

DRAFT

ELBERT COUNTY ZONING REGULATIONS

Part II

Section 26

Oil and/or Gas Operations – Special Use Permit

Section 26.1 - Authority & Enforcement

A. AUTHORITY

This Section is adopted pursuant to C.R.S. §§ 29-20-11 et seq., 34-60-101 et seq., and 30-28-101 et seq. This Section is not intended to supersede State law, regulations, and rules pertaining to oil and/or gas development, but rather is meant to supplement those requirements, where appropriate.

B. PURPOSE

This Section of the Elbert County Zoning Regulations is enacted to protect and promote the health, safety, values, convenience, order, prosperity and general welfare of the present and future residents of Elbert County. It is Elbert County's intent by enacting this Section to facilitate the development of oil and gas resources within the unincorporated area of Elbert County, while mitigating potential conflicts between existing, as well as planned land uses. It is recognized that under State law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other.

Owners of sub-surface mineral interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their sub-surface mineral interests, subject to compliance with the provisions of this Section and any other applicable statutory and regulatory requirements.

Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner and to have adverse land use impacts upon their property, associated with the development of the mineral estate, mitigated through compliance with this Section and any applicable statutory or regulatory requirements. Should it be established by competent evidence that a proposed Minor or Major Oil and/or Gas Facility cannot be operated in compliance with this Section; County land use approval for such a facility shall be denied, subject to the provisions of Section 26.1 I., Waiver and Section 26.1 J, Operational Conflicts Waiver.

C. APPLICABILITY

This Section shall apply to lands within the unincorporated area of Elbert County. It shall be unlawful to construct, install, or cause to be constructed or installed (including site grading), any oil and/or gas facility within the unincorporated portions of Elbert County unless approval has been granted pursuant to this Section by the Director of Community & Development Services (CDS) or the Board of County Commissioners (BOCC). Such approval shall be recognized through the Special Use Review process as outlined in this Section and the issuance of an “Oil and/or Gas Development Permit”.

This Section, upon adoption by the BOCC, shall replace and supersede any reference to “oil and gas drilling operations” referenced in the current *Elbert County Zoning Regulations*, for the individual zone districts or as referenced in “Uses Permitted by Special Review”, *Part II, Section 18*. This Section is to be added as *Part II, Section 26 of the Elbert County Zoning Regulations*, with the “Definitions” section (currently *Part II, Section 26*), becoming *Part II, Section 27 of the Elbert County Zoning Regulations*.

D. EFFECTIVE DATE

This Section shall become effective on the date specified in the adopting Resolution No. _____ by the BOCC in accordance with State law. This Section shall apply to all oil and gas facilities for which construction has not commenced as of the effective date of this Section.

E. NON-CONFORMING USES

1. An oil and/or gas facility use which was in place as of the effective date of this Section shall be allowed to continue so long as the use is not abandoned for an uninterrupted period of twelve (12) months or more. For wells, abandonment shall mean plugging and abandonment of a well, temporary abandonment of a well, or shut-in of a well, as defined by the Colorado Oil and Gas Conservation Commission (COGCC).
2. Normal or routine maintenance of a facility described in subsection (E)(1) above will not subject the facility to this Section 26. “Normal or routine maintenance” does not include any modification of the facility that would lead to an increase in noise associated with the facility’s operations, change the visual impact of the facility, or, for a period greater than six (6) months, impinge upon a surface area beyond that originally impacted by the facility. Modification of a facility, other than normal or routine maintenance shall not be allowed without the required approval of a Special Use Permit for a Minor or Major Oil and/or Gas Facility, pursuant to this Section, as appropriate.
3. Nothing herein shall be construed as a regulatory requirement to close or abandon an existing oil and/or gas facility.

F. RIGHT TO ENTER

CDS personnel, the County Engineer, and personnel of the Office of Emergency Management are authorized by this Section to enter and inspect a property, during normal business hours, without notice. If entry is denied, the County shall have the authority to revoke any approved permits and applications, discontinue application processing, or to obtain an order from a court of competent jurisdiction to obtain entry.

