the proposed City rule does not.

### **G. Inspections**

Under the Act, the "Commission may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract." CRS § 34-60-106(15). Absent such a delegation, local governments have no authority to inspect oil and gas operations for compliance with COGCC rules, orders and permits. The COGCC, as it recently did with Gunnison County, is willing to consider delegating such authority to the City, but no such delegation has yet occurred. Nonetheless, some of the Draft Regulations may be read as though such a delegation has already occurred.

The Draft Regulations, 6/41-43, provide that "Any permitted oil and gas operations and facilities may be inspected by the City at any time, to ensure compliance with the requirements of the approved permit...." In order to clarify the City intends to inspect compliance with the City's land use regulations, as opposed to the COGCC's regulations concerning oil and gas operations, the City should revise the Draft Regulations to specifically distinguish a "City Permit" from a "COGCC Permit."

The Draft Regulations, 9/43-44, state that the "operator of oil and gas facilities shall demonstrate" to the City that it is in "compliance with COGCC requirements for initial and ongoing site security and safety measures." The COGCC does not issue certificates of compliance that would enable an operator to demonstrate that it is in compliance with COGCC rules. Instead, the COGCC issues Notices of Alleged Violation ("NOAV") for noncompliance. Accordingly, this section of the regulations should be removed.

The task force created by Governor Hickenlooper to better coordinate state and local efforts to regulate the industry recently recommended that the COGCC should "transmit to local

government an electronic copy of an NOAV that has been issued in its jurisdiction, including links to enforcement documents related to ongoing matters, or other relevant notifications that are available in the COGCC database.” Accordingly, the City’s desire to be apprised of rule violations in the City will be addressed as a result of this recommendation.

**H. Designated Outside Activity Areas**

The memo accompanying the Draft Regulations states City Council wished to “remove the Planning and Zoning Commission review of outside activity areas, and pursue applications for designation through the COGCC.” Memo, p. 3. However, the Draft Regulations contain submittal requirements for designated outside activity area applications. Draft Regulations, 3/29-32. In order to avoid confusion, this section should be removed.

**CONCLUSION**

The City should reject the Draft Regulations as being in operational conflict with the COGCC’s regulatory regime. The City can accomplish its objectives through the COGCC’s Local Governmental Designee program, through which the COGCC can impose permit-specific conditions of approval pursuant to COGCC Rule 305.d. Additionally, the COGCC encourages the City to consider whether a Memorandum of Understanding or Intergovernmental Agreement would be beneficial. The COGCC can also address local concerns through area specific orders under COGCC Rule 503 and geographic area plans under COGCC Rule 513.

Sincerely,

FOR THE ATTORNEY GENERAL



JAKE MATTER  
Assistant Attorney General  
Natural Resources & Environment

cc: Thom Kerr, Acting Director COGCC

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO  
Case No. 02CV5735, Courtroom 5

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REPORTER'S TRANSCRIPT (Excerpt of Proceedings)  
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ROATCAP CATTLE COMPANY, LTD., et al.,  
Plaintiffs,

v.

RICHARD T. GRIEBLING, DIRECTOR, COLORADO OIL AND GAS  
CONSERVATION COMMISSION, et al.,  
Defendants.

-----  
The hearing in the above-captioned case  
commenced on Tuesday, March 18, 2003, before the  
HONORABLE LAWRENCE A. MANZANARES, Judge of the District  
Court.



1 quality standards or classifications established by the  
2 Water Quality Control Commission.

3 I might note that none of those requirements  
4 is limited to on-site water, but relates to water  
5 quality and quantity generally. So the first thing that  
6 I find is that the -- I guess Conservation Commission  
7 has purported and indeed does regulate water quality and  
8 water quantity and does so generally and not simply with  
9 respect to on-site water resources.

10 And that's -- and I'll make it very clear,  
11 that's very different from saying that they -- that such  
12 regulations are substantively adequate or that they're  
13 sufficient to protect the residents of Delta County or  
14 any county.

15 And I'm sure the plaintiffs would argue, and  
16 they may have a pretty good point, that the Oil and Gas  
17 Conservation Commission has not adequately imposed  
18 standards that would protect their clients.

19 That, however, is -- I think for purposes of  
20 preemption is not the issue. It's not whether the  
21 regulations are any good or whether they've fallen well  
22 short of what they should have done, it's whether  
23 they've simply regulated in that area. And it is  
24 apparent to the Court that they have.

25 That being the case, in accordance with the

1 Town of Frederick v. North America Resources case, as  
2 well as Bowen/Edwards and the other cases that deal with  
3 preemption in the area of Oil and Gas Commission, the  
4 Court finds that there is an operational conflict.

5           That such operational conflict is apparent  
6 based -- and can be determined based simply on review of  
7 the -- based on a review of the resolution itself, as  
8 well as the statute and the regulations of the Oil and  
9 Gas Commission.

10           It's also apparent to the Court that by  
11 finding that the concerns over water quality and  
12 quantity of the board were not adequately addressed by  
13 making the finding in the resolution, that is in essence  
14 the local imposition of a technical condition on well  
15 drilling where such conditions are not imposed under  
16 state regulations. Despite the clear intent of the  
17 state to be the governing authority with respect to  
18 those areas.

19           In that regard, therefore, I find that based  
20 on the nature of the state's regulations and statutory  
21 authority, that local entities are not authorized to  
22 impose additional requirements or additional standards  
23 relating to water quantity and quality concerns, because  
24 those are regulated by the state, and, therefore,  
25 creates an operational conflict.

1           I think it's self-evident that the operational  
2 conflict is actually there, and that the requirements  
3 cannot be harmonized is suggested by the plaintiffs,  
4 because we have a situation where it's pretty clear that  
5 the Oil and Gas Conservation Commission has said, you  
6 meet our standards, and the Delta County Board of  
7 Commissioners has said, you don't meet our standards,  
8 and it's hard to imagine a clearer conflict than that.  
9 And, therefore, I see no need to attempt to determine  
10 whether the requirements can be harmonized, when it's  
11 pretty clear that they are in conflict.

12           A little bit more difficult to deal with is  
13 the reference by the county to the lack of sufficient  
14 information regarding gas lines, power lines, and other  
15 easements and rights of way from the sources to the well  
16 sites.

17           I think under the Frederick case it's clear  
18 that the county has the authority to impose certain  
19 regulations over issues of local concern that are not  
20 operationally in conflict.

21           I don't find anything in the statute or the  
22 regulations of the commission which purports to  
23 specifically tell you what you have to do with respect  
24 to gas lines, power lines, or other easements or rights  
25 of way.

# Complaint in COGCC v. Longmont

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO</p> <p>Boulder Justice Center 1777 Sixth Street Boulder, CO 80302 Phone: (303) 441-3750 Fax: (303) 441-4750</p> <hr/> <p><b>PLAINTIFF:</b> COLORADO OIL AND GAS CONSERVATION COMMISSION,</p> <p>v.</p> <p><b>DEFENDANT:</b> CITY OF LONGMONT, COLORADO.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General JAKE MATTER, Assistant Attorney General* 1525 Sherman Street, 7<sup>th</sup> Floor Denver, CO 80203 Phone: (303) 866-4500 Fax: (303) 866-3558 E-Mail: jake.matter@state.co.us Registration Number: 32155 *Counsel of Record</p>	<p>Case No.</p>
<p><b>COMPLAINT FOR DECLARATORY RELIEF</b></p>	

The Colorado Oil and Gas Conservation Commission, by and through the Office of the Attorney General, files this Complaint for Declaratory Relief and states:

**INTRODUCTION**

The Colorado Oil and Gas Conservation Commission (“Commission”) seeks a declaratory order invalidating portions of City of Longmont (“City”) Ordinance O-2012-25 (“Ordinance”) as preempted by the Colorado Oil and Gas Conservation Act (“Act”) and implementing regulations.

The development of oil and gas resources is a matter of statewide concern. Recent amendments to the Act and its implementing regulations preempt the City from regulating certain aspects of oil and gas operations. Further, the disputed provisions of the Ordinance are superseded by procedural and substantive standards supplied by the Commission's comprehensive regulatory structure.

The Ordinance states that the disputed provisions relate to "land use" and are properly subject to local regulation. The Commission disagrees and views the disputed provisions as relating to the regulation of oil and gas operations which, if countenanced, will undermine the Commission's statutory charge to foster the responsible development of Colorado's oil and gas resources in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources. Accordingly, the Commission requests the Court enter an order invalidating the disputed provisions of the Ordinance as preempted.

### **PARTIES**

1. The Commission is the primary state agency responsible for regulating oil and gas operations in Colorado. The Commission's office is located at 1120 Lincoln Street, Suite 801, Denver, Colorado 80203.

2. The City is a home rule city situated within the Greater Wattenberg Area as defined by the Rules of Practice and Procedure before the Colorado Oil and Gas Conservation Commission, 2 Code Colo. Regs. 404-1 ("Commission Rules"). The City's office is located at 385 Kimbark St., Longmont, Colorado 80501.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction because the events complained of occurred in Colorado and the resolution of this dispute requires the application of Colorado law.

4. Venue is proper pursuant to C.R.CIV.P. 98(c) because the City is a resident of Boulder County.

## GENERAL ALLEGATIONS

### A. The Commission, its Powers and Duties

5. The Commission is a nine-member citizen body charged with implementing the Act, the General Assembly's detailed legislative scheme for regulating and administering oil and gas operations in the state.

6. Seven of the nine Commissioners are volunteer citizens, appointed by the Governor, with the consent of the Senate, and selected for their educational and professional expertise as well as geographic considerations. The Executive Directors of the Colorado Department of Natural Resources ("DNR") and the Colorado Department of Public Health and Environment ("CDPHE") fill the other two seats on the Commission. § 34-60-104(2)(a)(I), C.R.S.

7. The Commission conducts hearings on rules, regulations and orders at public meetings approximately once a month. The director and a professional staff of approximately 45 employees carry out day-to-day administration of the Act.

8. The Commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of the Act, and has the power to make and enforce rules, regulations, and orders pursuant to the Act, as well as to do whatever may reasonably be necessary to carry out the provisions of the Act. §34-60-105, 106, C.R.S.

9. The General Assembly has declared it to be in the public interest to foster, encourage, and promote the development, production, and utilization of oil and gas resources in the state consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources; to protect the public and private interests against waste of these natural resources; and to safeguard the coequal and correlative rights of owners and producers of oil and gas. § 34-60-102, C.R.S.

10. It is the express intent of the General Assembly to "[p]ermit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production...." § 34-60-102(1)(b), C.R.S. Further, it is the state policy to encourage, by every appropriate means, the full development of the state's natural resources. § 24-33-103, C.R.S.

## B. The Greater Wattenberg Area

11. With the exception of approximately one square mile on the western edge of the City, Longmont is situated in an oil and gas field designated by the Commission as the Greater Wattenberg Area of the Denver Julesburg Basin (“GWA”).

12. The GWA is located in northeast Colorado, primarily in Weld County, but extends into Adams, Boulder, Broomfield and Larimer Counties. The field is approximately fifty miles long and fifty miles wide covering 2,916 square miles.

13. The GWA is Colorado’s most productive oil and gas field, accounting for roughly 60% of the state’s oil production and 14% of the state’s natural gas production annually. The GWA is also Colorado’s most heavily-regulated field.

14. Pursuant to its rulemaking authority under the Act and the State Administrative Procedures Act, the Commission has enacted field-wide rules applicable to the GWA. These specific rules pertain to, among other things, baseline water sampling, well location, spacing and unit designation. See Commission Rule 318A(I) attached as **Exhibit A**.

15. “Since the initial Wattenberg Field discovery in 1970, oil and gas development has continued to increase, with significant ancillary economic benefits. Commission Rule 318A was initially adopted in April 1998. The rule, also referred to as The Greater Wattenberg Area Rule [“GWA Rule”], was promulgated in order to facilitate location of wells, and operator access to all Cretaceous age formations, without need to routinely secure Commission approval. ... The GWA Rule was driven by intense interest in hydrocarbon development in the GWA, the complex nature of the tight sands of the GWA, and the need to mitigate conflicts between mineral rights developers and surface owners with predictable and reasonably protective rules.” *Statement of Basis, Specific Statutory Authority, and Purpose for August 2011 Amendments to Commission Rule 318A* (available at <http://cogcc.state.co.us/>).

16. Effective September 2011, the Commission enacted amendments to the GWA Rule to address new technologies and practices that promote the responsible development of oil and gas resources in the GWA. Among other things, the intent of the recent amendments was to conduct water sampling in the GWA.

17. Many of the Ordinance provisions irreconcilably conflict with the Commission Rules generally, and the GWA Rule specifically. Provisions of the Ordinance usurp the Commission's authority and harm its institutional interests by impairing its ability to fulfill its statutory mandate.

### **C. 2007 Amendments to the Act**

18. The Act was originally passed in 1951 and has been amended several times. Most recently, the Act was amended in 2007, by House Bills 07-1298 and 07-1341, codified at §§ 34-60-106 and 34-60-128, C.R.S. (collectively, the "2007 Amendments").

19. Under revised Section 106 of the Act, the Commission was required to, among other things:

a. "Promulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit." § 34-60-106(11)(a)(I)(A).

b. "Promulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations. The rules shall provide a timely and efficient procedure in which the department has an opportunity to provide comments during the commission's decision-making process." § 34-60-106(11)(a)(II).

20. Under revised Section 128 of the Act, which is known as the Colorado Habitat Stewardship Act of 2007, the Commission was required to, among other things:

a. "[A]dminister [the Act] so as to minimize adverse impacts to wildlife resources affected by oil and gas operations." § 34-60-128(2), C.R.S.

b. "Establish a timely and efficient procedure for consultation with the wildlife commission and division of wildlife on decision-making that impacts wildlife resources." § 34-60-128(3)(a), C.R.S.

c. “Implement, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources.” § 34-60-128(3)(c), C.R.S.

d. “Promulgate rules by July 16, 2008, in consultation with the wildlife commission, to establish standards for minimizing adverse impacts to wildlife resources affected by oil and gas operations and to ensure the proper reclamation of wildlife habitat during and following such operations.” § 34-60-128(3)(d), C.R.S.

21. The 2007 Amendments preempt conflicting local regulations and provide additional procedural and substantive requirements for the regulation of oil and gas operations in Colorado. Such statutory amendments demonstrate the General Assembly’s intent that certain aspects of oil and gas regulation are to be regulated solely by the Commission.

#### **D. The Commission’s 2008 Rulemaking**

22. By passing the 2007 Amendments, the General Assembly directed the Commission to comprehensively update the Commission Rules pursuant to the State Administrative Procedures Act to specifically protect the environment and wildlife resources. §§ 34-60-102(1)(a)(I), 128(3)(d), C.R.S.

23. By passing the 2007 Amendments, the General Assembly also directed the Commission to “[p]romulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations.” § 34-60-106(11)(a)(II) (“2008 Rulemaking”).

24. “A major reason for [2008 Rulemaking] was to address concerns created by the unprecedented increase in the permitting and production of oil and gas in Colorado in the past few years.” *Statement of Basis, Specific Statutory Authority, and Purpose for 2008 Amendments to Commission Rules*, p. 1.

25. During the 2008 Rulemaking, the Commission developed new regulations in collaboration with CDPHE to protect water resources and prevent degradation of the environment. *See* Commission Rules 317B and 324A.

26. The Commission also developed extensive new regulations in collaboration with Colorado Parks and Wildlife (“CPW”). These regulations

impose special operating requirements in all areas, apply additional operating requirements in sensitive wildlife habitat and restricted surface occupancy areas, mandate consultation with the CPW in sensitive wildlife habitat, and require operators to avoid restricted surface occupancy areas where feasible. As a result of these new regulations, the Commission consults with the CPW where appropriate. *See* Commission Rules 1202-1206 and Commission 1000 Series Rules.

27. Eleven counties and two cities were formal parties to the 2008 Rulemaking. The City did not participate.

28. The 2008 amendments to the Commission Rules preempt conflicting local regulations and provide additional procedural and substantive requirements for the regulation of oil and gas operations in Colorado. These rules expand the preemptive effect of the Commission's regulatory structure and displace conflicting local regulations.

#### **E. The City's Regulation of Oil and Gas Operations**

29. On December 20, 2011, the City imposed a 120 day moratorium on accepting applications for City oil and gas well permits. The moratorium was set to expire April 17, 2012, but was extended to June 16, 2012.

30. On February 10, 2012, the City released the first draft of its oil and gas regulations. Shortly thereafter, the director and other members of the Commission staff met with the City to express the Commission's concern that some of the draft regulations were preempted, to explain the Commission's regulatory structure and to explore ways in which the Commission could address the City's concerns through the Commission's existing regulatory program.

