

CHAPTER 5 USE AND DIMENSIONAL STANDARDS

5.2.37. Oil and/or Gas Operations *(adopted 1/31/12, clarified 2/21/12 by Resolution 12-69)*

(A) General

(1) Purpose

The intent of this section is to facilitate the exploration and production of oil and/or gas resources within the unincorporated areas of the County in a responsible manner, which includes ensuring that potential land use and environmental conflicts will be avoided or appropriately mitigated. The following regulations are enacted in order to preserve the rights and privileges of surface and mineral estate owners and lessors, while ensuring the health, safety, and general welfare of the present and future residents of El Paso County and the preservation and protection of the environment and wildlife resources.

(2) Applicability

All oil and/or gas operations, including exploration and production activities, are subject to the requirements of this section. In the event that the provisions of this section conflict with any other provisions of the Code, this section shall supersede as it applies to oil and/or gas operations.

(3) 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. These standards are not intended to supersede state laws, regulations, and rules pertaining to oil and/or gas development, but rather are meant to supplement those requirements where appropriate.

(4) Waivers

(a) General

The Board of County Commissioners (BOCC) or the DSD Director may grant a waiver for one or more of the requirements of this section.

(5) Right to Enter

The empowerment of the DSD Director to enter and inspect a property is authorized under Section 11.1.4 of this Code. If entry is denied, the County shall have the authority to discontinue application processing, revoke approved permits and applications, or to obtain an order from a court of competent jurisdiction to obtain entry.

(6) Notice of Application and Public Hearing

Notice to surface property owners and affected residents of the County shall follow the provisions of the Procedures Manual pertaining to special use applications for oil and/or gas operations. At a minimum, written notice shall be provided by the applicant to any adjoining property owner at the time of special use application to the County. In addition, notice shall be provided by the County to any adjoining property owner a minimum of 14 days prior to a decision on an application by the DSD Director or a minimum of 14 days prior to a hearing on the application by the Planning Commission or the BoCC.

(7) Local Government Designee

(a) General

The COGCC rules establish a process for consultation with local governments on certain state applications pertaining to the location of roads, production facilities, and well sites. To facilitate this process, the COGCC rules allow local governments to appoint a Local Government Designee (LGD), to which copies of all applicable documents are sent by the COGCC for consultation on behalf of the local government.

(b) Consultation

By enacting the regulations of this section, the BoCC hereby acknowledges that the LGD for El Paso County shall be authorized to provide consultation on behalf of El Paso County on any notifications received from the COGCC and that such consultation shall be based upon the requirements of this section and the relevant provisions of the Procedures Manual.

(B) Definitions

The application of the following terms and associated definitions shall be limited to those applications submitted under this section of the Land Development Code (LDC). These terms and definitions do not modify, alter, or replace any other terms or definitions included within other sections of this Code, including, but not limited to, those terms and definitions contained within Chapter 1.

Oil and/or Gas Facility

Equipment or improvements used or installed at any location for the exploration, production, withdrawal, gathering, treatment, or processing of oil and/or natural gas.

Oil and/or Gas Operations

Exploration for oil and/or gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and/or gas well, underground

injection well, or gas storage well; production operations related to any such well including the installation of pipelines, flowlines, and gathering systems; any construction, site preparation, storage and/or staging, or reclamation activities associated with such operations; a centralized facility for oil and/or gas production, water injection, water transfer or recycling, or water pumping, and associated facilities; or any other related activity.

Operator

The person or entity who has the legal right to drill into and produce from a pool and to appropriate the oil or gas produced therefrom either for such operator or others.

Site

Any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of oil or gas is authorized pursuant to a lease agreement.

Surface Owner

The owner of the surface property on which the facility will be constructed or any owner of a surface estate within one mile of an oil and/or gas facility or within one-half (1/2) mile of the terminus of any directional well bore.

Wellhead

The equipment attached to the casing of an oil, gas, or injection well above the surface of the ground.

All other terms used in this article, which are not otherwise defined by this Code, shall be given their usual, customary, and accepted meaning.

(C) Application Review and Approval Process

(1) Required Applications

(a) Special Use Application

Approval of a special use application is required for oil and/or gas operations in all zoning districts.

(2) Processing of Applications for Oil and/or Gas Operations

(a) Special Use Applications for Oil and/or Gas Operations

Special use applications for oil and/or gas operations may be reviewed and approved administratively by the DSD Director. The DSD Director shall make a decision on a special use application within 30 days of the day that a complete application is submitted. The final decision on the application by the DSD Director shall be based upon a determination by the DSD

Director that all necessary information has been received, which may include receipt of any applicable waiver requests, and upon consultation with the Engineering Criteria Manual (ECM) Administrator and El Paso County Public Health (EPCPH). An appeal of any decision made by the DSD Director shall be heard by the Board of County Commissioners. The Director, at his or her sole discretion, is authorized to elevate any special use application for review by the Planning Commission and for final action by the BoCC. All complete special use applications, as determined by the DSD Director in consultation with the ECM Administrator and EPCPH, that have been elevated by the DSD Director for public hearing shall be heard by the BoCC within 30 days of the DSD Director's decision to elevate the application. An appeal of a final action by the BoCC on any applications for oil and/or gas operations shall be to the El Paso County District Court.