G. FALSE OR INACCURATE INFORMATION

The BOCC may revoke approval of a Special Use Permit for an oil and/or gas facility if false or inaccurate information was provided during the permitting process. Prior to such action, the Applicant, CDS personnel, and the public shall be provided with an opportunity to be heard at a public meeting before the BOCC, at least ten (10) days after CDS provides written notice to the Applicant. If the BOCC then determines that the Applicant provided information or documentation upon which approval was based, which the Applicant, its authorized representatives, and employees knew, or reasonably should have known, was false, misleading, deceptive, or inaccurate, the BOCC may revoke the Special Use Permit approval or impose additional conditions.

H. PERMIT EXPIRATION

Approval of a Minor or Major Oil and/or Gas Facility, or an approved modification thereof, shall expire if construction of the facility or the approved modification has not commenced within two (2) years of final County approval. No extensions of this deadline will be granted.

I. WAIVERS

The BOCC or the CDS Director, as appropriate, may grant a waiver for one or more of the requirements of this Section. When, in the opinion of the CDS Director, the impacts of the requested waiver warrant input from the public, the Director may choose to require a public hearing for the waiver request. No waiver shall be granted however, when, in the opinion of the CDS Director, the Applicant has not provided reasonable and adequate evidence justifying the request presented, or when the request is determined to be based upon a self-imposed hardship, which can be rectified by means other than a waiver. If a request for a waiver is denied by the CDS Director, the Applicant may appeal the decision within thirty (30) days of the decision of the Director. The BOCC will consider the appeal at the next available scheduled public hearing date.

J. OPERATIONAL CONFLICTS WAIVER

A waiver of one or more provisions of this Section shall be granted if the operational effect of this Section actually conflict with State statutes, rules, or regulations. All applications where a waiver due to operational conflicts is requested shall be processed as a Major Oil & Gas Facility and heard in a noticed public hearing by the Planning Commission and the Board of County

Commissioners. The Applicant shall have the burden of proving an actual, material, irreconcilable operational conflict between the requirements of this Section and those of State statute or regulation in the context of the proposed facility. For purposes of this Section, an operational conflict exists where an actual application of a County condition of approval or requirement prevents compliance with State statutory or regulatory requirements and where County requirements would prevent the development, production, or utilization of the oil and/or gas resources. If the BOCC determines that compliance with the requirements of these Regulations results in an operational conflict with State statutes or regulations, a waiver to this section shall be granted, in whole or part, but only to the extent necessary to remedy the operational conflict. The BOCC may condition the approval of a waiver as necessary to protect the public health, safety, and welfare. If the Applicant, or any person entitled to receive notice of the original application for the oil and/or gas facility, wishes to seek judicial review of a final BOCCs' decision on the operational conflict waiver request, they may appeal to the district court pursuant to C.R.C.P. Rule 106(a)4.

K. WITHDRAWAL OF AN APPLICATION

A request to withdraw an application shall be submitted, in writing, to CDS. Withdrawal of the application shall preclude reactivation. There will be no refund of application fees and/or professional review fees, when an application is withdrawn. The submittal of a new application and processing fee will be required in order to pursue a proposed facility that has been previously withdrawn. An application shall be considered withdrawn if the Applicant fails to respond to a request by the County for information/clarification within ninety (90) days of such request.

L. APPEALS

An appeal to any decision made by the Director of CDS shall be heard by the BOCC within thirty (30) days of the decision by the Director. An appeal of a final action by the BOCC on any applications for Oil and/or Gas Facilities shall be to the Elbert County District Court.

M. PERMIT REVOCATION

In the event any oil and/or gas facility is not brought into compliance with its approved permit standards and conditions, the County may schedule a hearing to consider revocation of the permit. All such hearings shall be held before the Planning Commission and the BOCC, in a public hearing setting. Notice shall be given to surrounding property owners and the permit holder in the same manner as the original permit review and approval. At the conclusion of the public hearing, the BOCC shall determine whether: 1.) the failure of compliance is so serious as to require revocation of the permit and resolve the same; or 2.) the permit holder may be given the opportunity to bring the facility into compliance with this Section and any existing and new conditions of approval. The action of the BOCC shall be memorialized in writing and recorded by the Elbert County Clerk and Recorder. This document shall serve as the final decision of the County, subject to review by the District Court.