31. The City and the Commission discussed opportunities for the City's Local Governmental Designee ("LGD") to influence the Commission's decision making by collaborating in the development of Comprehensive Drilling Plans, receiving advance notice of permit applications submitted to the Commission by an operator, and requesting "technically feasible and economically practicable conditions of approval" to Commission permits. Commission Rule 216, 305.b. and 305.d.

32. In the context of a particular application, if the Commission staff refuses to impose a condition of approval requested by an LGD, then the LGD

has a right to petition the entire nine-member Commission to attach the desired condition of approval under Commission Rule 503.b.(7).C.

33. The City issued numerous drafts of its proposed regulations and, on each occasion, the Commission expressed its concern that some of the proposed rules, if adopted, would be preempted.

34. On April 27, 2012, the Commission, through counsel, submitted written comments on the City's proposed regulations. Specifically, the Commission expressed concern that the rules at issue in this complaint were preempted, including:

a. The City's claimed right to assess the "appropriateness" of certain technical oil and gas operation practices and impose additional conditions as required conditions of approval, including the use of multi-well sites, directional and horizontal drilling techniques, and relocating facilities.

b. The City's *per se* ban on surface oil and gas operations and facilities in residential zoning districts.

c. The City's claimed right to impose water sampling requirements on GWA operators above and beyond those required by the Commission's applicable rule, which requires baseline water sampling in the GWA. Commission Rule 318A(I).a.(4).

d. The City's imposition of riparian setbacks on oil and gas operations which are above and beyond Commission Rules to protect water resources.

e. The City's requirement that operators comply with the habitat and species protection provisions of the Longmont Municipal Code, even where the code imposes a higher or more restrictive standard than that imposed by the Commission Rules.

35. The Commission's concerns were not addressed in the City's final draft of its regulations, and on May 8, 2012, the City conditionally approved its amended oil and gas regulations through a first reading.

36. The second and final reading of the Ordinance was to occur on May 22, 2012. However, on May 21, 2012, the Executive Director of DNR, Mike King,

wrote a letter to the City stating that a patchwork of local oil and gas regulations was contrary to the statewide public interest as expressed by the General Assembly, and that the parties should continue to work together to coordinate their regulatory efforts and collaborate on ways to ensure that oil and gas development in the City proceeds in a responsible manner. In response to Mr. King's letter, the City delayed the passage of its oil and gas regulations and extended its moratorium for an additional 45 days.

37. The Ordinance was tabled and the City moratorium extended to allow time for City staff to meet with the Commission, the Colorado Oil and Gas Association and TOP Operating Company ("TOP") to discuss state permitting procedures and to negotiate agreements between the City and TOP regarding potential drilling locations on City owned properties as well as TOP's agreement to utilize various operating standards desired by the City. The City and TOP subsequently entered into such agreements which were approved by City Council on July 17, 2012.

38. On July 17, 2012, the City Council also approved the Ordinance, attached as **Exhibit B**, over the Commission's objection.

39. No possible construction of the disputed provisions of the Ordinance can be harmonized with the state regulatory regime, and the Ordinance is superseded by procedural and substantive standards supplied by the Commission's comprehensive regulatory process. *See* Local Government Land Use Control Enabling Act of 1974, § 29-20-107, C.R.S.

40. All necessary parties are before the Court pursuant to C.R.CIV.P. 57(j), and an actual and justiciable controversy exists between the Commission and the City regarding the parties' respective rights to regulate oil and gas operations.

41. Pursuant to § 13-51-101, C.R.S. *et seq.*, and C.R.CIV.P. 57, this Court may declare the parties' respective rights, status and other legal relations.

## FIRST CLAIM FOR DECLARATORY RELIEF

### *The City's Claimed Right to Determine When the Use of Multi-Well Sites and Directional and Horizontal Drilling Techniques are "Possible or Appropriate" is Preempted*

42. The Commission incorporates the foregoing allegations by reference.

43. The Ordinance infringes on the Commission's authority to regulate technical aspects of oil and gas operations by vesting the City with authority to assess the appropriateness of certain technical oil and gas operations practices and by imposing such conditions as required conditions of approval, including the use of multi-well sites, and directional and horizontal drilling techniques:

Multi Well Sites and Directional/Horizontal Drilling: Oil and gas well operations and facilities will be consolidated on multi well sites and directional and horizontal drilling techniques will be used whenever possible and appropriate. In determining appropriateness, the benefits of consolidation and the use of directional and horizontal drilling, such as drilling from outside of a prohibited zoning district, minimizing surface disturbance and traffic impacts and increasing setbacks, will be weighed against the potential impacts of consolidated drilling and production activities on surrounding properties, wildlife and the environment.

Ordinance, pp. 12-13.

44. Pursuant to its rulemaking authority under the Act, the Commission has promulgated a comprehensive set of regulations governing directional drilling and multi-well sites. Commission Rules 303.c.(3), 318A(I).e, 321, 508.b.(2).B.(v) and 1002.d.

45. Because a Commission permit to drill is a prerequisite to obtaining a City oil and gas well permit, Ordinance, pp. 9-10, the City's claimed right to assess "the benefits of consolidation and the use of directional and horizontal drilling" undermines the General Assembly's directive for the Commission to "[p]romulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit," by requiring operators to reengineer

operations previously analyzed and approved by the Commission's permitting staff. § 34-60-106(11)(a)(I)(A), C.R.S.

46. The City has no authority to assess "the benefits of consolidation and the use of directional and horizontal drilling" or relocate a well previously permitted by the Commission because the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, environmental restoration and location and spacing of wells.

47. The City's claimed right to assess "the benefits of consolidation and the use of directional and horizontal drilling" usurps the Commission's statutory authority to, among other things, assess and "[i]mplement, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources." § 34-60-128(3)(c), C.R.S.

48. The City's claimed right to assess "the benefits of consolidation and the use of directional and horizontal drilling" is preempted.

49. The City's claimed right to assess "the benefits of consolidation and the use of directional and horizontal drilling" is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

## **SECOND CLAIM FOR DECLARATORY RELIEF**

### ***The City's Setback Rules are Preempted***

50. The Commission incorporates the foregoing allegations by reference.

51. Efficient and equitable oil and gas production is closely tied to well location and spacing. Non-uniform or irregular setback rules affect well location and spacing, and hence, oil and gas production.

52. Oil and gas are found in subterranean pools, the boundaries of which do not conform to any jurisdictional pattern. As a result, scientific drilling methods are necessary for the productive recovery of these resources. It is necessary to drill wells in a pattern dictated by the pressure characteristics of the pool, and because each well will only drain a portion of the pool, an irregular drilling pattern will result in less than optimal recovery and a corresponding waste of oil and gas.

53. Pursuant to its rulemaking authority under the Act, the Commission has promulgated a comprehensive set of regulations governing the location and spacing of wells and setbacks. *See* Commission Rules 318, 318A, and 603.

54. The Commission's well location, spacing and setback rules are central to the Commission's statutory mandate to "[p]rotect the public and private interests against waste in the production and utilization of oil and gas" and "[s]afeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas." §§ 34-60-102(1)(a)(II) and (III), C.R.S.

55. The Commission's well location, spacing and setback rules also further the state interest to permit "each oil and gas pool in Colorado to produce up to its maximum efficient rate of production...." § 34-60-102(1)(b), C.R.S.

56. Non-uniform or irregular location, spacing and setback rules undermine the Commission's statutory mandate by resulting in the inefficient and improper use or dissipation of reservoir energy, the reduction in quantity of oil or gas ultimately recoverable from a pool, and the abuse of correlative rights.

57. The City's setback for water bodies incorporates the Longmont Municipal Code ("LMC") by reference and imposes a "minimum" setback of 150' from certain specific stream corridors and riparian areas and imposes a 100' setback in all other instances. Ordinance, p. 22. The LMC vests the City with authority to depart from these stated minimum setbacks.

58. The City's setback for wildlife and wildlife habitat also incorporates the LMC by reference and imposes an unspecified "development setback from any important wildlife habitat area, riparian area, or plant species area." Ordinance, p. 26.

59. The Commission's well location, spacing and setback rules further the Commission's statutory mandate to "[f]oster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources." § 34-60-102(1)(a)(I), C.R.S.

60. The Commission Rules do not impose riparian or wildlife setbacks or buffers in all instances. The Commission has passed numerous regulations

for the protection of water resources. In addition to the Commission's technical regulations meant to ensure wellbore integrity and proper waste management, Commission Rule 317B provides extensive requirements concerning "Public Water System Protection" and Commission Rule 324A requires that any operation shall not degrade air, water, soil or biological resources.

61. During the 2008 Rulemaking, the Commission considered adopting setbacks for riparian areas, but decided not to because the Commission Rules already "require operators to reduce adverse impacts on wildlife resources by using directional drilling where feasible and to avoid or minimize wetland and riparian impacts and consolidate facilities and rights-of-way to the extent practicable." *Statement of Basis, Specific Statutory Authority, and Purpose for 2008 Amendments to Commission Rules*, p. 71.

62. The City's setbacks for water bodies and setbacks for wildlife and wildlife habitat are preempted.

63. The City's setbacks for water bodies and setbacks for wildlife and wildlife habitat are superseded by the procedural and substantive requirements of the Act and the Commission Rules.

### **THIRD CLAIM FOR DECLARATORY RELIEF**

#### ***The City's Wildlife Habitat and Species Protection Rules are Preempted***

64. The Commission incorporates the foregoing allegations by reference.

65. The Ordinance infringes on the Commission's authority to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

66. The Ordinance requires operators seeking to conduct oil and gas operations in the City to not only comply with the Commission's wildlife and habitat protection rules, but also comply with the City's municipal code pertaining to habitat and species protection:

Oil and gas facilities shall comply with federal and state requirements regarding the protection of wildlife and habitat, including the COGCC

wildlife resource protection rules, and the provisions of LMC section 15.035.030, 'Habitat and Species Protection.'

Ordinance, p. 26.

67. Pursuant to its rulemaking authority under the Act, the Commission has promulgated a comprehensive set of regulations governing the protection of wildlife and wildlife habitat. *See, e.g.*, Commission Rule 1200-Series, Protection of Wildlife Resources.

68. LMC § 15.035.030 is intended to go farther than applicable Commission Rules and expressly states that “[w]hen this section imposes a higher or more restrictive standard, this section shall apply.”

69. LMC § 15.035.030 imposes extensive additional regulations on operators seeking to conduct oil and gas operations in the City and provides, among other things, that:

a. The City planning director shall determine whether the proposed oil and gas operations are located in an area of “important plant or wildlife species or important wildlife habitat areas.” In doing so, the City planning director is required to consult “Colorado Division of Wildlife habitat maps for Boulder and Weld Counties, as amended from time to time [and] [o]ther maps or surveys completed by Boulder or Weld Counties, such as the ‘map of wildlife and plant habitats, natural landmarks and natural areas’ included in Boulder County’s comprehensive plan, as amended from time to time.”

b. “All development shall provide a development setback from any important wildlife habitat area, riparian area, or plant species area, identified according to this chapter.”

c. “On any site containing important wildlife habitat area [as determined by the City planning director], the applicant shall retain a qualified professional to recommend native and adapted plant species that may be introduced.”

d. “The applicant shall retain a qualified person with demonstrated expertise in the field and who is acceptable to the planning director to prepare a species or habitat conservation plan required by this section.”

70. The City's wildlife habitat and species protection rules are preempted.

71. The City's wildlife habitat and species protection rules are superseded by the procedural and substantive requirements of the Act and the Commission Rules.

#### **FOURTH CLAIM FOR DECLARATORY RELIEF**

##### ***The City's Residential Surface Facilities and Operations Ban Is Preempted***

72. The Commission incorporates the foregoing allegations by reference.

73. The Ordinance provides that "City oil and gas well permits may be issued for sites within the City excluding oil and gas well surface operations and facilities in residential zoning districts." Ordinance, p. 3. The Ordinance does not define "surface operations and facilities," but broadly defines "oil and gas well facility" and "oil and gas well operations." *Id.*, pp. 31-32.

74. For purposes of the City's ban, residential zoning includes not only current residential areas, but also areas of "planned residential uses." *Id.*, p. 3.

75. In order to facilitate the location of wells, insure operator access to oil and gas resources, and minimize surface disturbance, the Commission has established predetermined GWA "drilling windows." Commission Rule 318A(I).a. The City's ban conflicts with these pre-established windows.

76. The City's prohibition is preempted because it impairs the Commission's statutory mandate to "[p]rotect the public and private interests against waste in the production and utilization of oil and gas" and "[s]afeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas." §§ 34-60-102(1)(a)(II) and (III), C.R.S.

77. The City's prohibition is preempted because it undermines the state interest to permit "each oil and gas pool in Colorado to produce up to its maximum efficient rate of production...." § 34-60-102(1)(b), C.R.S.

78. The City's prohibition will have an extraterritorial effect on the development and production of oil and gas. The City's ban affects the ability of

owners of oil and gas in pools that underlie both the City's residential areas, including "planned" residential areas, and land outside the City to obtain an equitable share of production profits in contravention of the Act.

79. The City's residential surface facilities and operations ban is preempted.

80. The City's residential surface facilities and operations ban is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

### **FIFTH CLAIM FOR DECLARATORY RELIEF**

#### ***The City's Chemical Reporting Rule is Preempted***

81. The Commission incorporates the foregoing allegations by reference.

82. The Ordinance infringes on the Commission's authority to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

83. The Ordinance requires operators to provide "full disclosure" of all hazardous materials that will be transported on any roadway in the City. Such reports shall be made to the City hazards prevention office and will be "treated as confidential and will be shared by other emergency response personnel only on an as needed basis." Ordinance, pp. 14-15.

84. The City's chemical reporting rule conflicts with § 34-60-106(1)(e), C.R.S. and Commission Rules 205 and 205A. Pursuant to the Act, the Commission has exclusive statutory authority to require operators to maintain certain books and records, to inspect those records and to require operators to make "reasonable reports" to the Commission concerning oil and gas operations. Section 34-60-106(1)(e), C.R.S. excludes the City by omission as an entity authorized to require reports of oil and gas operations.

85. Under Commission Rules 205 and 205A, operators are required to compile Materials Safety Data Sheets and chemical inventories for any chemical products brought to a well site for use downhole during drilling, completion, and

work-over operations and are required to report chemicals used in hydraulic fracturing operations.

86. Commission Rules 205 and 205A also authorize the Commission to immediately obtain any information from vendors, suppliers and operators necessary to respond to a spill, release or complaint. Commission Rules 205 and 205A also provide protections for information claimed to be a trade secret.

87. Commission Rule 205A, concerning the disclosure and reporting of chemicals used in hydraulic fracturing operations, was enacted in December 2012 and has been heralded as a national model.

88. The City's chemical reporting rule is preempted.

89. The City's chemical reporting rule is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

#### **SIXTH CLAIM FOR DECLARATORY RELIEF**

##### ***The City Visual Mitigation Methods are Preempted***

90. The Commission incorporates the foregoing allegations by reference.

91. The Ordinance claims to vest the City with authority to condition approval of a City oil and gas well permit on an operator's use of "low profile tanks [and/or a] minor relocation of the facility to a less visible location...." Ordinance, pp. 19-20 ("City Visual Mitigation Methods").

92. The City Visual Mitigation Methods pertain to oil and gas operations, not land use, and are comprehensively regulated by the Commission Rules. *See, e.g.*, Commission Rule 804 (Visual Impact Mitigation).

93. The City has no authority to condition the issuance of a City oil and gas well permit on its imposition of the City Visual Mitigation Methods.

94. The City Visual Mitigation Methods are preempted because they impair the Commission's statutory mandate to "[p]rotect the public and private interests against waste in the production and utilization of oil and gas" and "[s]afeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas." §§ 34-60-102(1)(a)(II) and (III), C.R.S.

95. The City Visual Mitigation Methods are preempted because they undermine the state interest to permit “each oil and gas pool in Colorado to produce up to its maximum efficient rate of production....” § 34-60-102(1)(b), C.R.S.

96. The City Visual Mitigation Methods are preempted.

97. The City Visual Mitigation Methods are superseded by the procedural and substantive requirements of the Act and the Commission Rules.

### **SEVENTH CLAIM FOR DECLARATORY RELIEF**

#### ***The City’s Water Quality Testing and Monitoring Rule is Preempted***

98. The Commission incorporates the foregoing allegations by reference.

99. The Ordinance infringes on the Commission’s authority to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

100. The Ordinance provides that operators seeking to conduct oil and gas operations in the City shall comply with the Commission Rules governing water well testing procedures and requirements. Ordinance, pp. 22-23.