(b) Specific Procedural Requirements

The specific application submittal, review, notification, and final decision processes for special use applications for oil and/or gas operations shall follow the relevant provisions of this section and section P-AR-034-11 Oil and/or Gas Operations of the Procedures Manual.

(D) Specific Development and Performance Standards

(1) Transportation Impact Analysis and Mitigation

(a) Purpose

This section is meant to ensure that oil and/or gas facility operators plan, manage, and mitigate impacts to County roadways and bridges that result from facility construction, facility operation, and ongoing new traffic generation. In order to protect the health, safety, and welfare of the existing and future residents of El Paso County, mitigation of potential transportation impacts shall be required.

(b) Transportation Impact Study

Applications for all oil and/or gas operations may be required to include a transportation impact study, which shall clearly identify and distinguish the impacts to County roads and bridges related to facility construction, operations, and ongoing new traffic generation. All required studies shall be prepared in accordance with the Engineering Criteria Manual (ECM) or other guidelines as provided by the ECM Administrator. The process for mitigation of transportation impacts typically includes a plan for

traffic control, the receipt of all necessary permits, ongoing roadway maintenance, and improving or reconstructing County roads, including providing financial assurance.

(i) Traffic Control Plan Required

A traffic control plan shall be prepared for each phase of construction where County roads will be utilized for transportation of materials in support of site construction and/or operations. The plan shall include the following components:

- Method for Handling Traffic (MHT)
- Haul Route Plan
- Detour Plan
- Existing Conditions Survey

(ii) Construction Drawings Required

In the event that public road improvements are required to accommodate an oil and/or gas operation, drawings prepared by a Colorado licensed civil engineer shall be approved prior to permitting work in the right-of-way. Such drawing shall be in substantial conformance with the ECM, as determined by the ECM Administrator. Financial assurance shall be required for the construction or reconstruction of all public roads. The following permits are typically required prior to construction of public improvements:

- Construction Permit
- Work in the Right-of-Way Permit
- Erosion and Stormwater Quality Control Permit
- Special Transport Permit

(iii) Maintenance

In the event that the activities of a facility operator cause any roadway to become substandard, the County may require the operator to provide ongoing maintenance of the applicable substandard County roadways. Such maintenance may include dust control measures and roadway improvements such as graveling, shouldering, and/or paving as determined in the Transportation Impact Study.

- (iv) **Site Access**

Any access to a property from a County roadway requires a County-issued access permit. Access permits to the County road system are issued through either the DSD private driveway permit process or through the Public Services Department (PSD) temporary access permit process. Both 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 standards of the ECM.
- (v) **Financial Assurance Required**

The transportation impact study, along with the associated construction drawings and cost estimate, shall determine whether to require the operator to enter into an Oil and/or Gas Operations Impact Mitigation Agreement with the County and any other applicable jurisdiction. Such agreement shall be supported by an acceptable form of financial assurance, as outlined in this section under the Financial Assurance subsection.

(2) Emergency Response Plan

(a) General

All oil and/or gas facility operators shall provide an emergency response plan to the El Paso County Sheriff's Office, Fire Marshal, and the fire protection jurisdiction having authority. No application for oil and/or gas operations shall be considered complete or be approved until and unless the operator has provided such plan to the Sheriff's Office, Fire Marshal, and the fire protection jurisdiction having authority. The plan shall be filed with the Sheriff's Office, Fire Marshal, and the fire protection jurisdiction having authority and updated on an annual basis. Each annual update is to be provided for each calendar year by February 1 of the same year.

(b) Required Plan Content

The emergency response plan shall, at a minimum, consist of the following:

- (i) Name, address, and phone number, including 24-hour emergency numbers for at least two persons responsible for emergency field operations.
- (ii) An as-built facilities map showing the name, location, and description of all minor and major facilities, including

the size, type, and content of all pipelines, pits, and tanks. To the extent allowed by law, the as-built facilities map shall be held confidentially by the El Paso 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).

- (iii) 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, any or all of the following: explosions, fires, gas, chemical or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills.

(3) Water Quality Assessment, Monitoring, and Mitigation Plan* (See Resolution 12-69 approved 2/21/12)

(a) Groundwater Quality Monitoring Plan

Applications for oil and/or gas operations shall include a groundwater quality monitoring plan if well drilling activities are proposed. Well drilling activities include the drilling of any wells for exploration, production, and/or reinjection. The purpose of a monitoring plan is to ensure the preservation and protection of those groundwater resources that could be affected by oil and/or gas operations. The requirements of a groundwater monitoring plan include:

- (i) Establishing a monitoring network of existing water wells, seeps, and/or springs in order to evaluate the potential effects of oil and gas drilling on groundwater,
- (ii) Determining baseline conditions for naturally occurring constituents, and
- (iii) Providing mitigation measures to be implemented if monitoring results indicate significant impacts to groundwater quality as a result of oil and gas operations.