N. VIOLATIONS; ENFORCEMENT; CIVIL ACTION

In the event any well pad, oil and/or gas facility, or any related structure is erected, constructed, re-constructed, altered or used, or any land is used, in violation of any provision of this Section and prior to a Special Use Permit approval for an oil and/or gas facility, the Attorney to the BOCC, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, re-construction, alteration, or use, or upon approval of the BOCC, may refer the matter to the District Attorney for prosecution of violation of County and/or State law.

O. LOCAL GOVERNMENT DESIGNEE

The rules of the COGCC establish a process for providing local governments with information on certain state applications pertaining to the location of roads, production facilities, and oil and gas well sites. The COGCC rules further allow local governments to appoint a Local Government Designee (LGD), who will be notified by the COGCC of all oil and gas activity within the jurisdiction and will be provided information regarding such activities. By enacting this Section, the BOCC hereby acknowledges that the LGD for Elbert County shall be a person so designated by the BOCC. The LGD for Elbert County shall be authorized to provide consultation on behalf of Elbert County on any notifications received from the COGCC and that such consultation shall be based upon the requirements of this Section.

Section 26.2 – Application Review & Permit Processing

A. SPECIAL USE PERMIT APPLICATION

Approval of a Special Use Permit is required for all Minor and Major Oil and/or Gas Facilities in all zoning districts. Minor and Major Oil and/or Gas Facilities are differentiated as follows:

1. Minor Oil and/or Gas Facility
 - a. Well pad with 1 or more wells;
 - b. Intermediate lines from the wellhead;
 - c. Storage tanks;
 - d. Tank batteries;
 - e. Gathering flow lines;
 - f. Ancillary equipment – including, but not limited to: drip stations, vent stations, pigging facilities, chemical injection stations, and valve boxes;
 - g. Temporary storage and construction staging yards in place for less than 6 months;

- h. Seismographic or other exploratory testing.

The Director of CDS, at his/her sole discretion, is authorized to elevate any Special Use Permit application for a Minor Oil and /or Gas Facility for review by the Elbert County Planning Commission and for final action by the BOCC.

2. Major Oil and/or Gas Facility

- a. Any facility that consolidates, markets or transports production or production fluids from one or more Minor Oil and/or Gas Facilities;
- b. Storage and construction staging yards in place for longer than 6 months;
- c. Worker camps and related temporary living facilities for oil and gas crew members;
- d. Any oil and/or gas facility that does not meet the definition of a Minor Oil and/or Gas Facility.

Modifications to a permitted Major Oil and/or Gas Facility that would lead to an increase in noise associated with the facility's operations, change the visual impact of the facility, or, for a period greater than six (6) months, impinge upon a surface area beyond that originally impacted by the facility require the submittal of a new permit application. Modifications of such facilities that do not have such impacts do not require a new permit application but must be approved by CDS.

B. POLICY STATEMENT – MEMORANDUM OF UNDERSTANDING (for Minor Oil and/or Gas Facilities only)

It is Elbert County's intent to facilitate the development of oil and gas resources within the unincorporated area of Elbert County, while mitigating potential negative impacts to surrounding property owners and Elbert County citizens. It shall be Elbert County's policy to attempt to enter into a Memorandum of Understanding (MOU) with individual oil and gas production companies that are active within the County and are proposing a Minor Oil and/or Gas Facility, as defined above. The MOU will incorporate Best Management Practices (BMPs) for all proposed Minor Oil and/or Gas Facilities that the production company develops within Elbert County. No MOU will be effective unless approved by the BOCC at a public hearing. If the "standard" MOU is altered or amended, such alterations and /or amendments shall require approval by the BOCC at a public hearing. For those production companies that enter into a MOU with Elbert County, the permitting process will be administrative and based upon the application submitted, approved or denied by the Director of CDS.

