

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

IN THE MATTER OF THE APPLICATION CRESTONE PEAK RESOURCES OPERATING LLC FOR AN ORDER TO: (1) ESTABLISH AND APPROVE A RULE 216 COMPREHENSIVE DRILLING PLAN FOR SECTIONS 1, 2, 3, 10, 11 AND 12, TOWNSHIP 1 NORTH, RANGE 69 WEST, 6TH P.M. AND SECTIONS 25, 26, 27, 34, 35 AND 36, TOWNSHIP 2 NORTH, RANGE 69 WEST, 6TH P.M. FOR THE COMPREHENSIVE DEVELOPMENT AND OPERATION OF THE CODELL AND NIOBRARA FORMATIONS, WATTENBERG FIELD, BOULDER COUNTY, COLORADO, AND (2) TO APPROVE A RULE 502.b. VARIANCE TO COMMISSION RULE 303

CAUSE NO. 407

DOCKET NO. 170500189

TYPE: GENERAL
ADMINISTRATIVE

**PROTEST OF CRESTONE PEAK'S APPLICATION FOR AN ORDER PLACING
TEMPORARY HOLD ON ACCEPTANCE OF DRILLING PERMITS**

8 North, LLC, a wholly owned subsidiary of Extraction Oil & Gas Inc., Operator No. 10575 ("8 North" or "Protestant"), by and through its attorneys, Beatty & Wozniak, P.C., respectfully files this protest ("Protest") of an application of Crestone Peak Resources Operating LLC ("Crestone" or "Applicant"). In support of its Protest, 8 North states and alleges the following:

A. Procedural Background

1. On February 22, 2017 (amended March 17, 2017), Crestone filed with the Oil and Gas Conservation Commission of the State of Colorado ("COGCC" or "Commission") an application ("Application") for an order to, among other things, establish and approve a Comprehensive Drilling Plan in accordance with the requirements of Commission Rule 216 for the below-described lands, for development and production of the Codell and Niobrara Formations:

Township 1 North, Range 69 West, 6th P.M.

Section 1: All
Section 2: All
Section 3: All
Section 10: All
Section 11: All
Section 12: All

Township 2 North, Range 69 West, 6th P.M.

Section 25: All
Section 26: All
Section 27: All
Section 34: All
Section 35: All
Section 36: All

7,680 acres, more or less, Boulder County, Colorado.

These lands are hereinafter referred to as the "Application Lands" and are depicted on the reference map attached hereto as Exhibit A.

2. Additionally, Crestone's Application requested the Commission grant a Rule 502.b. variance to Rule 303 by placing a temporary hold on accepting and processing any new Form 2, Application for Permit to Drill, or Form 2A, Oil and Gas Location Assessment, for the Application Lands from any Owner **except Crestone**. (Emphasis supplied.)

3. On March 22, 2017, the Secretary of the Commission issued a Notice of Hearing, indicating the portion of the Application requesting a Rule 502.b. variance to Rule 303 had been scheduled for hearing on May 1, 2017 at the COGCC offices, 1120 Lincoln Street, Denver, Colorado, and that any interested party desiring to protest or intervene should file with the Commission a written protest or intervention in accordance with Rule 509, no later than April 17, 2017. The notice further indicated that Applicant's request for an order establishing and approving a Comprehensive Drilling Plan for the Application Lands would be considered at a future hearing, and properly noticed in accordance with the Oil and Gas Conservation Act ("Act") and Commission Rules at that time.

4. 8 North is a limited liability company duly authorized to conduct business in the State of Colorado, and has registered as an operator with the Commission. 8 North has standing to protest the Application pursuant to §34-60-108(7), C.R.S. and Commission Rules 503, 507 and 509.

5. 8 North holds approximately 35% total working interest in the Application Lands. A map depicting the location of 8 North's leasehold in the Application Lands is attached hereto as Exhibit B.

8 North's drilling plans

6. As stated above, 8 North holds approximately 35% working interest in the Application Lands. 8 North began purchasing oil and gas leases in Boulder County, and specifically in the Application Lands, in 2015.

7. As noted in Crestone's Application, because of a moratorium imposed by Boulder County in 2012, operators and mineral interest owners have been prohibited from permitting new, or modifying existing, Oil and Gas Locations in Boulder County. Paragraph 9 of the Application.

8. On March 23, 2017, the Board of Boulder County Commissioners voted to adopt new regulations for oil and gas development in the unincorporated areas of Boulder County. The regulations will apply to oil and gas development applications filed after May 1, 2017, which is the same date the most recent moratorium is set to expire. See Boulder County Press Release attached hereto as Exhibit C.