101. The Commission Rule governing water well testing procedures and requirements in the GWA, and therefore all but one square mile of the City, is Commission Rule 318A(I).a.(4), which requires baseline water sampling “prior to the first well proposed within a governmental section” and provides general requirements for the selection of the well to be tested and laboratory testing criteria (the “GWA Water Sampling Rule”).

102. In addition to incorporating the GWA Water Sampling Rule by reference, the Ordinance goes farther than the applicable Commission Rule by vesting the City with authority to require, in its sole discretion, additional water sampling above and beyond the requirements of the GWA Water Sampling Rule.

103. Under the City’s water quality testing and monitoring regime, an operator must “submit a water quality monitoring plan to the City for review and approval.” Ordinance, p. 23 (“City Plan”).

104. The City Plan, at a minimum, must identify the number of wells needed to establish baseline groundwater quality up-gradient and down-gradient of the proposed oil and gas operations; constituents to be sampled for; frequency of sampling; analytical methods to be used; and, proposed frequency of reporting results to the City and the Commission. Ordinance, p. 23.

105. “Oil and gas well operators shall fund the development and implementation of the [City Plan] and program for the duration of operations on the site and for a minimum of five (5) years following completion of operations and abandonment of the well(s).” Ordinance, p. 23.

106. The City Plan is preempted.

107. The City Plan is superseded by the procedural and substantive requirements of the Act and the Commission Rules.

#### **EIGHTH CLAIM FOR DECLARATORY RELIEF**

##### ***The City has no Authority to Adjudicate Operational Conflicts***

108. The Commission incorporates the foregoing allegations by reference.

109. The Ordinance requires operators to comply with the disputed provisions discussed above and claims to enable the City to attach additional preempted conditions of approval to a City oil and gas well permit even though an operator is required to have already obtained a Commission permit to drill “prior to issuance of a City oil and gas well permit.” Ordinance, pp. 9-10.

110. Therefore, in an effort to avoid operational conflicts arising out of the City’s successive permitting regime, the City has included an “operational conflicts special exception” waiver process in the Ordinance. Ordinance, pp. 7-8.

111. Under the City’s waiver process, the City shall decide whether an “operational conflict between the requirements of [the Ordinance] and the State’s interest in oil and gas development [exists] in the context of a specific application.” Ordinance, p. 7.

112. If the City “finds, based upon competent evidence in the record, that compliance with the requirements of [the Ordinance] shall result in an operational conflict with the state statutory and regulatory scheme, a special exception to this section **may** be granted, in whole or in part, but only to the

extent necessary to remedy the operational conflict.” Ordinance, p. 7 (emphasis added).

113. The resolution of such a dispute, in the first instance, is for the District Courts of Colorado, not the City’s “decision making body.” Ordinance, pp. 7-8. Moreover, if an operational conflict is present, the City regulation **must** yield to the state interest.

114. The City’s waiver process vests the ultimate determination in the City as to whether a conflict exists and, further, places additional requirements on the applicant where an operational conflict exists instead of simply precluding the City regulation.

115. Moreover, the Commission Rules provide an extensive LGD process to address local concerns and avoid such conflicts. Commission Rules 305, 306, 503.b.(7).

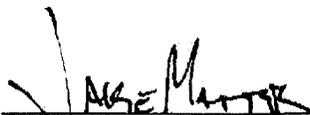
116. The City’s attempt to use the waiver process if it determines there is an operational conflict does not shield the disputed provisions from being preempted. The waiver is illusory because the City has no authority to determine whether an operational conflict exists.

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests this Court to declare that the foregoing disputed provisions of the Ordinance are preempted by the Colorado Oil and Gas Conservation Act and its implementing regulations and are therefore invalid, and enter judgment in favor of the Commission and against the City on all claims, and granting such further relief as this Court deems just and appropriate.

Dated this July 30, 2012

JOHN W. SUTHERS  
Attorney General

A handwritten signature in black ink, appearing to read "Jake Matter", is written over a horizontal line.

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- FILED Document  
 Oil and Gas Regulatory District Court 20th JD  
 Produced Pursuant to Protective Order in Case No. 2018-0010  
 Under Rule 16(b)(2) of the Colorado Rules of Civil Procedure  
 Review Clerk: Natascha Wise
- b. **Wells less than 2,500 feet in depth.** A well to be drilled to less than a depth of two thousand five hundred (2,500) feet below the surface shall be located not less than two hundred (200) feet from any lease line, and not less than three hundred (300) feet from any other producible oil or gas well, or drilling well, in said source of supply, except that only one producible oil or gas well in each such source of supply shall be allowed in each governmental quarter-quarter section unless an exception under Rule 318.c. is obtained.
- c. **Exception locations.** The Director may grant an operator's request for a well location exception to the requirements of this rule or any order because of geologic, environmental, topographic or archaeological conditions, irregular sections, a surface owner request, or for other good cause shown provided that a waiver or consent signed by the lease owner toward whom the well location is proposed to be moved, agreeing that said well may be located at the point at which the operator proposes to drill the well and where correlative rights are protected. If the operator of the proposed well is also the operator of the drilling unit or unspaced offset lease toward which the well is proposed to be moved, waivers shall be obtained from the mineral interest owners under such lands. If waivers cannot be obtained from all parties and no party objects to the location, the operator may apply for a variance under Rule 502.b. If a party or parties object to a location and cannot reach an agreement, the operator may apply for a Commission hearing on the exception location.
- d. **Exemptions to Rule 318.**
- (1) This rule shall not apply to authorized secondary recovery projects.
  - (2) This rule shall apply to fracture or crevice production found in shale, except from fields previously exempted from this rule.
  - (3) In a unit operation, approved by federal or state authorities, the rules herein set forth shall not apply except that no well in excess of two thousand five hundred (2,500) feet in depth shall be located less than so hundred (600) feet from the exterior or interior (if there be one) boundary of the unit area and no well less than two thousand five hundred (2,500) feet in depth below the surface shall be located less than two hundred (200) feet from the exterior or interior (if there be one) boundary of the unit area unless otherwise authorized by the order of the Commission after proper notice to owners outside the unit area.
- e. **Wells located near a mine.** No well drilled for oil or gas shall be located within two hundred (200) feet of a shaft or entrance to a coal mine not definitely abandoned or sealed, nor shall such well be located within one hundred (100) feet of any mine shaft house, mine boiler house, mine engine house, or mine fan; and the location of any proposed well shall insure that when drilled it will be at least fifteen (15) feet from any mine haulage or airway.

**318A(I). GREATER WATTENBERG AREA SPECIAL WELL LOCATION, SPACING AND UNIT DESIGNATION RULE (EXCEPT THE CITY AND COUNTY OF BROOMFIELD)**

*The provisions of Rule 318A(I)., recited below, pertain to those lands within the Greater Wattenberg Area defined herein, excepting those lands within the City and County of Broomfield, Colorado as it existed on August 8, 2011.*

- a. **GWA, GWA wells, GWA windows and unit designations.** The Greater Wattenberg Area ("GWA") is defined to include those lands from and including Townships 2 South to 7 North and Ranges 61 West to 69 West, 6th P.M. In the GWA, operators may utilize the

following described surface drilling locations ("GWA windows") to drill, twin, deepen, or recomplete a well ("GWA well") and to commingle any or all of the Cretaceous Age formations from the base of the Dakota Formation to the surface:

- (1) A square with sides four hundred (400) feet in length, the center of which is the center of any governmental quarter-quarter section ("400' window"); and,
- (2) A square with sides eight hundred (800) feet in length, the center of which is the center of any governmental quarter section ("800' window").
- (3) Absent a showing of good cause, which shall include the existence of a surface use or other agreement with the surface owner authorizing a surface well location outside of a GWA window, all surface wellsites shall be located within a GWA window.

(4) Unit designations.

- A. 400' window. When completing a GWA well in a 400' window to a spaced formation, the operator shall designate drilling and spacing units in accordance with existing spacing orders.
- B. 800' window. When completing a GWA well in an 800' window, whether in spaced or unspaced formations, the operator shall: (i) designate drilling and spacing units in accordance with existing spacing orders where units are not smaller than a governmental quarter section; or (ii) form a voluntary drilling and spacing unit consisting of a governmental quarter section; or (iii) where designating a drilling and spacing unit smaller than a governmental quarter section, secure waiver(s) from the operator or from the mineral owners (if the operator is also the holder of the mineral lease) of the lands in the governmental quarter section that are not to be included in the spacing unit; or (iv) apply to the Commission to form an alternate unit or to respace the area.
- C. Unspaced areas and wellbore spacing units. When completing a GWA well to an unspaced formation, the operator shall designate a drilling and spacing unit not smaller than a governmental quarter-quarter section if such well is proposed to be located greater than four hundred sixty (460) feet from the quarter-quarter section boundary in which it is located. If a well is proposed to be located less than four hundred sixty (460) feet from the governmental quarter-quarter section boundary, a wellbore spacing unit ("wellbore spacing unit") for such well shall be comprised of the governmental quarter-quarter sections that are located less than four hundred sixty (460) feet from the wellbore regardless of section or quarter section lines.
- D. Horizontal GWA well. Where a drilling and spacing unit does not exist for a horizontal well, a horizontal wellbore spacing unit shall be designated by the operator for each proposed horizontal well. The horizontal wellbore spacing unit may be of different sizes and configurations depending on lateral length and orientation but shall be comprised of the governmental quarter-quarter sections in which the wellbore lateral penetrates the productive formation as well as any governmental quarter-quarter sections that are located less than four hundred sixty (460) feet from the portion of the wellbore lateral that penetrates the productive zone regardless of section or quarter section lines. However, if the horizontal component of the horizontal wellbore is located entirely within a GWA

window, the operator shall designate a drilling and spacing unit in accordance with subsections a.(4)A. and a.(4)B. of this rule. A horizontal wellbore spacing unit may overlap portions of another horizontal wellbore spacing unit or other wellbore spacing unit designated in accordance with subsection a.(4)C. GWA horizontal wells and horizontal wellbore spacing units shall be subject to the notice and hearing procedures as provided for in Rule 318A(I).e.(6).

- b. **Recompletion/commingling of existing wells.** Any GWA well in existence prior to the effective date of this rule, which is not located as described above, may also be utilized for deepening to or recompletion in any Cretaceous Age formation and for the commingling of production therefrom.
- c. **Surface locations.** Prior to the approval of any Application for Permit-to-Drill submitted for a GWA well, the proposed surface well location shall be reviewed in accordance with the following criteria:
  - (1) A new surface well location shall be approved in accordance with Commission rules when it is less than fifty (50) feet from an existing surface well location.
  - (2) When the operator is requesting a surface well location greater than fifty (50) feet from a well (unless safety or mechanical considerations of the well to be twinned or topographical or surface constraints justify a location greater than fifty (50) feet), the operator shall provide a consent to the exception signed by the surface owner on which the well is proposed to be located in order for the Director to approve the well location administratively.
  - (3) If there is no well located within a GWA window but there is an approved exception location well located outside of a GWA window that is attributed to such window, the provisions of subsections (1) and (2) of this subsection c. shall be applicable to such location.
- d. **Prior wells excepted.** This rule does not alter the size or configuration of drilling units for GWA wells in existence prior to the effective date of this rule. Where deemed necessary by an operator for purposes of allocating production, such operator may allocate production to any drilling and spacing unit with respect to a particular Cretaceous Age formation consistent with the provisions of this rule.
- e. **GWA infill.**
  - (1) **Interior infill wells.** Additional bottom hole locations for the "J" Sand, Codell and Niobrara Formations are hereby established greater than four hundred sixty (460) feet from the outer boundary of any existing 320-acre drilling and spacing unit ("interior infill wells"). Pursuant to the well location provisions of subsection a., above, interior infill well locations shall be reached by utilizing directional drilling techniques from the GWA windows.
    - A. If a bottom hole location for an interior infill well is proposed to be located less than four hundred sixty (460) feet from the outer boundary of an existing drilling and spacing unit, a wellbore spacing unit as defined in a.(4)C., above, shall be designated by the operator for such well.
    - B. If a bottom hole location for an interior infill well is proposed to be located greater than four hundred sixty (460) feet from an existing 80-acre or existing 320-acre drilling and spacing unit, the spacing unit for such well

shall conform to the existing 80-acre or existing 320-acre drilling and spacing unit.

- (2) **Boundary wells.** Additional bottom hole locations for the "J" Sand, Codell and Niobrara Formations are hereby established less than four hundred sixty (460) feet from the outer boundary of a 320-acre governmental half section or from the outer boundary of any existing 320-acre drilling and spacing unit ("boundary wells"). A wellbore spacing unit as defined in a.(4)C., above, shall be designated by the operator for such well.
- (3) **Additional producing formations.** An operator wanting to complete an interior infill well or boundary well in a formation other than the "J" Sand, Codell, or Niobrara Formations ("additional producing formation") must request an exception location prior to completing the additional producing formation. The spacing unit dedicated to the exception location shall comply with subsections (1) or (2), above, as appropriate.
- (4) **Water well sampling.** The Director shall require initial baseline testing prior to the first well proposed within a governmental section. The following shall be used as guidance for the Director in establishing initial baseline testing:
  - A. Within the governmental quarter section of the proposed well, the closest water well ("water quality testing well") completed in the Laramie/Fox Hills Aquifer shall be sampled.
  - B. If no Laramie/Fox Hills water wells are located within the governmental quarter section, then the deepest representative water quality testing well within the governmental quarter section of the proposed well shall be sampled.
  - C. If no water wells are located within the governmental quarter section, a water quality testing well (preferably completed in the Laramie/Fox Hills Aquifer) within one-half ( $\frac{1}{2}$ ) mile of the proposed well shall be selected.
  - D. If there are no water quality testing wells that meet the foregoing criteria, then initial baseline testing shall not be required.
  - E. Initial baseline testing shall include laboratory analysis of all major cations and anions, total dissolved solids, iron and manganese, nutrients (nitrates, nitrites, selenium), dissolved methane, pH, and specific conductance.
  - F. If free gas or a methane concentration level greater than 2 mg/l is detected in a water quality testing well, compositional analysis shall be performed to determine gas type (thermogenic, biogenic or an intermediate mix of both). If the testing results reveal biogenic gas, no further isotopic testing shall be required. If the testing results reveal thermogenic gas, carbon isotopic analyses of methane carbon shall be conducted. The Director may require further water well sampling at any time as a result of the laboratory results or in response to complaints from water well owners.
  - G. Copies of all test results described above shall be provided to the Director and the landowner where the water quality testing well is located within three (3) months of collecting the samples used for the test. Laboratory results shall also be submitted to the Director in an electronic format.

- (5) Existing production facilities. To the extent reasonably practicable, operators shall utilize existing roads, pipelines, tank batteries and related surface facilities for all interior infill wells and boundary wells.
- (6) Notice and hearing procedures. For proposed boundary wells, wellbore spacing units, and additional producing formations provided by this subsection e., and for proposed horizontal wells and horizontal wellbore spacing units as provided by 318A(l).a.(4)D., the following process shall apply:
  - A. Notice shall be given by certified mail by the operator of a proposed boundary well, wellbore spacing unit, horizontal well or horizontal wellbore spacing unit to all owners in the proposed wellbore spacing unit. Notice shall be given by certified mail by the operator of a proposed additional producing formation to all owners in cornering and contiguous spacing units of the requested completion and the proposed spacing unit; if the additional producing formation is unspaced only the owner in the proposed spacing unit needs to be notified. Notice for a boundary well, wellbore spacing unit, horizontal well or horizontal wellbore spacing unit shall include a description of the wellbore orientation, the anticipated spud date, the size and shape of the proposed wellbore spacing unit (with depiction attached), the proposed surface and bottom hole locations, identified by footage descriptions, and the survey plat. For proposed horizontal wells and horizontal wellbore spacing units, the operator shall also identify by footage descriptions, the location at which the wellbore penetrates the target formation.
  - B. Each owner shall have a thirty (30) day period after receipt of such notice to object in writing to the operator. The written objection must be based upon a claim that the notice provided by the operator does not comply with the informational requirements of subsection A., above, and/or a technical objection that either waste will be caused, correlative rights will be adversely affected, or that the operator is not an "owner", as defined in the Act, of the mineral estate(s) through which the wellbore penetrates within the target formation. Specific facts must form the basis for such objection. The objecting party shall provide a copy of the written objection to the Director.
  - C. If an objection pursuant to subsection B. is timely received, the operator may seek a hearing before the Commission on the objection. The objecting party will bear the burden of proving that the notice provided by the operator does not comply with the informational requirements of subsection A., above, that the operator is not an owner, as defined by the Act, and/or the approval of the boundary well location, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation would either create waste or adversely affect the objecting party's correlative rights. The objection may be first presented to the hearing officer of the Commission and such hearing officer, based on the facts, may recommend to the Commission that such objection shall stand or be dismissed.
  - D. If the objection stands, the Commission may either enter an order approving or denying the proposed boundary well location, wellbore spacing unit, horizontal well location, horizontal wellbore spacing unit or additional producing formation, with or without conditions. Such conditions may be requisites for the Application for Permit-to-Drill, Form 2, if the operator

chooses to proceed with an Application for Permit-to-Drill, Form 2, relative to the proposed boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation. If the objection is dismissed, the operator shall treat the objection as withdrawn and otherwise proceed with subsection E. below.