For those oil and gas production companies that choose not to enter into a MOU with Elbert County; the requirements of Section "E", below, will apply.

C. PROCESSING OF A SPECIAL USE PERMIT APPLICATION FOR A MINOR OIL AND/OR GAS FACILITY (When the production company HAS an executed MOU with Elbert County)

1. Initial Meeting with CDS Staff

The applicant should schedule an initial meeting with CDS to discuss: the administrative MOU process versus the Special Use Permit process for oil and gas permitting in Elbert County; provide a copy of the Oil & Gas Development Permit Application form; provide the standard MOU; provide the checklist of BMPs to become “Addendum A” of the MOU; provide the standard Road Operations and Maintenance Agreement; provide a checklist of items required for the Pre-Application Meeting; provide a copy of this Section; and provide a copy of the fees associated with oil and gas permitting.

2. Pre-Application Meeting

Upon applicant submittal of the necessary items for a Pre-Application Meeting and payment of the fee, CDS will review the submittal items within five (5) business days of the submittal and schedule the Pre-Application Meeting at the next available date. Representatives of the Applicant, Elbert County staff and consultants, and the appropriate fire district will meet to discuss: the proposed facility and the standard BMPs to be included in the MOU (the Applicant can suggest other BMPs they are willing to include or discuss alternative methods of satisfying BMPs.); proposed haul routes; the Road Operations and Maintenance Agreement; proposed development timeline; the checklist of items required for the formal submittal; fees and any additional expenses related to the application review and processing. The fire district will discuss items required for to meet the applicable fire code and safe access to the site. After the Pre-Application Meeting, CDS will prepare copies of the standard MOU and Road Operations and Maintenance Agreement for the Applicant’s signature and notes from the Pre-Application Meeting.

3. Application and Submittal Items

The completed Oil & Gas Development Permit Application form, the appropriate fees, and items required from the checklist generated at the Pre-Application Meeting, will be reviewed for completeness within five (5) Elbert County business days (Monday through Thursday), of the submittal. In addition, an original, notarized signature copy of the MOU and the Road Maintenance Agreement will be included for consideration by the BOCC at their next available public hearing. The Applicant is responsible for sending a certified letter to surrounding property owners within one (1) mile of the proposed oil and/or gas facility within three (3) days of the application submittal.

4. Coordination with COGCC and Oil & Gas Development Permit Issuance

After approval of the MOU and Road Maintenance Agreement by the BOCC, CDS will provide an executed MOU to the COGCC, which is to be attached to COGCC’s Form 2

and/or Form 2A. Once the COGCC provides confirmation of the MOU via written correspondence (e-mail is acceptable), then the Minor Oil & Gas Development Permit will be issued by CDS and construction of the facility may begin.

D. MODIFICATIONS AND AMENDMENTS TO A PREVIOUSLY EXECUTED MEMORANDUM OF UNDERSTANDING

Any modification or amendment to an existing MOU must be approved by the BOCC. If the modification or amendment warrants, CDS may require review by the Planning Commission also. The party requiring such modifications/amendments will be responsible for sending a certified letter to surrounding property owners within one (1) mile of the proposed oil and/or gas facility(s), at least fourteen (14) days prior to the BOCC public hearing. The BOCC hearing date will be scheduled at the earliest possible date.

E. PROCESSING OF A SPECIAL USE PERMIT APPLICATION FOR A MINOR OIL AND/OR GAS FACILITY (When the production company does NOT have an executed MOU with Elbert County) & FOR A MAJOR OIL AND/OR GAS FACILITY

The Special Use Permit process for a Minor Oil & Gas Development Permit in Elbert County when the oil/gas production company chooses not to enter into a MOU with Elbert County, or for obtaining a Major Oil & Gas Development Permit is as follows:

1. Initial Meeting with CDS

The applicant shall schedule a meeting with CDS to discuss: the Special Use Permit process for permitting a Minor or Major Oil and Gas Facility in Elbert County; the Oil & Gas Development Permit Application form, the standard Road Operations and Maintenance Agreement, the checklist of items required for the Pre-Application Meeting, and the fees associated with oil and gas permitting.

