

**DRAFT**

**ELBERT COUNTY ZONING REGULATIONS**

**Part II**

**Section 26**

**Oil and/or Gas Operations – Special Use Permit**

**Revised 3/21/13**

**Pink = Carolyn Red = Committee changes Blue = John Green = Tony Navy = Pete**

**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.<sup>[JM1]</sup>, and 30-28-101 et seq. This Section ~~is not intended to~~ does not 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 other 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. 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”. Any and all new, significantly modified, or amended Oil and Gas facilities must have an approved Oil & Gas Permit.

This Section, upon adoption by the Board of County Commissioners (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 does not cease for an uninterrupted period of twenty four (24) ~~months~~<sup>UM2</sup>. After that time, all associated auxiliary equipment must be removed and disposed of in accordance with COGCC and CDPHE regulations within 18 ~~months~~.
2. Normal or routine maintenance of a facility described in subsection (E)(1) above will not subject the facility to this Section 26 ~~with the exception of regulations relating to security locks, fencing, or other health and/or safety requirements~~. “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 twelve (12) 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. The addition of ~~production equipment at the well location or permanent facilities such as~~ pumping units or well head compressors are allowed as part of the original application, as long as the operator minimizes noise impacts through the use of mufflers and site impacts by painting or screening. Any complaints filed with the County, COGCC or CDPHE in response to these facility additions will be investigated [JM3] by CDS personnel or designee. (The struck language seems to put item 3 in direct conflict with 2 above. Perhaps striking the broader language will make these two items more compatible. This language was added to specifically address JB's complaint regarding the requirement for a new application to add a pump jack.) [I added this text in the event that the addition, which was not initially in place may cause a condition where nearby residents are impacted.]
4. 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 [JM4] a property, during normal business hours, provided County personnel are equipped with all Personal Protection Equipment (PPE) and comply with Operator's customary safety rules. The County shall use its best effort to provide 24 hours advanced notice to the Operator prior to an inspection provided, however, that in the event of an imminent threat to public health or safety or to the environment entry may be made without notice by first responders and/or appropriate authorities. If entry is not accommodated within 24 hours, 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 misleading, deceptive, 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, its authorized representatives, or employees, knowingly or recklessly provided information or documentation upon which approval was based, that 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. [JM5]

I. **WAIVERS**

The BOCC or the CDS Director, as appropriate, may grant a waiver for one or more of the requirements of this Section, [with the exception of Section H](#). A waiver may be granted for good cause shown. 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 or the BOCC, the Applicant has not provided reasonable and adequate evidence justifying the request, or when the request is determined to be based upon a self-imposed hardship, which can be rectified by means other than a waiver. It is understood that excessive complexity, operational risk, time required, or costs to perform, may all be reasons for requesting a waiver, which shall not be unnecessarily denied, should the request show that the safety (Do we want to include health and welfare?) or environmental protection of the county is not put at risk. 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. [\[I added the no exception for H because the section says no deadlines extension, so I didn't want a conflict between I and H.\]](#)

J. **OPERATIONAL CONFLICTS WAIVER**

A waiver of one or more provisions of this Section shall ~~shall~~ [may](#) <sup>[JM6]</sup> 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 heard in a noticed public hearing by the Board of County Commissioners. Notification shall be per Sec 26.2, E, 6. The Applicant shall present evidence of 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 actual application of a County condition of approval or regulation is inconsistent with state statutory or regulatory requirements and where such conflict would (1) materially increase the cost of a facility's construction or operation over and above the cost associated with state standards or (2) limit the development, production, or utilization of oil or gas resources in ways materially greater than those imposed by State regulation. 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 BOCC 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 on the issuance of a Special Use Permit 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**

If CDS determines that an oil and/or gas facility is not in compliance with its approved permit standards and conditions, the Director of CDS will provide the operator with a written notice which describes the nature of the noncompliance and gives the operator 10 days to present a written plan for correcting the problem. In the event the plan is unsatisfactory to CDS, or the operator fails to comply with the plan, 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 in accordance with Section (26)()(6).~~ 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 a further opportunity to bring the facility into compliance with this Section and any existing and new conditions of approval; ~~or~~ 3.) no further action is warranted. 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 require the violator to 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. [Would suggest we consider a legal statement that the removal or repair action is done at the sole cost of the violator.]

**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 and an Oil & Gas 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; intermediate lines from the wellhead, storage tanks, separators, or tank batteries,
  - b. Gathering lines as defined by COGCC
  - c. Flow lines as defined by COGCC
  - d. Ancillary <sup>JM7</sup>equipment – including, but not limited to: compressors, drip stations, vent stations, pigging facilities, chemical injection stations, valve boxes, electrified compressors and liquid pumps utilizing smaller than 250 BHP
  - e. Temporary storage and construction staging yards in place for less than 12 months.
  - f. Non-commercial field injection or disposal well that does not meet Section 26.2, (A)(2)(b)

Any conversion of an existing well to a water disposal well in an existing facility shall require a new application. If the actual use of the injection well is for the commercial disposal of produced water, then it is a Major Oil & Gas facility.