(b) Existing Well Monitoring Network

A monitoring network of existing wells, seeps, and/or springs shall be included in the groundwater quality monitoring plan. A minimum of four (4) existing water wells, seeps, and/or springs within a one-half (1/2) mile radius from the wellhead shall be

included in the monitoring plan, if available. The DSD Director and/or the BoCC, in consultation with EPCPH, may require the inclusion of additional wells, seeps, and/or springs into the monitoring plan, subject to availability. The inclusion of any well, seep, and/or spring into a monitoring network requires documented landowner consent, which should include right of entry for the County to enter the site in the event of execution of the financial assurance for the groundwater monitoring plan.

(c) Water Quality Samples

Groundwater samples shall be collected prior to the commencement of any drilling activities for the purpose of establishing baseline water quality. Subsequent to the completion of drilling activity, all water wells within the respective monitoring network shall be tested at years one (1), three (3), and six (6) from the date of drilling completion. The monitoring network shall also include any future water wells drilled within the 1/2 mile radius subsequent to the oil and gas well drilling, subject to EPCPH determination and landowner consent. All samples shall be collected by a qualified independent contractor experienced in water quality sampling and shall be sent to a State of Colorado certified laboratory for analysis. The groundwater samples shall be analyzed for the following:

- (i) pH units (EPA Method 150.2 or calibrated field instrument),
- (ii) Total dissolved solids (TDS),
- (iii) BTEX compounds (benzene, toluene, ethylbenzene, total xylene),
- (iv) Methane,
- (v) Major ions, including but not necessarily limited to, chloride, sulfate, sodium, calcium, potassium, bromide, magnesium, nitrate and nitrite as N, and
- (vi) Dissolved Metals, including but not necessarily limited to arsenic, barium, chromium (total), and cadmium.

Testing results shall include the analysis for the above listed parameters, location of the water well, seep, and/or spring (to the nearest 10 feet), location of the oil or gas well site (to the nearest 10 feet), depth of any included water well, depth and identification of aquifers (if identifiable), and date of sampling. Such results, upon prior approval by the respective landowner, shall be submitted to the COGCC, DSD, EPCPH, and any applicable

water district and/or central water provider within 90 days of the date of sample collection.

(4) Noxious Weed Management

(a) Purpose

The purpose of this section is to ensure that oil and/or gas facility operators assess, manage, and mitigate the potential spread of noxious weeds, pursuant to Section 6.3.7. of this Code, the Colorado Noxious Weed Act C.R.S. § 35-5-5 et. seq., and the El Paso County Weed Management Plan adopted by Resolution 09-106 on March 24, 2009.

(b) General

Oil and gas facility operators shall be responsible for ongoing site and access road noxious weed control during construction and operation of the facility. The selection of a reseeding mix and the method(s) for appropriate weed control shall be determined through documented consultation with the El Paso County Environmental Division, the Natural Resources Conservation Service (NRCS), and the Colorado Department of Agriculture, as applicable.

(E) Financial Assurance

(1) Financial Assurance for Road Damage and Construction

The applicant may be required to provide financial assurance in favor of El Paso County, in an amount to be determined by the ECM Administrator, which is sufficient to ensure restoration of any damage to County roads caused by the applicant's permitted activities and/or to ensure construction of any required public roadways to appropriate design standards. The form of the financial assurance must be acceptable to the County. If a commercial bond is provided, the bonding company must be currently authorized to provide bonds for federally funded projects.

(F) Review Standards *(Clarified by Resolution 12-69 approved 2/21/12)*

In approving special use applications for oil or gas facilities, the following findings shall be made:

- The special use is consistent with the applicable Master Plan;
- The special use is in compliance with the applicable requirements of the Land Development Code;
- The special use is in compliance with the applicable requirements of the Engineering Criteria Manual and the Drainage Criteria Manual;
- The special use conforms or will conform to all other applicable County rules, regulations, or ordinances;

- The impact of the special use does not overburden or exceed the capacity of public facilities and services or, in the alternative, the special use application demonstrates that it will provide adequate public facilities in a timely and efficient manner;
- The special use will not create undue traffic congestion or traffic hazards in the surrounding area, and has adequate, legal access;
- The special use will avoid land use and environmental conflicts or, at a minimum, includes mitigation measures and applicable financial assurance in order to ensure that any potentially unavoidable land use and environmental conflicts will be mitigated to the maximum extent practicable;
- The special use will not be otherwise detrimental to the public health, safety, and welfare of the present or future residents of El Paso County;
- The financial burden of compliance with the special use is practical and does not outweigh the benefit of such compliance; and
- The technical requirements for compliance with the special use are technically feasible and commercially available.