2. Pre-Application Meeting

Upon submittal of the necessary items for a Pre-Application Meeting and payment of the Pre-Application Meeting fee, CDS will schedule the Pre-Application Meeting at the next available date. Representatives of the Applicant, Elbert County staff, and the appropriate fire district will meet to discuss: the proposed facility and discuss potential BMPs to be included as conditions of approval for the Special Use Permit; proposed haul routes; the standard Road Operations and Maintenance Agreement; the checklist of items required for the formal application submittal; fees and any additional expenses related to the application review and processing. The fire district will discuss items required for emergency services' review of the proposed facility. After the Pre-Application Meeting, CDS will prepare final copies of the standard Road Operations and Maintenance Agreement for the Applicant's signature and notes from the Pre-Application Meeting.

3. Community Meeting

The Applicant will arrange a date for the community meeting based upon input from CDS. Fourteen days prior to the community meeting, the applicant will send out notification letters by certified mail to property owners within one (1) mile of the proposed oil and/or gas facility. The Applicant will be responsible for conducting the meeting, with a representative from CDS in attendance to discuss the Special Use Permit process and to answer questions related to the permitting of the oil and/or gas facility.

4. Formal Application Submittal

After the required community meeting, the Applicant may file the items necessary for the formal Special Use Permit application. The Applicant shall provide a one-copy submittal for review by CDS before providing multiple copies for each referral agency. Once CDS reviews the one-copy submittal for completeness, and determines the necessary requirements have been satisfied, the Applicant may submit the formal application with the necessary number of copies for the various referral agencies. In addition to the required submittal items, the Applicant shall provide the application fee, the County Engineer review fees (to be placed in the County Engineer's escrow account), and any other fees for specialized outside consultants determined by CDS to be appropriate for sufficient review of the application.

5. Referral Agencies' Review and Comment

CDS will send the various County departments, State agencies, and other referral agencies copies of the application for review and comment. The County departments, State agencies, and referral agencies shall have twenty-one (21) days to review the proposal and provide CDS with their comments. Comments will be forwarded to the Applicant with the expectation that the Applicant will address items from the various referral agencies. Once all outstanding items have been sufficiently addressed by the Applicant, public hearing dates will be set for the Planning Commission and the BOCC.

6. Notification to Surrounding Property Owners and Publication for Public Hearing Dates

The Applicant is responsible for sending a certified letter to surrounding property owners within one (1) mile of the proposed oil and/or gas facility announcing the Special Use Permit public hearings before the Planning Commission and the BOCC. CDS may require that a sign(s) be posted on the subject property indicating the public hearing dates, in a location(s) determined by CDS. The public hearings dates will also be published in a newspaper of general circulation. All notifications must be completed at least thirty (30) days prior to the BOCC public hearing date. Public hearing dates will also be posted on Elbert County's webpage.

7. Planning Commission Public Hearing

The Planning Commission will consider the CDS staff report and presentation, the Applicant's presentation, and comments from the public regarding the proposed oil and/or gas facility. The Planning Commission will make its recommendation to the BOCC based upon the testimony given at the public hearing, compliance with the standards in this Section for oil and gas facilities, and mitigation of impacts to surrounding properties. The Planning Commission may recommend approval of the Special Use Permit, approval with conditions, or denial of the application.

8. Board of County Commissioners' Public Hearing

The BOCC will consider the Planning Commission's recommendation, the CDS staff report and presentation, the Applicant's presentation, and comments from the public regarding the proposed oil & gas facility. The BOCC will make its decision based upon the testimony given at the public hearing, compliance with the standards in this Section for oil and/or gas facilities, and mitigation of impacts to surrounding properties. The BOCC may approve the Special Use Permit, approve the Special Use Permit with conditions, or deny the Special Use Permit.

9. Completion of Conditions of Approval and Recordation Special Use Permit

The Applicant will coordinate with CDS to complete all conditions of approval imposed by the BOCC. Once all conditions of approval have been met and all fees have been paid, the Special Use Permit will be recorded by CDS and the Oil and Gas Development Permit will be issued by CDS.