- E. Absent receipt of a timely objection pursuant to subsections A. and B., above, the Director may administratively approve the boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation. A location plat evidencing the well location, wellbore spacing unit, or additional producing formation and applicable spacing unit shall be submitted to the Director together with copies of any surface waivers and a certification that no timely objections were received. An Application for Permit-to-Drill, Form 2, specifically identifying that a boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation is proposed, shall also be filed with the Director in accordance with Rule 303, within ninety (90) days of the expiration of the thirty (30) day notice period or such notice shall be deemed withdrawn. Should such notice be withdrawn or deemed withdrawn, the proposed operator shall not submit another notice for the same well or wellbore spacing unit within forty-five (45) days of the date the original notice is withdrawn or deemed withdrawn.
- f. **Limit on locations.** This rule does not limit the number of formations that may be completed in any GWA drilling and spacing unit nor, subject to subsection c., above, does it limit the number of wells that may be located within the GWA windows.
- g. **GWA water sampling.** The Director may apply appropriate drilling permit conditions to require water well sampling near any proposed GWA wells in accordance with the guidelines set forth in subsection e.(4), above.
- h. **Waste Management.** In conjunction with filing an Oil and Gas Location Assessment, Form 2A, the operator shall include a waste management plan meeting the general requirements of Rule 907.a.
- i. **Exception locations.** The provisions of Rule 318.c. respecting exception locations shall be applicable to GWA wells, however, absent timely objection, boundary wells, wellbore spacing units, and additional producing formations shall be administratively approved as provided in subsection e.(6) above.
- j. **Correlative rights.** This rule shall not serve to bar the granting of relief to owners who file an application alleging abuse of their correlative rights to the extent that such owners can demonstrate that their opportunity to produce Cretaceous Age formations from the drilling locations herein authorized does not provide an equal opportunity to obtain their just and equitable share of oil and gas from such formations.
- k. **Supersedes orders and policy.** Subject to paragraph d. above, this rule supersedes all prior Commission drilling and spacing orders affecting well location and density requirements of GWA wells. Where the Commission has issued a specific order limiting the number of horizontal wells permitted in a drilling and spacing unit, the well density in such unit shall be governed by that order.
- l. The landowner notice provision for the owner(s) of surface property within five hundred (500) feet of the proposed oil and gas location under Rule 305.e. shall not apply to any such locations that are subject to the provisions of this subsection 318A(l).

m. **Minimum intrawell distance.** No horizontal wellbore lateral shall be located less than one hundred fifty (150) feet from any existing or permitted oil or gas wellbore as illustrated in the directional survey for drilled wellbores or as illustrated in the deviated drilling plan for permitted wellbores or as otherwise reflected in the COGCC well records. This requirement may be waived in writing by the operator of the encroached upon well.

**318A(II). GREATER WATTENBERG AREA SPECIAL WELL LOCATION, SPACING AND UNIT DESIGNATION RULE (THE CITY AND COUNTY OF BROOMFIELD)**

*The provisions of Rule 318A(II), recited below, pertain to those lands within the Greater Wattenberg Area within the City and County of Broomfield, Colorado as it existed on August 8, 2011.*

a. **GWA, GWA wells, GWA windows and unit designations.** The Greater Wattenberg Area ("GWA") is defined to include those lands from and including Townships 2 South to 7 North and Ranges 61 West to 69 West, 6th P.M. In the GWA, operators may utilize the following described surface drilling locations ("GWA windows") to drill, twin, deepen, or recomplete a well ("GWA well") and to commingle any or all of the Cretaceous Age formations from the base of the Dakota Formation to the surface:

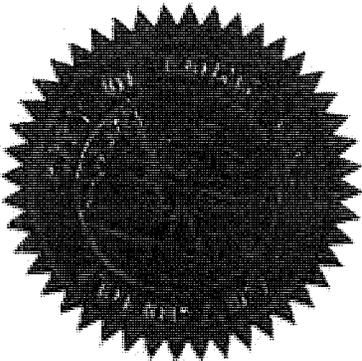
- (1) A square with sides four hundred (400) feet in length, the center of which is the center of any governmental quarter-quarter section ("400' window"); and,
- (2) A square with sides eight hundred (800) feet in length, the center of which is the center of any governmental quarter section ("800' window").
- (3) Absent a showing of good cause, which shall include the existence of a surface use or other agreement with the surface owner authorizing a surface well location outside of a GWA window, all surface wellsites shall be located within a GWA window.
- (4) Unit designations.
  - A. 400' window. When completing a GWA well in a 400' window to a spaced formation, the operator shall designate drilling and spacing units in accordance with existing spacing orders.
  - B. 800' window. When completing a GWA well in an 800' window, whether in spaced or unspaced formations, the operator shall: (i) designate drilling and spacing units in accordance with existing spacing orders where units are not smaller than a governmental quarter section; or (ii) form a voluntary drilling and spacing unit consisting of a governmental quarter section; or (iii) where designating a drilling and spacing unit smaller than a governmental quarter section, secure waiver(s) from the operator or from the mineral owners (if the operator is also the holder of the mineral lease) of the lands in the governmental quarter section that are not to be included in the spacing unit; or (iv) apply to the Commission to form an alternate unit or to respace the area.
  - C. Unspaced areas and wellbore spacing units. When completing a GWA well to an unspaced formation, the operator shall designate a drilling and spacing unit not smaller than a governmental quarter-quarter section if such well is proposed to be located greater than four hundred sixty (460) feet from the quarter-quarter section boundary in which it is located. If a well is proposed to be located less than four hundred sixty (460) feet

STATE OF COLORADO )  
COUNTY OF BOULDER ) ss.  
CITY OF LONGMONT )

I, Valeria L. Skitt, City Clerk, hereby certify that the following attached document is a true and correct copy of the original which is on file in the City Clerk's Office at 350 Kimbark Street, Longmont, Colorado:

ORDINANCE O-2012-25

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 15.04, 15.05, 15.07, 15.10 AND APPENDIX B OF TITLE 15 OF THE LONGMONT MUNICIPAL CODE REGARDING OIL AND GAS WELL OPERATIONS AND FACILITIES



CITY OF LONGMONT, COLORADO

  
\_\_\_\_\_  
Valeria L. Skitt  
City Clerk

Date: July 24, 2012

Complaint Exhibit B
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Section 2

The Council repeals and replaces § 15.04.020(B)(32) of the Longmont Municipal Code to read as follows:

32. Oil and Gas Operations and Facilities.

a. Purpose Statement.

i. The purpose of this section is to facilitate the exploration and production of oil and gas resources within the City in a responsible manner. The City has a recognized, traditional authority and responsibility to regulate land use within its jurisdiction and to provide for the orderly development and protection of the community. These regulations are intended as an exercise of this land use authority and the police power.

ii. These regulations are enacted to preserve the rights and privileges of both surface and mineral estate owners and lessors, while ensuring the health, safety, and general welfare of the present and future residents of Longmont and surrounding areas and the preservation and protection of wildlife and the environment. The City’s goal is to work cooperatively with oil and gas applicants and operators, affected individuals, groups or institutions, the Colorado Oil and Gas Conservation Commission, and other municipal, county, state and federal agencies and interested parties to ensure that potential land use and environmental conflicts are adequately addressed and mitigated.

b. Authority. This section is adopted pursuant to C.R.S.A § 31-15-401, Colorado Constitution Article XX, § 6 and C.R.S. §§ 29-20-11 et seq., 34-60-101 et seq., and 30-28-101 et seq. These standards are not intended to supersede state or federal laws, regulations, or rules pertaining to oil and gas development, but rather are meant to supplement those requirements where appropriate and to address areas of regulation where none has been heretofore established by the state or federal governments

c. Applicability.

1           i.       All oil and gas well operations and facilities within the City are subject to  
2 the requirements of this section. In the event that the provisions of this section conflict  
3 with any other provisions of the code, this section shall supercede as it applies to oil and  
4 gas well operations and facilities.

5           ii.       City oil and gas well permits issued pursuant to this section shall  
6 encompass within its authorization the right of the operator, its agents, employees,  
7 subcontractors, independent contractors, or any other person to perform that work  
8 reasonably necessary to conduct the activities authorized by the permit, subject to all  
9 other applicable City regulations and requirements.

10          iii.       City oil and gas well permits may be issued for sites within the City  
11 excluding oil and gas well surface operations and facilities in residential zoning districts.  
12 For purposes of this section, residential zoning shall include residential and mixed use  
13 planned unit development (PUD) districts and mixed use (MU) zoning districts that  
14 include existing or planned residential uses. Any proposed oil and gas well location not  
15 complying with the requirements of this subsection, may apply for an operational conflict  
16 special exception according to the procedures in this section. Oil and gas waste disposal  
17 facilities, including injection wells for disposal of oil and gas exploration and production  
18 wastes, commercial disposal facilities, centralized E&P waste management facilities, and  
19 subsurface disposal facilities are classified as heavy industrial uses and are limited to  
20 applicable industrial zoning districts.

21  
22          d.       Exceptions.

23           i.       Oil and gas well facilities that are in existence on the effective date of this  
24 subsection or that are located within territory which thereafter is annexed to the City may  
25 continue operating without the issuance of a City oil and gas well permit. A City oil and  
26 gas well permit is required for any such grandfathered well prior to any of the following:  
27 oil and gas well location expansion, new wells on the well site, and operations including  
28 completing, recompleting, hydraulic fracturing, sidetracking, or twinning of a well.  
29 Existing oil and gas well and production facilities shall not be considered nonconforming  
30 in terms of setback requirements where development has encroached within the required  
31 setbacks. The right to operate oil and gas well facilities terminates if the use thereof is

1 discontinued for six months or more, other than by temporary abandonment or shut-in  
2 which is in conformance with COGCC rules.

3 ii. Accessory equipment and pumping systems that are in existence on the  
4 effective date of this subsection or are located within territory which thereafter is annexed  
5 to the City may continue operating without the issuance of a City oil and gas well permit.  
6 Any renovation or repair of nonconforming accessory equipment or pumping systems  
7 shall be permitted without a City oil and gas well permit, provided the work does not  
8 increase the degree of nonconformity. Any replacement of existing accessory equipment  
9 or any addition of accessory equipment shall conform to this section subject to the  
10 applicable review process in this section. The replacement or addition of individual tanks,  
11 treaters, or separators shall not require the remaining accessory equipment in an oil and  
12 gas well location to conform to the development standards in this section.

13  
14 e. Prohibitions.

15 The following oil and gas facilities are prohibited within the City of Longmont.

16 i. Temporary housing at an oil and gas well location, including trailers,  
17 recreational vehicles, and similar temporary structures.

18  
19 f. Definitions.

20 For the purposes of these oil and gas well regulations only, term definitions are  
21 included at the end of this section.

22  
23 g. General Provisions.

24 i. Application Process.

25  
26 (a) Applications subject to administrative review. The following are  
27 subject to administrative review:

28 (1) Oil and gas well operations and facilities that comply with  
29 all minimum and recommended standards in this section are subject to  
30 limited use site plan review.

1 (2) Seismic survey operations are subject to administrative  
2 review, except that seismic survey operations on City owned property may  
3 be subject to City Council approval.

4 (3) Pipelines that cross public property are subject to a work in  
5 right-of-way permit review.

6 (b) Applications subject to public hearing review. The following are  
7 subject to public hearing review:

8 (1) Oil and gas well operations and facilities that meet  
9 minimum standard requirements and some or none of the recommended  
10 standards listed in this section are subject to conditional use site plan  
11 review.

12 (2) The following oil and gas facilities are subject to  
13 conditional use site plan review:

14 (i) Injection wells for disposal of oil and gas  
15 exploration and production wastes;

16 (ii) Commercial disposal facilities;

17 (iii) Centralized E&P waste management facilities;

18 (iv) Subsurface disposal facilities;

19 (v) Other oil and gas facilities permitted by COGCC  
20 and not described above;

21 (3) Variances and operational conflicts special exceptions.

22  
23 h. Submittal Requirements.

24 Applications for a limited use or conditional use site plan for oil and gas well  
25 operations and facilities under this subsection shall contain all relevant information  
26 required for limited use and conditional use site plan applications contained in Appendix  
27 B of this development code and the specific information for oil and gas well operations  
28 and facilities contained in Table 8 in Appendix B of this development code.  
29

1           i.       Issuance of oil and gas well permit for unsubdivided property. A City oil and gas  
2 well permit may be granted on unsubdivided property without requiring the property to be  
3 subdivided.

4  
5           j.       Notice and procedures.

6               i.       Limited use review. Applications for limited use review of oil and gas  
7 well operations and facilities are subject to the notice requirements of Section  
8 15.02.040(H) and the minor application procedures requirements of Section 15.02.080.

9               ii.      Conditional use review. Applications for conditional use review of oil and  
10 gas well operations and facilities are subject to the notice requirements of Section  
11 15.02.040(H) and the major application procedure requirements of Section 15.02.050.

12  
13          k.       Review Criteria.

14               i.       Limited use review. Applications for limited use review are subject to the  
15 limited use and site plan review criteria in Sections 15.02.090(E)(3) and 15.02.090(F)(5)  
16 respectively, in addition to the development standard compliance criteria listed below.

17               ii.      Conditional use review. Applications for conditional use review are  
18 subject to the conditional use and site plan review criteria in Sections 15.02.060(D)(2)  
19 and 15.02.090(F)(5), respectively, in addition to the development standard compliance  
20 criteria listed below.

21  
22          l.       Compliance with development standards.

23               i.       Applications for limited use review shall comply with all standards,  
24 including recommended standards in this section.

25               ii.      Applications for conditional use review shall comply with the minimum  
26 standards in this section, unless a variance or special exception is granted by the decision  
27 making body, as well as conditions of approval specified in the conditional use  
28 agreement.

29  
30          m.       Variances and Operational Conflicts Special Exceptions.

31               i.       Variance requests.

1 (a) Variance requests to the standards of this section may be requested  
2 by the applicant. All applications where a variance is requested shall be processed  
3 in accordance with the standards and procedures outlined in section  
4 15.02.060(F)(6) for variances.

5 (b) Requests for variances may include, but not be limited to, one or  
6 more of the following factors:

- 7 (1) Topographic characteristics of the site;
- 8 (2) Duration of use of the facility;
- 9 (3) Proximity of occupied structures to the facility;
- 10 (4) Ownership status of adjacent and/or affected land;
- 11 (5) Construction of adequate infrastructure to serve the project;

12 and

- 13 (6) Planned replacement and/or upgrading of facility  
14 equipment.

15 (c) If the decision making body finds, based upon competent evidence  
16 in the record, that compliance with the regulations of this division is impractical, a  
17 variance may be granted by the decision making body permanently or for a period  
18 of defined duration.

19 ii. Operational conflicts special exception.

20 (a) Special exceptions to the standards of this section may be granted  
21 where the actual application of requirements of this section conflicts in operation  
22 with the requirements of the Oil and Gas Conservation Act or implementing  
23 regulations.

24 (b) All applications where a special exception due to operational  
25 conflicts is requested shall be processed as a public hearing and reviewed in a  
26 noticed public hearing by the decision making body acting in a quasi-judicial  
27 capacity.

28 (c) The applicant shall have the burden of pleading and proving an  
29 actual, material, irreconcilable operational conflict between the requirements of  
30 this section and the State's interest in oil and gas development in the context of a  
31 specific application.

1 (d) For purposes of this section, an operational conflict exists where  
2 actual application of a City condition of approval or regulation conflicts in  
3 operation with the state statutory or regulatory scheme, and such conflict would  
4 materially impede or destroy the State's interest in fostering the responsible,  
5 balanced development and production and utilization of the natural resources of  
6 oil and gas in the State of Colorado in a manner consistent with protection of  
7 public health, safety, and welfare, including protection of the environment and  
8 wildlife resources, and no possible construction of the regulation in question  
9 could be found that would harmonize it with the state regulatory scheme.