Modifications to a permitted Minor 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 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.

The Director of CDS may 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, if it is determined that **such** elevation is in the best interests of the health, welfare and safety of Elbert County residents.

2. Major Oil and/or Gas Facility

- a. Any facility that consolidates, markets or transports production **oil /gas** or production fluids from one or more Minor Oil and/or Gas Facilities;
- b. Any centralized treatment, recycling, **or water disposal facility, including associated water storage** and pipelines, provided, however, such facilities shall not include any conversion of an existing well to a water disposal well.
- c. **Storage and construction staging yards in place for longer than 6 months; (Do we need? Anything more than 12 is major anyway)(Agreed)**
- d. Worker camps and related temporary living facilities for oil and gas crew members;
- e. Any oil and/or gas facility that does not meet the definition of a Minor Oil and/or Gas Facility.
- f. Export or sales pipelines used to transfer oil or gas to 3<sup>rd</sup> party transportation pipelines or storage terminals

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.

3. Seismographic Testing

Any entity proposing to conduct seismic testing must first acquire a seismic testing permit.

4. Recompletion/Refracturing

Any recompletion to a new production interval, or re-fracturing, must first acquire a recompletion or re-fracturing permit

**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<sup>[JM8]</sup>, 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. **Any agreed upon BMP's within the MOU must be incorporated by the applicant into State permit forms 2 and 2A prior to the issuance of a County permit.** The standard MOU may be amended alternate language- on a case by case basis for a specific one site use, when there is a demonstrated need to accommodate site specific circumstances including, but not limited to, topography, geology, geography, reservoir management, historical site, location of surface waters and surface owners concerns. Such amendments must be approved by the BOCC at a public hearing.

Where an amendment is sought based on a claim that site specific circumstances require a reduction in the setback requirements of the standard MOU, any such amendment shall include provisions aimed at mitigating the impacts of the facility including, but not limited to noise, lighting, well protection and monitoring.

For those production companies that enter into an approved MOU with Elbert County, the permitting process will then be administrative and based upon the application submitted, approved or denied by the Director of CDS.

Once an MOU and agreed upon BMP's have been executed, these documents may apply to all the Operator's subsequent Oil and/or gas production facilities within Elbert County **except that any site specific amendments shall be applicable only to the site they were granted for.** An exception exists if the Director of CDS determines that differences in the characteristics of a subsequent facility or conditions at its proposed location require a modification of the MOU. In this case, the director may 1.) negotiate a modification of the MOU, **applicable only to the site specific facility** and present the modification to the BOCC for approval, or 2.) if such a modification is not agreed to, require the production company to apply for a new Special Use Permit in accordance with these regulations.

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 Applicant~~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<sup>[JM9]</sup>;
- receive a copy of the Oil & Gas Development Permit Application form;
- receive the standard MOU;
- receive the checklist of BMPs to become “Addendum A” of the MOU as determined by CDS Director;
- receive the standard Road Operations and Maintenance Agreement;
- receive a checklist of items required for the Pre-Application Meeting;
- receive a copy of this Section; and
- receive a copy of the **estimated** 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, **but no more than 10 days, (This group meets on tues mornings. We usually require 10 days for review by departments, 5 may not work)** 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 the Director of Community and Development Services has determined are required for the formal submittal; **estimated** fees and any additional expenses related to the application review and processing. The fire district will discuss items required to meet the applicable fire code and for 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) to ten (10) 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 regularly scheduled public hearing. The Applicant is responsible for sending a certified letter of notification to surrounding property owners within one (1) mile of the proposed oil and/or gas facility within three (3) [seems short – how about 5 days] days of the application submittal.

4. ~~Coordination with COGCC and Oil & Gas Development Permit Issuance~~ Tabled until we can check with COGCC

~~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 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 **Planning commission or** BOCC public hearing. The **BOCC** hearing dates will be scheduled at the earliest possible date, as agenda openings are available.

**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 **estimated** 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, but not more than 10 days following submittal acceptance. (Again, only Tues morning meetings, dept need time to review.) 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, as determined by CDS Director; estimated 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<sup>JM10</sup> 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 **Planning Commission 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. (no timeframe between PC and BOCC. s/b 21 days?)

8. Board of County Commissioners' Public Hearing

The BOCC will consider the Planning Commission's recommendations, 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 an MOU:

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 re-constructing 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 being 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 unless authorized by Commission Rule 907.c.(2).(D).<sup>[JM11]</sup>
- g. Open Water Storage Pits- It is the intent of the County that operators use closed-loop systems and water recycling or disposal for any Oil & Gas fluids emanating from a well activities in order to minimize or eliminate the need for open earthen pits. Any proposed open pits must be processed as a major application and is subject to the full notification and public hearing process.
- h. 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.
- i. 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 ~~by a an-acceptable~~ form of financial assurance acceptable to the County.