F. PERFORMANCE STANDARDS

The following Performance Standards shall apply, where appropriate, to all oil and/or gas facilities within Elbert County, including those covered by MOU's:

1. Transportation Impact Analysis and Mitigation

- a. Purpose – To ensure that oil and/or gas production companies plan for and mitigate impacts to County roads and bridges that result from facility construction, facility operation, and related traffic generation. In order to protect the health, safety, and welfare of the existing and future residents of Elbert County, mitigation of potential transportation impacts by the permit holder shall be required. The mitigation of traffic impacts should include a plan for traffic control, on-going road maintenance, track mats, obtaining all necessary permits, and improving or reconstructing County roads as necessary.

- b. Traffic Impact Analysis – All oil and/or gas facilities, as appropriate, shall be required to provide a Transportation Impact Analysis, which shall clearly identify the potential impacts to County roads and bridges related to the facility's construction, operation, and traffic generation. Such analysis shall be prepared by a Colorado licensed transportation engineer in accordance with the Elbert County Construction Standards and Specifications Manual or other criteria as provided by the Public Works Department and/or the County Engineer.
- c. Traffic Control Plan – A Traffic Control Plan shall be prepared for each phase of construction activity where County roads and bridges will be utilized for the transportation of materials related to site construction and/or operations. The Traffic Control Plan shall include the following information:
1. Method for handling traffic
 2. Haul route plan and operations schedule
 3. Detour plan as necessary
 4. Existing road and bridge condition survey and photos
- d. Construction Drawings for Public Road Improvements – Should public road improvements be required to accommodate an oil and/or gas facility or its operation; construction drawings prepared by a Colorado licensed civil engineer shall be approved by the Public Works Department and/or the County Engineer prior to an Oil and/or Gas Development permit is issued. All drawings shall be prepared in conformance with the Elbert County Construction Standards and Specification Manual. Adequate financial assurances shall be required for the construction or re-construction of all public roads or improvements. The following permits are typically required prior to construction of public improvements:
1. Construction Permit
 2. Right-of-Way Work Permit
 3. Erosion and Storm Water Quality Control Permit
 4. Roadway Use Permit for Overweight Vehicles
- e. Maintenance – Should the activities of a facility operator cause a County road to become damaged, the County may require the operator to provide on-going maintenance to correct the road damage. On-going maintenance may include:

roadway improvements such as graveling, improving shoulders, and/or paving as determined by the Traffic Impact Analysis.

- f. Dust Control Measures – The facility operator will be responsible for mitigating dust during all phases of operational activity. Produced water cannot be used for dust mitigation on the site or on roadways.
- g. Site Access – An access permit issued by the Public Works Department is required to access a property from a County road. Access routes shall, to the extent feasible, minimize visual impact on the public, taking into account the needs of the surface owner. Should the access be from a State highway or municipal roadway, the Applicant shall secure an access permit from the appropriate entity. Access permits are revocable upon issuance of a stop work order or if other permit violations occur. The permitting and construction of site accesses shall comply with the Elbert County Construction Standards and Specifications Manual.
- h. Financial Assurance Required – The Transportation Impact Analysis, along with the associated construction drawings and a cost estimate prepared by a licensed Colorado civil engineer shall determine whether to require the operator to enter into a Road Maintenance Agreement with the County or other applicable jurisdiction. Such Agreement shall be accompanied with an acceptable form of financial assurance.