10 (e) Additional City requirements in areas regulated by the COGCC,  
11 which fall within City land use and police powers and which are necessary to  
12 protect the public health, safety and welfare under the facts of the specific  
13 application presented, and which do not impose unreasonable burdens on the  
14 applicant and which do not materially impede the state's goals, shall be presumed  
15 not to present an operational conflict.

16 (f) If the decision making body finds, based upon competent evidence  
17 in the record, that compliance with the requirements of this section shall result in  
18 an operational conflict with the state statutory and regulatory scheme, a special  
19 exception to this section may be granted, in whole or in part, but only to the extent  
20 necessary to remedy the operational conflict.

21 (g) The decision making body may condition the approval of a special  
22 exception as necessary to protect the public health, safety and welfare by  
23 mitigating any adverse impacts arising from the grant of approval. Any such  
24 condition shall be designed and enforced so that the condition itself does not  
25 conflict with the requirements of the COGCC.

26 (h) A final decision by the City on the exception request is subject to  
27 judicial review pursuant to Rule 106(a)4 of the Colorado rules of civil procedure.

28  
29 n. Third Party Technical Review.

30 i. Upon determination that the application is complete, the City may require  
31 that the application materials, including requests for minor modifications, variances, and

1 operational conflicts special exceptions, be submitted to a technical consultant deemed by  
2 the City to be appropriate and necessary to complete the review.

3 ii. Reasonable costs associated with such review shall be paid by the  
4 applicant.

5  
6 o. Sales and Use Tax License Requirement.

7 i. Operators shall obtain and maintain a City sales and use tax license prior  
8 to commencing operations.

9 ii. Operators must conform to applicable provisions of Chapter 6.04 of the  
10 Longmont Municipal Code related to licensing.

11  
12 p. Building Permit Requirement.

13 The operator shall obtain building permits prior to the construction of any above  
14 ground structures to the extent required by the City building and fire codes then in effect.

15  
16 q. Approval Period.

17 Approval of limited use or conditional use applications for oil and gas well  
18 operations and facilities are valid for two years from the date of approval until the start of  
19 the operation, unless the decision making body grants a longer approval period.

20  
21 r. Extensions.

22 Requests for extensions to the approval period for oil and gas well operations and  
23 facilities shall be reviewed according to the procedures outlined in Section 15.02.040(O).

24 s. Issuance of Oil and Gas Well Permit. The following items are required by the  
25 City prior to issuance of a City oil and gas well permit:

26 i. Approval of a limited use site plan or conditional use site plan, as  
27 applicable.

28 ii. Satisfaction of any conditions of approval of the above applications prior  
29 to commencement of operations.

30 iii. Copies of:

31 (a) Applicable executed agreements,

- 1 (b) Applicable transportation related permits,
- 2 (c) A City sales and use tax license,
- 3 (d) Required liability insurance, and
- 4 (e) All necessary state or federal permits issued for the oil and gas
- 5 well operation and facilities.

6 iv. Financial securities, or payment of fees, as applicable.

7

8 t. Right to Enter / Inspections.

9 i. Right to Enter - For the purpose of implementing and enforcing this

10 section, duly authorized City personnel or contractors may enter onto subject property

11 upon notification of the permittee, lessee or other party holding a legal interest in the

12 property. If entry is denied, the City shall have the authority to discontinue application

13 processing, revoke City approved permits and applications, or to obtain an order from a

14 court of competent jurisdiction to obtain entry.

15 ii. Operator contact - The applicant shall provide the telephone number of a

16 contact person who may be reached 24 hours a day for purposes of being notified of any

17 proposed City inspection under this Section or in case of emergency. Any permitted oil

18 and gas operations and facilities may be inspected by the City at any time, to ensure

19 compliance with the requirements of the City approved permit, provided that at least one

20 hour's prior notice is given to the contact person at the telephone number supplied by the

21 applicant. Calling the number (or leaving a message on an available answering machine

22 or voice mail service at the number) at least one hour in advance of the proposed

23 inspection shall constitute sufficient prior notice if the contact person does not answer.

24 By accepting an approved City oil and gas well permit, the applicant grants consent to

25 such inspections. The cost of any City inspection deemed reasonable and necessary to

26 implement or enforce the regulations for the applicant shall be borne by the applicant,

27 provided such inspections and fees are not in conflict with COGCC inspections and rules.

28

29 u. Enforcement and Penalties.

30 i. Oil and gas operators working without or not in compliance with a City oil

31 and gas well permit.

1           Any operator engaging in oil and gas well operations who does not obtain a City  
2 oil and gas well permit pursuant to these regulations, who does not comply with City oil  
3 and gas well permit requirements, or who acts outside the jurisdiction of the City oil and  
4 gas well permit may be enjoined by the City from engaging in such oil and gas well  
5 operations and may be subject to such other penalties or civil liability as may be  
6 prescribed by law. If the City prevails in whole or part in any action, the operator shall  
7 pay all reasonable attorney fees and expert costs incurred by the City.

8           ii.       Suspension of City oil and gas well permit.

9           If the City determines at any time that there is a violation of the conditions of the  
10 City oil and gas well permit or that there are material changes in an oil and gas operation  
11 or facility as approved by the permit, the development services manager or designee may,  
12 for good cause, temporarily suspend the City oil and gas well permit. In such case, upon  
13 oral or written notification by the development services manager or designee, the  
14 operator shall cease operations immediately. The development services manager or  
15 designee shall forthwith provide the operator with written notice of the violation or  
16 identification of the changed condition(s). The operator shall have a maximum of fifteen  
17 (15) days to correct the violation. If the violation is not timely corrected, the permit may  
18 be further suspended pending a revocation hearing. The operator may request an  
19 immediate hearing before the Planning and Zoning Commission regarding the  
20 suspension. The Planning and Zoning Commission shall hold the hearing within ten (10)  
21 days of the operator's written request.

22           iii.       Revocation of City oil and gas well permit.

23           The Planning and Zoning Commission may, following notice and hearing, revoke  
24 a City oil and gas well permit granted pursuant to these regulations if any of the activities  
25 conducted by the operator violate the conditions of the City oil and gas well permit or  
26 these regulations, or constitute material changes in the oil and gas operation approved by  
27 the City. No less than fourteen (14) days prior to the revocation hearing, the City shall  
28 provide written notice to the permit holder setting forth the violation or the material  
29 changes and the time and date for the revocation hearing. Notice of the revocation  
30 hearing shall be published in a newspaper of general circulation not less than five(5) days  
31 prior to the hearing. Following the hearing, the City may revoke the oil and gas permit or

1 may specify a time by which action shall be taken to correct any violations of the oil and  
2 gas permit to avoid revocation.

3 iv. Transfer of permits.

4 A City oil and gas well permit may be transferred only with the written consent of  
5 the City. The City shall not unreasonably withhold its consent, but shall ensure, in  
6 approving any transfer, that the proposed transferee can and will comply with all the  
7 requirements, terms, and conditions contained in the City oil and gas well permit and  
8 these regulations, that such requirements, terms, and conditions remain sufficient to  
9 protect the health, welfare, and safety of the public, and the environment; and that an  
10 adequate guaranty of financial security related to the City approved permit can be timely  
11 made.

12 v. Judicial review.

13 A final decision by the City on a City oil and gas well permit is subject to judicial  
14 review pursuant to Rule 106(a)(4) of the Colorado rules of civil procedure.

15  
16 v. General Development Standards.

17 The following sections provide minimum and/or recommended standards that will  
18 apply to any oil & gas well operations and production facilities, and shall be in addition  
19 to any applicable state and federal standards. Use of consolidated well pads and  
20 directional and horizontal drilling when and where appropriate, closed loop (“pitless”)  
21 systems, appropriate water quality monitoring systems, and other techniques, including  
22 current and available best management practices, are intended to protect the integrity of  
23 the surface estate and subsurface resources and ensure the health, safety, and general  
24 welfare of the present and future residents of Longmont and surrounding areas and the  
25 preservation and protection of wildlife and the environment.

26 i. Compliance with State and Federal Regulations, Rules, Orders and  
27 Conditions.

28 In addition to the provisions contained in these regulations, oil and gas  
29 operations and facilities within the City of Longmont shall comply with all  
30 applicable state and federal regulations, rules, orders and conditions.

31 ii. Multi Well Sites and Directional/Horizontal Drilling.

1 Oil and gas well operations and facilities will be consolidated on multi  
2 well sites and directional and horizontal drilling techniques will be used whenever  
3 possible and appropriate. In determining appropriateness, the benefits of  
4 consolidation and the use of directional and horizontal drilling, such as drilling  
5 from outside of a prohibited zoning district, minimizing surface disturbance and  
6 traffic impacts and increasing setbacks, will be weighed against the potential  
7 impacts of consolidated drilling and production activities on surrounding  
8 properties, wildlife and the environment.

9 iii. Well Facilities Siting.

10 Oil and gas well facilities and operations shall be located and designed to  
11 minimize impacts on surrounding uses, including residential areas, schools,  
12 medical facilities, churches, day care and retirement centers, and other places of  
13 public assembly, and natural features such as distinctive land forms, vegetation,  
14 river or stream crossings, ridgelines and vistas, City-owned and City-designated  
15 open space areas, and other designated landmarks to the maximum extent  
16 practical. Efforts shall be made to avoid adversely impacting the well spacing  
17 requirements of the COGCC or the ability of the oil and gas well operator to  
18 develop the resource. Facilities should be located at the base of slopes where  
19 possible and access roads should be aligned to follow existing grades and  
20 minimize cuts and fills.

21 iv. Cultural Resources.

22 Applications for all oil and gas well facilities and operations may require a  
23 cultural resources report, as determined by the City. The report, if required, will  
24 be prepared by a qualified professional, and meet state of Colorado requirements,  
25 including a complete written description and identification of the cultural  
26 resources on the site and within the surrounding area of the proposed oil and gas  
27 well facility and will include mitigation measures, if necessary, to ensure that  
28 appropriate actions are taken to avoid or minimize negative impacts to the  
29 maximum extent practical.

30 v. Drainage.

1 Oil and gas well operations and facilities shall comply with applicable  
2 City drainage requirements and standards.

3 vi. Hazard Areas.

4 Oil and gas well operations and facilities in hazard areas, including  
5 floodplains and man-made (e.g., airport) conditions, and in other areas where such  
6 operations would constitute a hazard to public health and safety or to property  
7 should be avoided. Land should not be developed for oil and gas well facilities  
8 and operations until hazards have been identified and avoided, removed, or until  
9 the applicant can show that the impact of the hazard(s) can be mitigated to the  
10 maximum extent practical. All well facilities and operations conducted within a  
11 floodplain shall comply with title 20 of the Longmont Municipal Code pertaining  
12 to floodplain regulations.

13 vii. Emergency Preparedness.

14 Oil and gas well operations and facilities shall provide the City with an  
15 acceptable written emergency response plan for the potential emergencies that  
16 may be associated with the operation of the facilities. This shall include, but not  
17 be limited to, any or all of the following:

18 (a) Explosions, fires, gas or water pipeline leaks or ruptures,  
19 hydrogen sulfide or other toxic gas emissions, and hazardous material  
20 vehicle accidents or spills.

21 (b) Operation-specific emergency preparedness plans are  
22 required for any oil and gas operation that involves drilling or penetrating  
23 through known zones of hydrogen sulfide gas.

24 (c) The plan shall include a provision for the operator to  
25 reimburse the appropriate emergency response service provider for costs  
26 incurred in connection with the emergency.

27 viii. Hazardous Materials.

28 Full disclosure, consistent with COGCC requirements, including material  
29 safety data sheets of all hazardous materials that will be transported on any public  
30 or private roadway within the City for the oil and gas operation, shall be provided  
31 to the Longmont hazards prevention office. This information will be treated as

1 confidential and will be shared with other emergency response personnel only on  
2 an as needed basis.

3 ix. Safety/Security.

4 The operator of oil and gas facilities shall comply with COGCC  
5 requirements for initial and ongoing site security and safety measures. Such  
6 requirements shall adequately address security fencing, the control of fire hazards,  
7 equipment specifications, structural stabilization and anchoring, and other  
8 relevant safety precautions.

9 x. Maintenance and General Operation.

10 (a) The operator shall at all times keep the wellsites, roads, rights-of-  
11 way, facility locations, and other oil and gas operations areas safe and in good  
12 order, free of noxious weeds, litter and debris.

13 (b) The operator shall dispose of all water, unused equipment, litter,  
14 sewage, waste, chemicals and debris off of the site at an approved disposal site.

15 (c) The operator shall promptly reclaim and reseed all disturbed sites  
16 in conformance with COGCC rules.

17 xi. Indemnification.

18 Each City oil and gas well permit issued by the City shall include the  
19 following language: "Operator does hereby expressly release and discharge all  
20 claims, demands, actions, judgments, and executions which it ever had, or now  
21 has or may have, or its successors or assigns may have, or claim to have, against  
22 the City and/or its departments, its agents, officers, servants, successors, assigns,  
23 sponsors, volunteers, or employees, created by, or arising out of personal injuries,  
24 known or unknown, and injuries to property, real or personal, or in any way  
25 incidental to or in connection with the actions or inactions of the Operator or its  
26 agents, or caused by or arising out of, that sequence of events which occur from  
27 the Operator's or its agents actions or inactions. The Operator shall fully defend,  
28 protect, indemnify, and hold harmless the City and/or its departments, agents,  
29 officers, servants, successors, assigns, sponsors, or volunteers, or employees from  
30 and against each and every claim, demand, or cause of action and any and all  
31 liability, damages, obligations, judgments, losses, fines, penalties, costs, fees, and

1 expenses incurred in defense of the City and/or its departments, its agents,  
2 officers, servants, successors, assigns, sponsors, volunteers, or employees,  
3 including, without limitation, personal injuries and death in connection therewith  
4 which may be made or asserted by Operator, its agents, assigns, or any third  
5 parties on account of, arising out of, or in any way incidental to or in connection  
6 with the performance of the work performed by the Operator under any permit,  
7 and the Operator agrees to indemnify and hold harmless the City and/or its  
8 departments, its agents, officers, servants, successors, assigns, sponsors,  
9 volunteers, or employees from any liabilities or damages suffered as a result of  
10 claims, demands, costs, or judgments against the City and/or, its departments, its  
11 agents, officers, servants, successors, assigns, sponsors, volunteers, or employees,  
12 created by, or arising out of their acts or omissions occurring on the drill site or  
13 operation site or in the course and scope of inspecting, permitting or monitoring  
14 the oil/gas wells. Liability for any action or inaction of the City is limited to the  
15 maximum amount of recovery under the Colorado Governmental Immunity Act.”

16 xii. Financial Securities/Liability Insurance.

17 a. Minimum standard.

18 (1) Performance security.

19 The applicant may be required to provide reasonable performance  
20 security to the City through a minor improvement security agreement as  
21 outlined in Section 15.02.120(H)(7), in an amount to be determined by the  
22 City and in a form acceptable to the City as outlined in 15.02.120(D) to  
23 ensure compliance with the City oil and gas well permit and with the  
24 requirements set forth in this section. Conditions of approval covered by  
25 this performance security shall consist of measures addressing specific  
26 impacts affecting the general public and any damage to public  
27 infrastructure. Reclamation and other activities which fall under COGCC  
28 jurisdiction are exempted from this performance guarantee coverage.

29 (2) Liability insurance.

30 For any oil or gas well facility permitted under this section, the  
31 applicant shall submit a certificate of insurance to the economic

1 development department, showing that a policy of comprehensive general  
2 liability insurance or a self-insurance program approved by the Colorado  
3 Insurance Commission, in the amount of no less than one million dollars  
4 (\$1,000,000) per occurrence, insuring the applicant against all claims or  
5 causes of action made against the applicant for damages arising out of the  
6 oil or gas well operations. The policy shall be written by a company  
7 authorized to do business in the state of Colorado, unless the applicant  
8 provides evidence to the City that the applicant is adequately self-insured.  
9 The certificate shall require at least thirty (30) days' notice to the city prior  
10 to termination of coverages for any reason.

11 b. Recommended standard.

12 (1) Performance security.

13 The applicant may be required to provide reasonable performance  
14 security to the City through a minor improvement security agreement as  
15 outlined in Section 15.02.120(H)(7), in an amount to be determined by the  
16 City and in a form acceptable to the City to ensure compliance with  
17 requirements set forth in this section and specific conditions in the City oil  
18 and gas permit. Conditions of approval covered by this performance  
19 security shall consist of measures addressing specific impacts that may  
20 affect the general public and any damage to public infrastructure.

21 xiii. Impact fees.