9. Despite the ongoing moratorium on oil and gas development, 8 North personnel began meeting with Boulder County's Planning and Legal Departments regarding its planned development in Boulder County on June 27, 2016. Representatives of 8 North and Boulder County have met on at least six occasions since June 27, 2016 regarding 8 North's planned development of its leasehold, including a meeting with Madam Chairman Jones.

10. 8 North has not filed Applications for Permits to Drill ("APDs") with the COGCC for its leasehold in the Application Lands to date as a result of Boulder County's ongoing moratorium. However, 8 North has taken necessary preliminary steps to develop its leasehold in the Application Lands, including meeting with Boulder County's Planning Department.

11. 8 North intends to commence development of its acreage in the Application Lands in the fourth quarter of 2018.

B. General Statement of Factual and Legal Basis for the Protest

Invalid and improper application of Rule 502.b.

12. Commission Rule 502.b. provides:

- (1) Variances to any Commission rules, regulations, or orders may be granted in writing by the Director without a hearing upon written request by an operator to the Director, or by the Commission after hearing upon application. The operator or the applicant requesting the variance shall make a showing that it has made a good faith effort to comply, or is unable to comply with the **specific requirements contained in the rules, regulations, or orders, from which it seeks a variance**, including, without limitation, securing a waiver or an exception, if any, and that the requested variance **will not violate the basic intent of the Oil and Gas Conservation Act**. (Emphasis supplied.)

13. Rule 502.b.(1) is expressly limited to circumstances where an applicant is unable to comply with a specific requirement contained in the rules, regulations or orders of the Commission. Put differently, Rule 502.b.(1) excuses an operator from abiding by a specific rule or regulation, so long as the operator demonstrates its inability to comply with the rule. For example, an operator may request a variance to reclamation requirements related to access roads when a surface owner requests that the access road remain in place. See *March 20, 2017 Staff Report* (Bill Barrett Corporation granted a variance to Rules 1004.a.,c.,d. and 1004.e. following surface owner request that access road remain). The express language of Rule 502.b.(1) does not, however, contemplate barring operators from exercising their rights at the request of, and for the sole benefit to, a single operator. In its Application, Crestone is not seeking a personal exemption from a specific regulation as a result of its inability to comply. Rather, Crestone asks that all other operators be prohibited from exercising their leasehold and development rights for the sole benefit of Crestone. This is an illegal request made pursuant to Rule 502.b.(1), and should therefore be denied by the Commission.

14. In addition to excusing a single operator from adhering to a specific regulation, a variance made pursuant to Rule 502.b.(1) cannot violate the basic intent of the Act. As noted in Crestone's Application, a basic intent of the Act is to "safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom." §34-60-102(1)(a)(III), C.R.S.; see Paragraph 36 of the Application.

15. Pursuant to the Act, correlative rights means "that each owner and producer in a common pool or source of supply of oil and gas shall have an equal opportunity to obtain and produce his just and equitable share of the oil and gas underlying such pool or source of supply." §34-60-103(4), C.R.S. In order to drill a well for oil and gas, an operator must first obtain a permit from the Commission. §34-60-106(1)(f), C.R.S.; Rule 303.

16. If approved, Crestone's variance would prohibit any operator, other than Crestone, from applying for a permit to drill within the Application Lands. Indeed, Crestone asks that the Commission prohibit other operators from filing a permit for the Application Lands, despite the fact that no Comprehensive Drilling Plan has been introduced to or approved by the Commission. Rather than protecting the equal opportunity of operators to obtain and produce their just and equitable share of hydrocarbons by filing APDs, granting the variance would recognize the leasehold rights of Crestone above all other operators because Crestone would be the only operator capable of filing the necessary permits to develop minerals. This type of unequal treatment of owners violates the basic intent of the Act. Accordingly, Crestone's variance request should be denied by the Commission.

Variance will subject operators to disparate treatment in violation of law

17. Nowhere in the Act or rules is the Commission authorized to treat similarly situated operators differently—to do so would be a violation of equal protection under the law. Indeed, the threshold inquiry in any equal protection claim is whether persons who are in fact similarly situated are subjected by some governmental act to disparate treatment. *Bd. of County Comm'rs v. Flickinger*, 687 P.2d 975, 982 (Colo. 1984).