2. Emergency Response Plan

- a. Oil and/or gas facility operators shall provide an Emergency Response and Spill Protection/Clean-Up Plan to the Elbert County Office of Emergency Management, the Elbert County Sheriff's Office, CDS, and the jurisdictional fire district. The plan shall at a minimum, consist of the following information:
 - 1. Name, address, and phone number, including 24-hour emergency numbers for at least two (2) persons responsible for emergency field operations.
 - 2. A written response plan for any potential emergencies that may be associated with the construction, drilling, completion, or operation of the facilities. This plan shall include, but not be limited to the following: explosions, fires, gas, chemical, water pipeline leaks or ruptures, spills, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents. This plan shall be coordinated with and approved by the Office of Emergency Management prior to beginning field operations.
 - 3. An as-built facilities map showing the name, location, and description of all minor and major facilities, including the size, type, and contents of all pipelines and tanks. To the extent allowed by law, the as-built facilities

map shall be held confidentially by the Elbert County Office of Emergency Management (OEM), and shall only be disclosed in the event of an emergency. To the extent allowed by law, the County OEM shall deny the right of inspection of the as-built facilities map to the public pursuant to C.R.S. 24-72-204(3)(a)(IV).

4. Provision of training, equipment and materials for fire and medical personnel.
5. The Applicant shall include copies of all applicable State and Federal permits (or applications in process for the same) needed for the proposed oil & gas facility, including COGCC Commission Forms 1, 2 & 2A.

3. Groundwater Baseline Sampling and Monitoring

- a. Groundwater baseline sampling and monitoring will be performed per the COGCC Rules, Section 609 – Statewide Groundwater Baseline Sampling and Monitoring. The Local Governmental Designee (LGD) for Elbert County will request from the Director of the COGCC that all analytical results and surveyed well locations be forwarded to the LGD. The LGD will post the results on the Elbert County website for public information.

4. Noxious Weed Management

- a. Oil and /or gas facility operators shall ensure that the Colorado Noxious Weed Act C.R.S. § 35-5-5 et. seq., be complied with. Oil and/or gas facility operators shall be responsible for on-going site and access road noxious weed control during construction and operation of the facility. The selection of a re-seeding mix and the method(s) for appropriate weed control shall be determined through documented consultation with the property owner, the Natural Resources Conservation Service (NRCS), and the Kiowa Conservation District, as applicable.

5. Control and Disposal of Produced Liquids

- a. On-site containment and disposal of water associated with oil and/or gas facilities shall be in accordance with applicable Federal, State and County requirements and all other provisions of this Section. No liquids may be disposed of on site or on roadways. Only closed-loop drilling systems shall be permitted in Elbert County.
- b. The Applicant shall incorporate on-site treatment of, and adequate on-site storage capacity for, produced and back-flow waters to reduce the volume of water used in the drilling process and to reduce truck volume on County roads. Except during drilling and completion, operators shall use reasonable efforts to transport

produced water by pipeline, to a central treatment location site or transport the produced water to a Colorado Department of Public Health and Environment (CDPHE) approved facility for disposal. The final disposition of produced water from any oil and/or gas operation shall be by the most environmentally beneficial method, based upon its relevant characteristics. The disposal method will be determined in consultation with the COGCC and the CDPHE, in accordance with relevant regulatory agency requirements and industry best management practices. Produced and back-flow liquids shall be removed from the County unless it is taken to an integrated recycling facility whose construction is approved pursuant to the requirement set forth in Elbert County Zoning Regulations. Disposal wells are permitted only as a Major Oil and/or Gas Facility, if included in an approved integrated recycling facility.

- c. Secondary containment shall be constructed of steel panels and installed around all tanks containing crude oil, condensate, or produced water; and shall be sufficient to contain the total volume of all tanks on site plus fifty percent (50%). Secondary containment structures shall be sufficiently impervious to contain discharged material.

6. Setbacks

Setbacks for Oil and/or Gas Facilities shall comply with COGCC Rule 603 – Statewide Location Requirements for Oil and Gas Facilities, Drilling, and Well Servicing Operations, a. Statewide Setbacks.

(Note: The following definitions will be added to the new Part II, Section 27 – “Definitions” portion of the Zoning Regulations.)

G. DEFINITIONS

The following word, terms and phrases, when used in these Regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning. Additional definitions are located in *Part II, Section 27* of the *Elbert County Zoning Regulations*. All other words, terms and phrases used in these Regulations shall be given their usual, customary and accepted meaning in the oil and gas industry.