22 Every permit issued by the City under this section shall require the  
23 applicant or operator to pay a fee that is sufficient to pay for all impacts which the  
24 proposed operation will cause to facilities owned or operated by the City or used  
25 by the general public, including, but not limited to: repair and maintenance of  
26 roads, bridges and other transportation infrastructure; improvements made or to  
27 be made by the City to accommodate the operations and to protect public health,  
28 safety and welfare; costs incurred to process and analyze the application,  
29 including the reasonable expenses paid to independent experts or consultants; and  
30 impact fees comparable to those charged to other businesses or industries who  
31 operate within the City which are not specifically mentioned herein, and other

1 impacts. The City shall establish a mechanism to assess and obtain payment of  
2 such fees, subject to the right of the City to request additional funds if the fees  
3 prove to be insufficient, or to refund surplus funds to the operator if the fees paid  
4 exceed the true cost of the impacts.

5 xiv. Operation Plan.

6 Applications for all oil and gas well facilities and operations will include  
7 an operation plan, which should, at a minimum, include the operator's method  
8 and schedule for drilling, well completion, transportation, resource production,  
9 and post-operation activities.

10  
11 w. Specific Development Standards

12 i. Setbacks/Location of Wells and Production Facilities from Buildings,  
13 Platted Residential Lots, Parks, Sports Fields and Playgrounds, and Designated Outside  
14 Activity Areas.

15 (a) Recommended standard.

16 (1) Wells and production facilities shall be 750 feet or more  
17 from occupied buildings or occupied buildings permitted for construction.

18 (2) Wells and production facilities shall be 750 feet or more, or  
19 the maximum distance practicable as determined by the City, from platted  
20 residential lots, or parks, sports fields, playgrounds or designated outside  
21 activity areas.

22 ii. Setbacks/Location of Proposed Buildings, Platted Residential Lots, Parks,  
23 Sports Fields and Playgrounds Public Roads, and Major Above Ground Utility Lines  
24 from Existing Wells and Production Facilities.

25 (a) Proposed occupied buildings shall be 750 feet or more from  
26 existing oil and gas wells and production facilities.

27 (b) Platted residential lots, sports fields and playgrounds shall be 750  
28 feet or more, or the maximum distance practicable as determined by the City,  
29 from existing oil and gas wells and production facilities.

30 (c) Proposed unoccupied buildings and other structures shall comply  
31 with local fire code requirements.

1 (d) Proposed public roads and major above ground utility lines shall be  
2 located 150 feet or more from existing oil and gas wells and production facilities.

3 iii. Setbacks/Location of Proposed Buildings, Platted Residential Lots, Sports  
4 Fields and Playgrounds from Plugged and Abandoned or Dry and Abandoned Wells.

5 (a) Proposed occupied buildings or additions, sports fields or  
6 playgrounds shall be located 150 feet or more, or the maximum distance  
7 practicable as determined by the City, from existing plugged and abandoned or  
8 dry and abandoned oil and gas wells.

9 (b) Proposed unoccupied buildings shall be located 50 feet or more, or  
10 the maximum distance practicable as determined by the City, from existing  
11 plugged and abandoned or dry and abandoned wells.

12 (c) No proposed residential lots shall include any portion of plugged  
13 and abandoned or dry and abandoned oil and gas wells.

14 iv. Visual Mitigation.

15 (a) Analysis.

16 Applications for all oil and gas facilities may be required to  
17 include a visual impact analysis. The analysis, if required, shall include  
18 photographic simulations of the site from nearby public rights-of-way and  
19 locations as determined by the development services manager or designee  
20 and proposed impact mitigation measures as indicated below. The  
21 development services manager or designee will determine the appropriate  
22 land use(s) from which a photographic simulation of the site shall be  
23 provided based upon topography, existing vegetative and/or structural  
24 screening, and the linear distance from the proposed oil and gas facility to  
25 the respective land use(s).

26 (b) Mitigation.

27 (1) Methods for appropriate visual impact mitigation include,  
28 but are not limited to, use of low profile tanks, facility painting, vegetative  
29 or structural screening, berming, or minor relocation of the facility to a  
30 less visible location on the respective site.

1 (2) On-site relocation may be necessary where the proposed  
2 facility would cause visual impacts to natural ridgelines, rock  
3 outcroppings, or other distinct geologic formations, provided relocation  
4 does not adversely impact the well spacing requirements of the COGCC or  
5 the ability of the oil and gas well operator to develop the resource.

6 (3) Where the painting of a facility or any structural screening  
7 (i.e., fence or wall) is required as a method of impact mitigation, such  
8 facility and screening shall be painted a uniform, non-contrasting, non-  
9 reflective color tone. The facility or structural screening paint color shall  
10 be matched to the land, not the sky, and shall be slightly darker than the  
11 adjacent landscape.

12 v. Noise

13 (a) Minimum standard.

14 Sound emission levels and mitigation, at a minimum shall be in  
15 accordance with the standards as adopted and amended by COGCC.

16 (b) Recommended standard.

17 (1) Sound emission levels shall be in accordance with the  
18 standards as adopted and amended by COGCC.

19 (2) The operator shall provide additional noise mitigation that  
20 may be required by the City. In determining such additional noise  
21 mitigation, specific site characteristics shall be considered, including, but  
22 not limited to, the following:

23 (i) Nature and proximity of adjacent development  
24 (design, location, type);

25 (ii) Prevailing weather patterns, including wind  
26 directions;

27 (iii) Vegetative cover on or adjacent to the site or  
28 topography.

29 (3) Further, based upon the specific site characteristics, the  
30 nature of the proposed activity, and its proximity to surrounding  
31 development, and type and intensity of the noise emitted, additional noise

1 abatement measures above and beyond those required by the COGCC may  
2 be required by the City. The level of required mitigation may increase  
3 with the proximity of the facility to existing residences and platted  
4 subdivision lots and/or the level of noise emitted by the facility. One or  
5 more of the following additional noise abatement measures shall be  
6 provided by the operator if requested by the City:

7 (i) Acoustically insulated housing or covers enclosing  
8 any motor or engine;

9 (ii) Screening of the site or noise-emitting equipment  
10 by a wall or landscaping;

11 (iii) Solid wall of acoustically insulating material  
12 surrounding all or part of the facility;

13 (iv) A noise management plan specifying the hours of  
14 maximum noise and the type frequency, and level of noise emitted;

15 (v) Use of electric-power engines and motors, and  
16 pumping systems; and/or

17 (vi) Construction of buildings or other enclosures may  
18 be required where facilities create noise and visual impacts that  
19 cannot otherwise be mitigated because of proximity, density,  
20 and/or intensity of adjacent land use.

21 vi. Vibration.

22 All mechanized equipment associated with oil and gas wells and  
23 production facilities shall be anchored so as to minimize transmission of vibration  
24 through the ground according to COGCC rules.

25 vii. Lighting.

26 All on-site lighting used in the construction of the well and its  
27 appurtenances shall comply with the COGCC Rule 803. All permanent lighting  
28 fixtures installed on the site shall comply with the City of Longmont lighting  
29 standards found in Section 15.05.140, Outdoor Lighting.

30 viii. Water Protection.

1 Rivers, streams, reservoirs, irrigation ditches, groundwater, wetlands and  
2 other water bodies are considered important water systems for the City. The value  
3 of both surface and ground water are significant and the City finds that protection  
4 of water resources is of primary importance, and must be adequately addressed by  
5 any applicant for an oil and gas facility permit.

6 (a) Oil and gas well operations shall not adversely affect the quality or  
7 quantity of surface or subsurface waters. If the COGCC designates a water body  
8 as part of a public water system, oil and gas well operations shall be consistent  
9 with COGCC Rule 317.B Public Water System Protection.

10 (b) Oil and gas well operations shall not adversely affect the water  
11 quality, quantity or water pressure of any public or private water wells.

12 ix. Setbacks to Water Bodies.

13 (a) Minimum standard.

14 Oil and gas well operations and facilities and operations shall  
15 comply with setback requirements for river/stream corridors and riparian  
16 areas, and wetlands under Section 15.05.020(E). If the water body is  
17 associated with a designated outside activity area, the setback from the  
18 water body shall be consistent with the setback for the outside activity  
19 area. If the water body is classified as part of a public water system, oil  
20 and gas well operations shall be consistent with COGCC Rule 317.B  
21 Public Water System Protection.

22 (b) Recommended standard.

23 Oil and gas well operations and facilities shall be located 300 feet  
24 or more, or the maximum distance practicable as determined by the City,  
25 from the normal high water mark of any water body. If the water body is  
26 associated with a designated outside activity area, the setback from the  
27 water body shall be consistent with the setback for the outside activity  
28 area. If the COGCC designates the water body as part of a public water  
29 system, oil and gas well operations shall be consistent with COGCC Rule  
30 317.B Public Water System Protection.

31 x. Water Quality Testing and Monitoring.

1 (a) The applicant shall comply with COGCC water well testing and  
2 water-bearing formation protection procedures and requirements.

3 (b) If the City determines that additional water quality testing or  
4 monitoring is required, the applicant shall submit a water quality monitoring plan  
5 to the City for review and approval.

6 (c) The plan will outline a monitoring program to establish a baseline  
7 for and monitor water quality conditions and pollutants in surface or groundwater  
8 that could be impacted by production of oil or natural gas from any well in an  
9 adjacent single or consolidated well site. The plan, at a minimum, will include the  
10 following:

11 (1) The type and number of wells needed to establish baseline  
12 groundwater quality upgradient and downgradient of the proposed oil and  
13 gas operations, including depth, materials of construction and location of  
14 wells on and around the site;

15 (2) The constituents to be sampled for, taking into account  
16 State of Colorado groundwater standards and any materials used in the oil  
17 and gas operations that could affect groundwater;

18 (3) The type and frequency of samples to be collected and  
19 analyzed before operations start, during operations and after operations  
20 have been completed;

21 (4) The analytical methods and reporting levels to be used;

22 (5) The proposed frequency of reporting results to the City and  
23 COGCC.

24 (d) The plan shall be based on hydrologic studies or equivalent  
25 information showing the subsurface conditions and mobility of the groundwater  
26 aquifer(s) that will be affected by the oil and gas operations. The plan shall be  
27 prepared by an engineer registered in the State of Colorado with experience in  
28 groundwater monitoring and subsurface condition investigations.

29 (e) The procedures and provisions in the approved plan shall be  
30 implemented by the oil and gas well operators prior to any construction or  
31 operations on the site. Oil and gas well operators shall fund the development and

1 implementation of the water quality monitoring plan and program for the duration  
2 of operations on the site and for a minimum of five (5) years following  
3 completion of operations and abandonment of the well(s). All monitoring records  
4 related to the program shall be provided to the City as soon as they are available  
5 to the operator.

6 xi. Waste and Wastewater Disposal & Closed Loop/Pitless System.

7 (a) Minimum Standard.

8 All water, waste, chemicals, fluids, solutions or other solid  
9 materials or liquid substances produced or discharged by the operation of  
10 the oil and gas well's facilities shall be treated and disposed of in  
11 accordance with all applicable rules and regulations of the governmental  
12 authorities having jurisdiction over such matters.

13 (b) Recommended Standard.

14 (1) No pits, production, reserve, waste, or otherwise, shall be  
15 constructed or maintained on the site and any produced water or waste and  
16 chemicals, fluids, hydrocarbons, fracturing solutions or other solid  
17 materials or liquid substances of any kind shall not be discharged on the  
18 site and shall be discharged and held only in a "closed loop system"  
19 comprised of sealed storage tanks, commonly used for such purposes in  
20 the industry, which contents shall be promptly removed from the site and  
21 disposed of off of the site at a licensed disposal site, in accordance with  
22 COGCC or other applicable rules and regulations.

23 (2) Drilling or operation of any waste water or other injection  
24 or disposal wells is prohibited. Except to the extent that materials are  
25 injected into a well as part of normal and ordinary drilling, completion and  
26 production operations, an operator shall not inject or re-inject any fluid,  
27 water, waste, fracking material, chemical or toxic product into any well.

28 xii. Production Site Containment.

29 Berms or other containment devices shall be constructed around crude oil  
30 condensate, or produced water and waste storage tanks and shall enclose an area  
31 sufficient to contain and provide secondary containment for 150 percent of the

1 largest single tank. Berms or other secondary containment devices shall be  
2 sufficiently impervious to contain all spilled or released material. No more than  
3 two storage tanks shall be located within a single berm in high density areas. All  
4 berms and containment devices shall be maintained in good condition. No  
5 potential ignition sources shall be allowed inside the secondary containment area.

6 xiii. Spill, Release, Discharge.

7 The operator shall implement best management practices in compliance  
8 with applicable state and federal laws to avoid and minimize the spill, release or  
9 discharge of any pollutants, contaminants, chemicals, solid wastes, or industrial,  
10 toxic or hazardous substances or wastes at, on, in, under, or near the site. Any  
11 such spill, release or discharge, including without limitation, of oil, gas, grease,  
12 solvents, or hydrocarbons that occurs at, on, in, under, or near the site shall be  
13 remediated by the operator and notice provided by the operator in compliance  
14 with applicable state and federal laws, rules and policies.

15 xiv. Stormwater Management.

16 The construction and operation of oil and gas wells and production  
17 equipment, including access roads and storage areas for equipment and materials,  
18 shall meet all stormwater management and pollution prevention requirements of  
19 the Colorado Department of Public Health and Environment and any applicable  
20 requirements of LMC Chapter 14.26.

21 xv. Pipeline and Gathering Systems.

22 The design, construction, cover, and reclamation of all pipelines and  
23 gathering lines for oil and gas operations shall be subject to the COGCC rules.  
24 The alignment location of any approved pipeline or gathering system shall be  
25 recorded against the respective property in the records of the County Clerk and  
26 Recorder. The location of any pipelines and gathering lines which are proposed  
27 for abandonment shall also be recorded against the respective property in the  
28 records of the County Clerk and Recorder upon abandonment.

29 xvi. Air Quality.

1 (a) Air emissions from oil and gas well facilities and operations shall  
2 be, at a minimum, in compliance with the permit and control provisions of the  
3 Colorado Air Quality Control Program, Title 25, Section 7, C.R.S.

4 (b) The operator shall make reasonable efforts to minimize methane  
5 emissions by using all feasible "green completion" techniques, pursuant to  
6 COGCC Rules Section 805(3) and the installation of "low bleed" pneumatic  
7 instrumentation and closed loop systems.

8 (c) To the maximum extent practicable, all fossil fuel powered engines  
9 used on site shall employ the latest emission-reduction technologies.

10 (d) The use of electric-power engines and motors, and pumping  
11 systems are recommended to reduce airborne emissions wherever practical given  
12 an oil and gas well facility's proximity to available electric transmission lines.

13 xvii. Odor/Dust Containment.

14 Oil and gas facilities and equipment shall be operated in such a manner  
15 that odors and dust do not constitute a nuisance or hazard to public health,  
16 safety, welfare, and the environment, including compliance with COGCC Rules  
17 section 805.b.(1) and LMC Section 15.05.160(D) regarding use of best available  
18 technologies to control odor.

19 xviii. Wildlife and Habitat.

20 Oil and gas facilities shall comply with federal and state requirements  
21 regarding the protection of wildlife and habitat, including the COGCC wildlife  
22 resource protection rules, and the provisions of LMC Section 15.05.030, "Habitat  
23 and Species Protection". The applicant shall implement such procedures as  
24 recommended by the Colorado Division of Wildlife after consultation with the  
25 City Natural Resources staff.

26 xix. Reclamation, Re-vegetation and Well Abandonment.

27 (a) Site Vegetation Analysis.

28 Applications for oil and gas well facilities shall include an analysis  
29 of the existing vegetation on the site to establish a baseline for re-  
30 vegetation upon abandonment of the facility or upon final reclamation of  
31 the site. The analysis shall include a written description of the species,

1 character, and density of existing vegetation on the site and a summary of  
2 the potential impacts to vegetation as a result of the proposed operation.

3 (b) Re-vegetation.

4 Applications for oil and gas facilities shall include any COGCC  
5 accepted interim and final reclamation procedures and consultation with  
6 City Natural Resources staff regarding site specific re-vegetation plan  
7 recommendations.

8 (c) Well Abandonment.

9 Operators shall comply with COGCC rules regarding well  
10 abandonment. Upon the plugging and abandonment of a well, the operator  
11 shall provide surveyed coordinates of the abandoned well and a physical  
12 marker of the well location.

13 xix. Transportation Impacts, Road and Access.

14 (a) Transportation Impact Study.