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 appropriate 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 unless authorized by Commission Rule 907.c.(2).(D).<sup>[JM12]</sup>. Only Closed-loop drilling systems ~~are preferred shall be permitted~~ in Elbert County. ~~No open pits will be included as part of a minor application.~~
- 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.~~<sup>[JM13]</sup> The final disposition of produced water from any oil and/or gas operation shall be conducted pursuant to applicable COGCC rules. ~~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. Disposal wells are permitted only as a Major Oil and/or Gas Facility, if included in an approved integrated recycling facility.~~<sup>[JM14]</sup>
- c. Secondary containment shall be constructed pursuant to applicable COGCC rules. ~~of steel panels or concrete and installed around and below (lined) all permanent storage tanks containing crude oil, condensate, or produced water; and shall be sufficient to contain the total volume of the largest tank on site plus fifty percent (50%). Secondary containment structures shall be lined and sufficiently impervious to contain discharged material.~~<sup>[JM15]</sup>

6. Setbacks



Setbacks for Oil and/or Gas Facilities shall comply with COGCC. Waivers to the State setback requirements of 500 feet may be granted by COGCC regulations.

When setbacks in excess of state requirements are included as part of an approved MOU, a waiver may be granted at the request of a surface owner<sup>[JM16]</sup>. In the case of an existing well, a waiver from setback requirements for new construction may be granted at the request of the surface owner. A waiver to setback requirements that are part of an approved MOU may only be granted within the surface owner's property boundaries.

7. Clustering of facilities

For minor oil and gas facilities, it is the County's objective to consolidate facilities whenever possible. Operators will cluster minor facilities whenever practicable. Clustering of multiple wells will encourage the development of underground infrastructure and provide visual mitigation against the proliferation of equipment pads. This provision **is intended** to provide protection to neighboring property values.

Exceptions to this objective may be granted when one or more of the following factors apply in a manner such that the clustering of wells is rendered impractical:

- Topographic characteristics of the site
- Natural resource constraints (e.g. wetlands)
- The location of utilities or similar services
- Demonstratively insurmountable technical issues related to the development or management of the mineral resource
- Other site conditions beyond the control of the applicant
- Demonstrable safety concerns

Nothing contained in this section shall be construed so as to require the closure or abandonment of any existing oil or gas well currently operating in accordance with COGCC requirements. [want to make sure County can require closure of existing wells that are not operating or not operating in accordance with law<sup>[JM17]</sup>].

*(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. All associated **auxillary** **JM18** equipment shall be removed from the site.

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 (BMP): 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

COMMERCIAL WELL - A Commercial well is defined as one used by more than one operator and involving a disposal fee or other compensation from one to **another** **JM19**.

Elbert County Business Days – Monday through Thursday

Flowlines – Shall mean those segments of pipe from the wellhead downstream through the production facilities ending at: in the case of gas lines, the gas metering equipment ;or in the case of oil lines the oil loading point or LACT unit: or in the case of water lines, the water loading point, the point of discharge to a pit, the injection wellhead, or the permitted surface water discharge point.

Gathering lines – Shall mean a pipeline and equipment described below that transports gas from a production facility (ordinarily commencing downstream of the final production separator at the inlet

flange of the custody transfer meter) to a natural gas processing plant or transmission line or main. The term “gathering line” includes valves, metering equipment, communication equipment, cathodic protection facilities, and pig launchers and receivers, but does not include dehydrators, treaters, tanks, separators, or compressors located downstream of the final production facilities and upstream of the natural gas processing plants, transmission lines, or main lines.

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 Applicant (e.g., oil and/or gas production companies) and Elbert County memorializing Best Management Practices that have been agreed to by both parties. [Text added in case applicant is not defined explicitly or solely as an O&G production company]

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. Any centralized [JM20] treatment, recycling, or water disposal facility, including water storage and pipelines, provided, however, such facilities shall not include any conversion of an existing well to a water disposal well.
- ~~e.~~
- c. Storage and construction staging yards in place for longer than 6 months;
- d. Worker camps and related temporary living facilities for oil and gas crew members;
- e. Any oil and/or gas facility that does not meet the definition of a Minor Oil and/or Gas Facility.
- f. Export or sales pipelines used to transfer oil or gas to 3<sup>rd</sup> party transportation pipelines or storage terminals

associated

Minor Oil and/or Gas Facility –

- a. Well pad with 1 or more wells; intermediate lines from the wellhead, storage tanks, separators, or tank batteries,
- b. Gathering lines as defined by COGCC

- c. Flow lines as defined by COGCC
- d. Ancillary equipment – including, but not limited to: compressors, drip stations, vent stations, pigging facilities, chemical injection stations, and valve boxes, electrified compressors and liquid pumps utilizing smaller than 250 BHP
- e. Temporary storage and construction staging yards in place for less than 6 12 months.
- f. Non-commercial field injection or disposal well that does not meet Section 26.2, (A)(2)(b)

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.

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