Abandonment: The permanent abandonment of a well, based on the operator’s filing of abandonment with the Colorado Oil and Gas Conservation Commission (COGCC). Presumption of permanent abandonment of a “Major Oil and Gas Facility” shall be based upon non-use or non-operation for eighteen months without notification to the Director of Community & Development Services of the intent to resume operations under specified conditions.

Access Road: A road located on private property between the site on which an oil and gas facility is located and the roadway serving such a facility, constructed in accordance with the private road standards as specified in the *Elbert County Standards and Specification Manual*.

Applicant: That person, corporation or other legal entity possessing the legal right to develop the mineral resource or their “Authorized Representative” who applies for an “Oil and Gas Development Permit (OGDP)” from Elbert County.

Authorized Representative: One authorized to make binding representations on behalf of the Applicant.

Best Management Practices (BMPs): Established techniques used in conducting mineral extraction operations which eliminate or minimize adverse impacts to public health, the environment, wildlife and cattle, landowners, and natural resources; which enhance the value of natural and landowner resources; and which reduce conflicts. BMPs are intended to promote the best practices or solutions in the conduct of operations.

BOCC - Elbert County Board of County Commissioners.

CDS – Elbert County Community & Development Services Office

COGCC – Colorado Oil and Gas Conservation Commission

Elbert County Business Days – Monday through Thursday

LGD - The COGCC rules allow local governments to appoint a Local Government Designee (LGD), who will be notified by the COGCC of all oil and gas activity within the jurisdiction and will be provided information regarding such activities. The LGD shall be appointed by the Board of County Commissioners.

MOU – Memorandum of Understanding between oil and/or gas production companies and Elbert County memorializing Best Management Practices that have been agreed to by both parties.

Major Oil and/or Gas Facility - Any facility that consolidates, markets or transports production or production fluids from one or more minor facilities, and any Oil and Gas Facility that does not meet the definition of a Minor Oil & Gas Facility or any storage and construction staging yard in place for longer than six (6) months. All Major Oil & Gas Facilities must be processed as a Special Use Permit.

Minor Oil and/or Gas Facility - An individual well pad built with one or more wells and operated to produce liquid petroleum and/or natural gas including, associated equipment required for such production; intermediate lines which extend from the wellhead, storage tanks, tank batteries, gathering flow lines, and ancillary equipment including, but not limited to, drip stations, vent

stations, pigging facilities, chemical injection stations, and valve boxes. Seismographic or other exploratory testing will be processed as a Minor Oil and/or Gas Permit.

Oil and/or Gas Development Permit - A permit issued by Elbert County after the Applicant has successfully completed the Special Use Permit process for a Minor or Major Oil and/or Gas Facility. Issuance of an Oil and/or Gas Development Permit authorizes the Applicant to begin oil and gas production activities on the site.

Road Operations and Maintenance Agreement – The operator shall enter into a Road Operations and Maintenance Agreement with the County Public Works Department. The operator's obligation under the Road Operations and Maintenance Agreement are subject to the provisions of the Elbert County Construction Standards and Specification Manual. This Agreement will include, but is not limited to the following:

- a. Vehicle haul routes. Vehicle haul routes are prohibited in platted subdivisions.
- b. The construction, improvements, and maintenance of access routes to oil &/or gas facilities. Such access routes shall, to the extent feasible, minimize visual impact on the public, taking into account the needs of the surface owner.
- c. Roadway maintenance
- d. Offsite improvements, including but not limited to, turn lanes and traffic signals. Costs related to all necessary traffic and engineering studies, as well as the review thereof, are the responsibility of the Applicant.
- e. Overweight vehicles
- f. Dust suppression and mitigation
- g. Financial securities that insure performance and compliance with the Road Operations and Maintenance Agreement.

Transportation Impact Analysis – A study prepared by a certified transportation engineer report that identifies the potential impacts to County roads and bridges related to the oil and/or gas facility's construction, operation, and traffic generation. The mitigation of traffic impacts should include a plan for traffic control, on-going road maintenance, track mats, obtaining all necessary permits, and improving or re-constructing County roads as necessary.