15 (1) Applications for oil and gas well facilities and operations  
16 may be required, as determined by the City, to include a transportation  
17 impact study, which shall clearly identify and distinguish the impacts to  
18 City roads and bridges related to facility construction, operations, and  
19 ongoing new traffic generation from other impacts. Transportation impact  
20 studies shall be prepared in accordance with the City standards  
21 requirements or other guidelines as provided by the City engineer. The  
22 process for mitigation of transportation impacts typically will include a  
23 plan for traffic control, evidence of the receipt of all necessary permits,  
24 ongoing roadway maintenance, and improving or reconstructing City  
25 roads as necessary, including providing financial assurance.

26 (2) A traffic control plan shall be prepared for each phase of  
27 operations where City roads will be utilized for transportation of materials  
28 in support of site construction and/or operations.

29 (3) In the event that public road improvements are required to  
30 accommodate an oil and gas well facility, engineered drawings prepared  
31 by a Colorado licensed civil engineer shall be approved prior to permitting

1 work in the right-of-way. Such drawings shall conform to City standards.  
2 Financial assurance shall be required for the construction or reconstruction  
3 of all public roads.

4 (b) Maintenance.

5 In the event that the activities of an operator cause any City  
6 roadway to become substandard, the City may require the operator to  
7 provide ongoing maintenance of the applicable substandard City roadway.  
8 Such maintenance may include dust control measures and roadway  
9 improvements such as graveling, shouldering, and/or paving as determined  
10 in the Transportation Impact Study.

11 (c) Site Access.

12 Any access to a property from a City street requires a City-issued  
13 access permit. Permits are revocable upon issuance of a stop work order or  
14 if other permit violations occur. The permitting and construction of site  
15 accesses shall comply with the City design standards.

16 (d) Private Access Roads.

17 For private access roads connecting oil and gas well facilities with  
18 a public street or state highway, the applicant shall provide written  
19 documentation as part of the application demonstrating that it has the legal  
20 right to use such road(s) for the purpose of accessing the facilities. All  
21 private roads used to access oil and gas well facilities shall be graded for  
22 appropriate drainage, and surfaced and maintained to provide adequate  
23 access for oil and gas operation vehicles and emergency vehicles. The  
24 operator shall comply with City standards regarding vehicle tracking and  
25 dust mitigation. The operator shall also enter into an agreement with the  
26 private road owner regarding maintenance and reimbursement for  
27 damages.

28 (e) State Highway Access.

29 If access is directly to a state highway, the applicant must have an  
30 approved State Highway Access Permit for the proposed facility.

31 xx. Signs.

1 Oil and gas well facilities shall have signage consistent with the COGCC  
2 rules. In addition, each well site and production site shall have posted in a  
3 conspicuous place a legible sign of not less than three square feet and not more  
4 than six square feet bearing the current name of the operator, a current phone  
5 number including area code, where the operator may be reached at all times, and  
6 the name or number of the lease and the number of the well printed thereon. The  
7 sign shall warn of safety hazards to the public and shall be maintained on the  
8 premises from the time materials are delivered for drilling purposes until the well  
9 site and production site is abandoned.

10  
11 x. Definitions.

12 (a) For purposes of these oil and gas well regulations only, the following  
13 words shall have the following definitions:

14 *Act* means the Oil and Gas Conservation Act of the State of Colorado.

15 *Accessory Facilities* means all of the equipment, buildings, structures, and  
16 improvements associated with or required for the operation of a well site, pipeline, or  
17 compressor facility. Ancillary facilities include, but are not limited to, roads, well pads,  
18 tank batteries, combustion equipment and exclude gathering lines.

19 *Best Management Practices (BMPs)* are practices that are designed to prevent or  
20 reduce impacts caused by oil and gas operations to air, water, soil, or biological  
21 resources, and to minimize adverse impacts to public health, safety and welfare,  
22 including the environment and wildlife resources.

23 *Centralized Exploration and Production (E&P) Waste Management Facility*  
24 means a facility, other than a commercial disposal facility regulated by the Colorado  
25 Department of Public Health and Environment, that (1) is either used exclusively by one  
26 owner or operator or used by more than one operator under an operating agreement; and  
27 (2) is operated for a period greater than three (3) years; and (3) receives for collection,  
28 treatment, temporary storage, and/or disposal produced water, drilling fluids, completion  
29 fluids, and any other exempt E&P wastes as defined by the COGCC Rules that are  
30 generated from two or more production units or areas or from a set of commonly owned  
31 or operated leases. This definition includes oil-field naturally occurring radioactive

1 materials (NORM) related storage, decontamination, treatment, or disposal. This  
2 definition excludes a facility that is permitted in accordance with COGCC Rule 903  
3 pursuant to COGCC Rule 902.e.

4 *Commercial Disposal Well Facility* means a facility whose primary objective is  
5 disposal of Class II waste from a third party for financial profit.

6 *COGCC* means the Colorado Oil and Gas Conservation Commission.

7 *Completion* - An oil well shall be considered completed when the first new oil is  
8 produced through well head equipment into lease tanks from the ultimate producing  
9 interval after the production string has been run. A gas well shall be considered  
10 completed when the well is capable of producing gas through wellhead equipment from  
11 the ultimate producing zone after the production string has been run. A dry hole shall be  
12 considered completed when all provisions of plugging are complied with as set out in  
13 these rules. Any well not previously defined as an oil or gas well, shall be considered  
14 completed ninety (90) days after reaching total depth. If approved by the COGCC, a well  
15 that requires extensive testing shall be considered completed when the drilling rig is  
16 released or six months after reaching total depth, whichever is later.

17 *Dedicated Injection Well* means any well as defined under 40 C.F.R. §144.5 B,  
18 1992 Edition, (adopted by the U.S. Environmental Protection Agency) used for the  
19 exclusive purpose of injecting fluids or gas from the surface. The definition of a  
20 dedicated injection well does not include gas storage wells.

21 *Designated Agent* means the designated representative of any oil and gas well  
22 operator.

23 *Designated Outside Activity Areas* means as defined in COGCC rules.

24 *Exploration and Production Waste (E&P Waste)* means those wastes associated  
25 with operations to locate or remove oil or gas from the ground or to remove impurities  
26 from such substances and which are uniquely associated with and intrinsic to oil and gas  
27 exploration, development, or production operations that are exempt from regulation under  
28 Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 USC Sections  
29 6921, et seq. For natural gas, primary field operations include those production-related  
30 activities at or near the well head and at the gas plant (regardless of whether or not the  
31 gas plant is at or near the wellhead)but prior to transport of the natural gas from the gas

1 plant to market. In addition, uniquely associated wastes derived from the production  
2 stream along the gas plant feeder pipelines are considered E&P wastes, even if a change  
3 of custody in the natural gas has occurred between the wellhead and the gas plant. In  
4 addition, wastes uniquely associated with the operations to recover natural gas from  
5 underground storage fields are considered to be E&P Wastes.

6 *Flowlines* mean those segments of pipe from the wellhead downstream through  
7 the production facilities ending at: in the case of gas lines, the gas metering equipment; or  
8 in the case of oil lines the oil loading point or Lease Automatic Custody Transfer (LACT)  
9 unit; or in the case of water lines, the water loading point, the point of discharge to a pit,  
10 the injection wellhead, or the permitted surface water discharge point.

11 *Gathering Line* means a pipeline and equipment described below that transports  
12 gas from a production facility (ordinarily commencing downstream of the final  
13 production separator at the inlet flange of the custody transfer meter) to a natural gas  
14 processing plant or transmission line or main. The term “gathering line” includes valves,  
15 metering equipment, communication equipment cathodic protection facilities, and pig  
16 launchers and receivers, but does not include dehydrators, treaters, tanks separators, or  
17 compressors located downstream of the final production facilities and upstream of the  
18 natural gas processing plants, transmission lines, or main lines.

19 *Green Completion Practices* mean those practices intended to reduce emissions of  
20 salable gas and condensate vapors during cleanout and flowback operations prior to the  
21 well being placed on production and thereafter as applicable.

22 *Groundwater* means subsurface waters in a zone of saturation.

23 *Inactive Well* means any shut-in well from which no production has been sold for  
24 a period of twelve (12) consecutive months; any well which has been temporarily  
25 abandoned for a period of (6) consecutive months; or, any injection well which has not  
26 been utilized for a period of twelve (12) consecutive months.

27 *Local Government Designee (LGD)* means the office designated to receive, on  
28 behalf of the local government, copies of all documents required to be filed with the local  
29 government designee pursuant to these rules.

30 *Mineral Estate Owner* means the owner or lessee of minerals located under a  
31 surface estate that are subject to an application for development.

1            *Multi-well Site* means a common well pad from which multiple wells may be  
2 drilled to various bottom hole locations.

3            *Oil* means crude petroleum oil and any other hydrocarbons, regardless of  
4 gravities, which are produced at the well in liquid form by ordinary production methods,  
5 and which are not the result of condensation of gas before or after it leaves the reservoir.

6            *Oil and Gas* means oil or gas or both oil and gas.

7            *Oil and Gas Well* means a hole drilled into the earth for the purpose of exploring  
8 for or extracting oil, gas, or other hydrocarbon substances.

9            *Oil and Gas Well Facility* means equipment or improvements used or installed at  
10 an oil and gas well location for the exploration, production, withdrawal, gathering,  
11 treatment, or processing of oil or natural gas.

12           *Oil and Gas Well Location* means a definable area where an operator has  
13 disturbed or intends to disturb the land surface in order to locate an oil and gas well  
14 facility.

15           *Oil and Gas Well Operations* means exploration for oil and gas, including the  
16 conduct of seismic operations and the drilling of test bores; the siting; drilling; deepening,  
17 recompletion, reworking, or abandonment of an oil and gas well, or gas storage well;  
18 production operations related to any such well including the installation of flowlines and  
19 gathering systems; the generation, transportation, storage, treatment,; and any  
20 construction, site preparation, or reclamation activities associated with such operations.

21           *Operating Plan* means a general description of a facility identifying purpose, use,  
22 typical staffing pattern, equipment description and location, access routes, seasonal or  
23 periodic considerations, routine hours of operating, source of services and infrastructure,  
24 and any other information related to regular functioning of that facility.

25           *Operator* means any person who exercises the right to control the conduct of oil  
26 and gas operations.

27           *Owner* means any person with a working interest ownership in the oil and gas or  
28 leasehold interest therein.

29           *Pit* means a subsurface earthen excavation (lined or unlined), or open top tank,  
30 used for oil or gas exploration or production purposes for retaining or storing substances

1 associated with the drilling or operation of oil and gas wells. Pits may include drilling  
2 pits, production pits, reserve pits and special purpose pits as defined in COGCC Rules

3 *Plugging and Abandonment* means the cementing of a well, the removal of its  
4 associated production facilities, the removal or abandonment in-place of its flowline, and  
5 the remediation and reclamation of the wellsite.

6 *Pollution* means man-made or man-induced contamination or other degradation of  
7 the physical, chemical, biological, or radiological integrity of air, water, soil, or  
8 biological resource.

9 *Production Facilities* mean all storage, separation, treating, dehydration, artificial  
10 lift, power supply, compression, pumping, metering, monitoring, flowline, and other  
11 equipment directly associated with oil or gas wells.

12 *Production Site* means that surface area immediately surrounding proposed or  
13 existing production equipment, or other accessory equipment necessary for oil and gas  
14 production activities, exclusive of transmission and gathering pipelines.

15 *Public Water System* means those systems designated by the COGCC. These  
16 systems provide to the public water for human consumption through pipes or other  
17 constructed conveyances, if such systems have at least fifteen (15) service connections or  
18 regularly serve an average of at least twenty-five (25) individuals daily at least sixty (60)  
19 days out of the year. Such definition includes:

20 (i) Any collection, treatment, storage, and distribution facilities under control  
21 off the operator of such system and used primarily in connection with such system.

22 (ii) Any collection or pretreatment storage facilities not under such control,  
23 which are used primarily in connection with such system.

24 The definition of "Public Water System" for purposes of Rule 317B does not  
25 include any "special irrigation district," as defined in Colorado Primary Drinking Water  
26 Regulations (5 C.C.R. 1003.1).

27 *Reclamation* means the process of returning or restoring the surface of disturbed  
28 land as nearly as practicable to its condition prior to the commencement of oil and gas  
29 operations or to landowner specifications with an approved variance under COGCC Rule  
30 502.b.

1            *Remediation* means the process of reducing the concentration of a contaminant or  
2 contaminants in water or soil to the extent necessary to ensure compliance with the  
3 concentration levels in COGCC rules and other applicable ground water standards and  
4 classifications.

5            *Seismic Operations* means all activities associated with acquisition of seismic data  
6 including but not limited to surveying, shothole drilling, recording, shothole plugging and  
7 reclamation.

8            *Sensitive Area* means an area vulnerable to potential significant adverse  
9 groundwater impacts, due to factors such as the presence of shallow groundwater or  
10 pathways for communication with deeper groundwater; proximity to surface water,  
11 including lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, and  
12 wetlands. Additionally, areas classified for domestic use by the Water Quality Control  
13 Commission, local (water supply) wellhead protection areas, areas within 1/8 mile of a  
14 domestic water well, areas within ¼ mile of a public water well, ground water basins  
15 designated by the Colorado Ground Water Commission, and surface water supply areas  
16 are sensitive areas.

17            *Sidetracking* means entering the same well head from the surface, but not  
18 necessarily following the same well bore, throughout its subsurface extent when  
19 deviation from such well bore is necessary to reach the objective depth because of an  
20 engineering problem.

21            *Spill* means any unauthorized sudden discharge of E&P waste to the environment.

22            *Subsurface Disposal Facility* means a facility or system for disposing of water or  
23 other oil field wastes into a subsurface reservoir or reservoirs.

24            *Surface Water Supply Area* means the classified water supply segments within  
25 five (5) stream miles upstream of a surface water intake on a classified water supply  
26 segment. Surface Water Supply Areas shall be identified on the Public Water Supply  
27 Area Map or through use of the Public Water System Surface Water Supply Area  
28 Applicability Determination Tool described in COGCC Rule 317B.b.

29            *Tank* shall mean a stationary vessel that is used to contain fluids, constructed of  
30 non-earthen materials (e.g. concrete, steel, plastic) that provide structural support.

1           *Treatment facilities* means any plant, equipment or other works used for the  
2 purposes of treating, separating or stabilizing any substance produced from a well.

3           *Twinning* means the drilling of a well within a radius of fifty feet from an existing  
4 well bore when the well cannot be drilled to the objective depth or produced because of  
5 an engineering problem, such as a collapsed casing or formation damage.

6           *Water Bodies* mean reservoirs, lakes, perennial or seasonally flowing rivers,  
7 streams, creeks, springs, irrigation ditches, aquifers, and wetlands.

8           *Waters of the State* mean any and all surface and subsurface waters which are  
9 contained in or flow in or through this state, but does not include waters in sewage  
10 systems, waters in treatment works of disposal systems, water in potable water  
11 distribution systems, and all water withdrawn for use until use and treatment have been  
12 completed. Waters of the state include, but are not limited to, all streams, lakes, ponds,  
13 impounding reservoirs, wetlands, watercourses, waterways, wells, springs, irrigation  
14 ditches or canals, drainage systems, and all other bodies or accumulations of water,  
15 surface and underground, natural or artificial, public or private, situated wholly or partly  
16 within or bordering upon the State.

17           *Well* means an oil or gas well for purposes of exploration and production.

18           *Well Site* means the areas that are directly disturbed during the drilling and  
19 subsequent operation of, or affected by production facilities directly associated with, any  
20 oil or gas well or injection well and its associated well pad.

21           (b) All terms used in this section that are defined in the Act or in COGCC  
22 rules and are not otherwise defined in Chapter 15.10 of this development code shall be  
23 defined as provided in the Act.

24           (c) All other words used in this section shall be given their usual customary  
25 and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas  
26 industry, shall be given that meaning which is generally accepted in the oil and gas  
27 industry.

28  
29 Section 3

30           The Council amends §§15.04.010 only of the Longmont Municipal Code, by adding  
31 italicized material and deleting stricken material to read as shown on the attached Exhibit 1.

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Section 4

The Council amends § 15.05.010 of the Longmont Municipal Code, by adding italicized material and deleting stricken material only, to read as follows:

- ...
- B. Residential zoning districts – Density and dimensional standards.
  - ...
  - 2. Special standards.
    - ...
    - h. Setbacks/location from existing and abandoned oil and gas wells and facilities. Please see section 15.04.020(B)(32)(w)(ii) and (iii) regarding setbacks/location of buildings and structures from existing and abandoned oil and gas wells and facilities.*
    - ...
- C. Commercial, industrial, mixed use and public zoning districts – Density, intensity, and dimensional standards, Table 15.05-B
  - ...
  - 2. Special standards.
    - ...
    - f. Setbacks/location from existing and abandoned oil and gas wells and facilities. Please see section 15.04.020(B)(32)(w)(ii) and (iii) regarding setbacks/location of buildings and structures from existing and abandoned oil and gas wells and facilities.*
    - ...

Section 5

The Council amends § 15.07.050 of the Longmont Municipal Code, by adding italicized material and deleting stricken material only, to read as follows:

- ...
- 15.07.50. Subdivision design and improvements.
  - ...



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Section 7

The Council amends Appendix B of Title 15 of the Longmont Municipal Code, by adding italicized material and deleting stricken material to read as shown on the attached Exhibit 2.

Section 8

To the extent only that they conflict with this ordinance, the Council repeals any conflicting ordinances or parts of ordinances. The provisions of this ordinance are severable, and invalidity of any part shall not affect the validity or effectiveness of the rest of this ordinance.

Introduced this 8th day of May, 2012.

Passed and adopted this 17th day of July, 2012.



Dennis F. Coombs  
MAYOR

ATTEST:

Valeria R. Skott  
CITY CLERK

NOTICE: THE COUNCIL WILL HOLD A PUBLIC HEARING ON THIS ORDINANCE AT 7:00 P.M. ON THE 22ND DAY OF MAY, 2012, IN THE LONGMONT COUNCIL CHAMBERS.

APPROVED AS TO FORM:

Eugene Mei  
CITY ATTORNEY

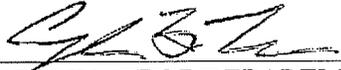
7/19/12  
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Laura Manno  
PROOF READ

7-19-12  
DATE

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ORIGINATING DEPARTMENT

7/19/12  
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TABLE 15.04-A: TABLE OF PRINCIPAL USES

P = Permitted Use C = Conditional Use L = Limited Use Blank Cell = Prohibited Use

USE CLASSIFICATION & SPECIFIC PRINCIPAL USES	ZONING DISTRICT																Additional Regulations (Apply in All Districts Unless Otherwise Stated)				
	E1	E2	R1	R2	R3	MH	RLE	RMD	MD-O	C	CR	CBD	BLI	MI	GI	P		A	MU	RP	
Medium industrial uses Majority of use occurs indoor													L/C	L	P					P	24; Operational impacts associated with noise, odors, light, vibration, etc. are confined to the zoning district in which the use is located or are adequately mitigated. BLI: Limited use review for indoor use only except for storage meeting accessory use standards. Conditional use review for uses with additional outdoor activities. Not allowed in MU district overlay
Heavy industrial uses Use may occur indoor or outdoor															C					C	24; Operational impacts associated with noise, odors, light, vibration, etc. are confined to the zoning district in which the use is located or are adequately mitigated. Not allowed in MU district overlay

TABLE 15.04-A: TABLE OF PRINCIPAL USES

P = Permitted Use C = Conditional Use L = Limited Use Blank Cell = Prohibited Use

USE CLASSIFICATION & SPECIFIC PRINCIPAL USES	ZONING DISTRICT																		Additional Regulations (Apply in All Districts Unless Otherwise Stated)	
	E1	E2	R1	R2	R3	MH	RLE	RMD	MD-O	C	CR	OB	BLI	MI	GI	P	A	MU		RP
Oil and gas well operations and facilities	C	C	C	C	C	C	C	C	C	L/C		L/C	32; Refer to section 15.04.020.B.32.c.iii regarding use restrictions; Refer to section 15.04.020.B.32.g regarding review process; Not allowed in MU district overlay							
...																				

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EXHIBIT 2

APPENDIX B. SUBMITTAL REQUIREMENTS FOR DEVELOPMENT APPLICATIONS

2. ~~Table 2:~~ Submittal requirements for applications for major developments.

a. Table 2: Information to be submitted as application package to planning and development services division (number of copies shall be specified in the pre-application conference).

~~a.b.~~ Oil and Gas *Well Operations and Facilities*: Additional Submittal Requirements. In addition to the conditional use application ~~package~~ requirements in Tables 2, 3 and 4 below, proposed oil and gas *well operations and facilities* subject to the use regulations in §15.04.020.B.32, "Oil and Gas *Well Operations and Facilities*," shall include the additional submittal requirements stated in Table 8 of this Appendix, below.

3. Submittal requirements for applications for minor developments.

a. Table 5: Application ~~Package~~ Requirements for ~~Applications for~~ Minor Developments.

b. *Oil and Gas Well Operations and Facilities*: Additional Submittal Requirements. In addition to the limited use application requirements in Tables 5, 6 and 7 below, proposed oil and gas *well operations and facilities* subject to the use regulations in §15.04.020.B.32, "*Oil and Gas Well Operations and Facilities*," shall include the additional submittal requirements stated in Table 8 of this Appendix, below.

4. Additional Submittal Requirements for ~~Conditional Use Review of~~ Oil and Gas *Well Operations and Facilities*. In addition to the conditional use application ~~package~~ requirements in Tables 2, 3 and 4 above or the limited use application requirements in Tables 5, 6 and 7 above, proposed oil and gas *well operations and facilities* subject to the

1 use regulations in §15.04.020.B.32, "Oil and Gas *Well Operations and Facilities*," shall include the submittal  
2 requirements stated in Table 8 below.

3  
4 TABLE 8  
5 ADDITIONAL SUBMITTAL REQUIREMENTS FOR ~~CONDITIONAL USE~~ REVIEW OF OIL AND GAS *WELL*  
6 *OPERATIONS AND FACILITIES*  
7

8 General Submission Requirements:

- 9 1. The *applicant and operator's name, and address, phone and fax numbers, and email addresses* ~~and copies of~~  
10 ~~applicable OGCC forms 1 and 2.~~
- 11 ~~2. An operating plan.~~
- 12 ~~2.A listing of all permits or approvals obtained or yet to be obtained from state or federal agencies other than OGCC.~~
- 13 3. *A written description of compliance with the requirements and standards in §15.04.020.B.32.*
- 14 4. *The following items consistent with the requirements and standards in §15.04.020.B.32:*
- 15 a. *Emergency response plan;*
  - 16 b. *Cultural resource plan, as applicable;*
  - 17 c. *Operation plan;*
  - 18 d. *Visual mitigation analysis, as applicable;*
  - 19 e. *Noise mitigation, as applicable;*
  - 20 f. *Lighting plan;*
  - 21 g. *Water quality monitoring plan, as applicable;*
  - 22 h. *Site vegetation analysis;*

1                   i. *Habitat protection plan, as applicable*

2                   j. *Transportation impact study, traffic control plan, and access plan.*

3 ~~4. An emergency response plan which includes, but is not limited to, a listing of local telephone numbers of the public~~  
4 ~~and private entities and individuals to be notified in the event of an emergency, the location of the well, the location~~  
5 ~~of drilling equipment and related facilities and structures, and provisions to be made for access by emergency~~  
6 ~~response entities.~~

7 ~~5. A schedule of drilling and anticipated completion events related to the proposed well.~~

8 ~~6. An access plan indicating proposed equipment routes and loading information.~~

9 ~~7. Drainage and erosion control plans for on site and off site drainage.~~

10 ~~8.5. Graphic representations, preferably a representative including photographs, photographs or pictorial drawing, of the~~  
11 ~~types of equipment to be used during drilling, completion, maintenance, or abandonment operations, as applicable.~~

12 *6. Any other reasonable or pertinent information deemed necessary by the City for the application review or*  
13 *compliance with the requirements and standards in §15.04.020.B.32.*

14  
15 Vicinity Map Requirements:

16 The Applicant shall include a *scaled* vicinity map *with aerial imagery* that shows all of the following:

17 1. ~~The location of all existing bodies of water and watercourses, including direction of water flow. This information~~  
18 ~~shall be submitted on United States Geological Service (USGS) 7.5 minute series, assessor base maps which~~  
19 ~~indicate topographic detail and show all existing bodies of water and watercourses with a physically defined~~  
20 ~~channel within a 1,000 foot radius one mile or greater of the proposed well(s) or a map of equal quality and~~  
21 ~~information.~~

1 ~~4.2.~~ The location of existing *and abandoned* oil and gas wells as reflected in COGCC records. ~~This information shall~~  
2 ~~include any and all wells, including abandoned wells, within a 1,000-foot radius one mile or greater of the proposed~~  
3 ~~well(s) location for the well.~~

4 ~~4.3.~~ The location of proposed wells, sites ~~and proposed production sites~~ *facilities and access roads*. ~~The information to~~  
5 ~~be submitted shall be that contained on OGCC form 2. The information shall also include the parcel tax~~  
6 ~~identification number of the property on which the well site and production site is to be located.~~

7  
8 Site Plan Requirements:

9 The Applicant shall submit a ~~conditional use site plan~~ that, in addition to the requirements in ~~Table 2~~ *for conditional use*  
10 *site plans or limited use site plans above*, includes the following elements:

11 1. The location of the proposed well ~~site~~ *operations and production facilities* ~~site~~ including well(s), proposed twinning  
12 locations, motors, *compressors*, tank battery, separators and treaters, production ~~pit~~ *equipment*, transmission and  
13 gathering pipelines and other ~~accessory equipment~~ *ancillary facilities* to be used during the drilling, maintenance  
14 and operation of the proposed well. The site plan shall identify all proposed access ways, and storage facilities  
15 associated with the well ~~site~~ *operations and production facilities* ~~site~~ depicted, and shall contain a description and  
16 location of proposed landscaping, ~~intended color of paint for storage tanks and other permanent structures, fencing~~  
17 ~~and berming for the site.~~

18 ~~4.2.~~ All existing physical features, including *water bodies*, drainage ways, floodplains, roads and rights-of-way within  
19 ~~1,000 feet~~ *one half mile or greater of a proposed well site operations or and production site facilities*. The site plan  
20 shall also depict existing subdivision boundaries, existing buildings or structures, property lines, public and private  
21 utility easements of record and utility facilities and improvements within ~~400 feet~~ *one half mile or greater of the*  
22 *proposed well site operations or production site facilities*.

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3. *Demonstration of compliance with applicable requirements and standards in §15.04.020.B.32 for oil and gas well operations and facilities.*

~~3.4. The Planning Director/Development Services Manager may waive one or more of the items listed as submission requirements if they are not applicable given the location of the well site/operations or production site/facilities. (See §15.02.040.Q., "Submittal Requirements.") The Planning Director may also require from the Applicant any other reasonable and pertinent information related to the submission requirements deemed necessary for the review of the conditional use permit.~~

**From:** [KCampbell@nobleenergyinc.com](mailto:KCampbell@nobleenergyinc.com)  
**To:** [Boulder County Board of Commissioners](#)  
**Cc:** [RLeo@nobleenergyinc.com](mailto:RLeo@nobleenergyinc.com); [JEkstrom@nobleenergyinc.com](mailto:JEkstrom@nobleenergyinc.com)  
**Subject:** Noble Response to Boulder County Planning Commission  
**Date:** Wednesday, October 17, 2012 11:24:57 AM  
**Attachments:** [BCPC 10.17.12.pdf](#)

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Dear Planning Commissioners:

Attached hereto is Noble Energy, Inc.'s correspondence regarding Boulder County's proposed Oil and Gas Regulations.

**Keely Campbell**  
Sr. Administrative Assistant  
Legal  
direct: 303.228.4356  
fax: 303.228.4293  
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October 17, 2012

Via Email: [commissioners@bouldercounty.org](mailto:commissioners@bouldercounty.org)  
Boulder County Planning Commission  
Boulder County Courthouse, Third Floor  
1325 Pearl Street  
Boulder, CO 80302

Dear Planning Commissioners:

On behalf of Noble Energy, Inc. (“Noble”), please accept the observations and comments set forth herein regarding the revised draft of Boulder County’s proposed Oil and Gas Regulations (“Proposed Regulations”) published on October 10, 2012. Noble appreciates Boulder County’s invitation to provide feedback on the Proposed Regulations and hopes this letter will serve to promote constructive dialogue between Boulder County and Noble.

Noble is a leading independent energy company with offices and mineral development operations in Colorado, including significant oil and gas interests in Boulder County that it seeks to develop in a responsible and cooperative manner. As a matter of course, Noble uses the latest technologies to protect the environment and reduce surface disturbance including closed loop drilling systems (*i.e.* no surface pits), the latest horizontal drilling methods, and increased setbacks from environmentally sensitive areas.

Noble understands the concerns of Boulder County regarding oil and gas development within its boundaries and recognizes its desire to manage that oil and gas development. Noble has endeavored to participate actively with Boulder County throughout this brief rulemaking process and has conducted a tour for Boulder County staff members of several of Noble’s drilling facilities in Colorado. When afforded the opportunity, Noble has been present at and participated in study sessions with the Boulder County Planning Commission staff and hearings before the Boulder County Planning Commissioners, and representatives of Noble will be present at the October 17 hearing. In sum, Noble has sought to promote collaboration between industry, Boulder County and the state in developing the regulations that will be workable and beneficial for all stakeholders. Notwithstanding these efforts, for the reasons described below, Noble has significant concerns about both the substance of the Proposed Regulations and process by which they have been prepared, promulgated and (it is anticipated) adopted.

With regard to substance, as Boulder County is well aware, oil and gas operators like Noble are already heavily regulated for health, safety, and industrial compliance by the Colorado Oil and Gas Conservation Commission (“COGCC”). Indeed, the COGCC is the arbiter of some of the strictest statewide oil and gas regulations in the nation. As noted by other members of industry, in numerous instances, the Proposed Regulations seek to regulate areas explicitly under the purview of and expressly addressed by COGCC regulations. In *Bowen/Edwards v. La Plata*

*County*, 830 P.2d 1045 (Colo. 1992), the Colorado Supreme Court recognized that regulation of numerous oil and gas operations falls under the sole jurisdiction of the state including regulation of setback distances, well spacing, waste prevention and environmental regulation. The Proposed Regulations purport to regulate many of these activities that are, pursuant to *Bowen/Edwards*, expressly preempted by the state regulation.

Regarding oil and gas regulations not expressly preempted, local government regulations were otherwise allowed in *Bowen/Edwards*, so long as the local government's regulations could be harmonized with the state's interest in these regulations. As the Colorado Supreme Court explained, "to the extent that such operational conflicts might exist, the county regulations must yield to the state regulations." Numerous requirements that are set forth in the Proposed Regulations create operational conflict with the rules of the COGCC. In fact, Boulder County seemingly admits the existence of these operational conflicts and purports to create a means to address them under the terms of the Proposed Regulations by providing for an administrative review process through the Board of County Commissioners. In addition to being unlawful, since Noble has a right to direct judicial review of regulations that exceed Boulder County's jurisdiction or authority, it is scarcely an efficient process to adopt a conflicting regulatory scheme and then invite administrative challenges.

Boulder County has solicited comments by Noble and other industry stakeholders but, as a practical matter, has not afforded adequate opportunity for stakeholders to meaningfully participate in the development of the rules or to conduct the kind of thorough review that is required of such sweeping regulations. The comment process is further complicated by the fact that the COGCC is in the process of strengthening its regulations with a specific eye many of the same activities purportedly addressed by the Proposed Regulations, *e.g.*, setback distances and groundwater sampling protocols among others. It is virtually impossible to simultaneously evaluate and compare two sets of proposed regulations being modified and proceeding on a parallel track and timeframe.

While many of the foregoing concerns about operational conflicts and preemption have been voiced previously, Boulder County has revised and strengthened the Proposed Regulations without otherwise acknowledging these issues. In response to concerns about the compressed time frame, Boulder County seemingly remains committed to a fast-track adoption of the Proposed Regulations. In short, while Noble would welcome an opportunity to engage in meaningful dialogue regarding the Proposed Regulations, this hasty process has not afforded sufficient time or due process to conduct the requisite detailed review the Proposed Regulations from an operational perspective or with regard to conflicts with the COGCC and other regulatory schemes, nor, apparently, is there interest on the part of Boulder County to allow time for such dialogue.

For the reasons described above, Noble respectfully requests that the Boulder County Planning Commission take note of Noble's overall concern with and objection to the Proposed Regulations and defer approval of the Proposed Regulations until the COGCC has been able to fully develop their own revised regulations and thereafter until all stakeholders are afforded an opportunity to participate meaningfully in the process of refining the regulations. Noble further requests that Boulder County carefully review and address the operational conflicts between its Proposed Regulations and give deference to the preemptive status of the COGCC regulations. Attempting to regulate the same activities that are regulated by the COGCC will not benefit Boulder County. It will, instead, create undue and improper burdens on legitimate oil and gas development.

Sincerely,



Daniel E. Kelly  
Vice President - Wattenberg Operations

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