18. Rule 303, among other things, mandates that an operator obtain an approved APD from the Commission before drilling a well, and sets forth the required information that must be attached to the APD. Additionally, Rule 303 sets forth the special circumstances for withholding approval of an APD, or issuing an APD without notice or consultation. See Rules 303.i. and 303.j. This rule does not, however, prescribe *who may file* an APD, nor does it speak to the COGCC's refusal to accept or process APDs.

19. Crestone's requested variance, if approved, would limit the COGCC's acceptance and processing of APDs from any operator other than Crestone. Such dissimilar treatment of operators would occur despite the fact that no Comprehensive Drilling Plan has been presented to or approved by the Commission for the Application Lands. The variance would selectively and unequally apply the rules and regulations of the COGCC to owners with the legal right to drill within the Application Lands. Such dissimilar treatment is a violation of law, and therefore Crestone's variance request must be denied.

Variance will adversely affect 8 North by effectively naming Crestone operator of 7,680 acres

20. Currently, the Commission follows a first-to-file policy, meaning that the first operator to file APDs for given lands will generally be issued the APDs over a competing operator's APDs that are subsequently filed. See Docket No. 160800347, Order No. 407-1793; see Director Lepore's presentation to the Commission, January 30, 2017.

21. Crestone's variance asks the Commission to refuse acceptance of APDs from any Owner, except Crestone, in approximately 7,680 acres of open land. Crestone allegedly asks for the variance so that re-entry of oil and gas development in Boulder County is pursued in a collaborative manner. Paragraph 15 of Application. However, there is nothing collaborative about Crestone's requested variance, which would effectively lock out other working interest owners from attempting to develop their leasehold by filing APDs. If Crestone's variance is approved, it will effectively name Crestone as the sole operator of 7,680 acres because Crestone will be able to file APDs within the Application Lands, while all other operators are prohibited from doing the same. This prohibition would occur before a Comprehensive Drilling Plan or associated application(s) for drilling units are presented to the Commission. Despite Crestone's

claim that its request is made to pursue development in a collaborative manner, Crestone seems to be using Rule 216 and its variance request as an end-run around the COGCC's race-to-permit policy.

22. As detailed above, 8 North has worked to acquire acreage in the Application Lands with the intent to drill. During Boulder County's moratorium, 8 North discussed its drilling plans with the Boulder County Planning Department as a prerequisite to formal development. In anticipation of the moratorium's expiration, 8 North is pursuing its development plans and expects to commence operations by 2018. If Crestone's variance is approved, it will adversely affect 8 North because 8 North will be barred from submitting APDs within the Application Lands. Additionally, because Crestone may submit APDs within the Application Lands under an approved variance, 8 North will be locked out from even attempting to operate its own leasehold through submitting APDs under a race-to-permit policy. Accordingly, 8 North asks the Commission to deny Crestone's variance request so that 8 North may have an equal opportunity to develop its leasehold in the Application Lands.

C. Conclusion

Crestone's variance request asks the Commission to do something it has never done before: to recognize another operator over all others in approximately 7,680 acres of land, before a plan or unit has even been approved for the acreage. Crestone's variance, if approved, would subject operators to disparate treatment by a government agency in violation of law, would be an invalid exercise of Rule 502.b.(1), would violate correlative rights, and cause harm to 8 North by naming Crestone the de facto operator of its acreage. Rule 216 actually contemplates a Comprehensive Drilling Plan cover the activities of **multiple operators** where appropriate, and Crestone alleges that its request is made in order to pursue collaborative development of the Application Lands; however, Crestone's variance would have the opposite effect by excluding all other owners from operating in the Application Lands. See Rule 216.b. (Emphasis supplied). 8 North asks that the Commission deny Crestone's variance request, and continue to uniformly apply its regulations to all operators, protect correlative rights, and encourage Comprehensive Drilling Plans to truly be utilized for collaborative development.

D. Relief Requested

WHEREFORE, 8 North respectfully requests the following relief:

1. That the Commission deny Crestone's variance request.
2. For such other findings and orders as the Commission may deem proper or advisable in the premises.
3. 8 North reserves the right to supplement this Protest with additional factual information and/or legal arguments and to request additional relief.

E. Description of Intended Presentation

1. 8 North will present arguments and evidence in support of the facts and arguments stated above.

2. 8 North intends to present one land witness, and reserves the right to present additional witnesses as necessary to supplement the above facts and/or rebut any evidence, argument or witness testimony at hearing.

F. Reservation of Rights

In addition to reserving the right to supplement this Protest with additional factual information and/or legal arguments, and to presenting additional witnesses, 8 North is limiting its objections to that portion of the Application set before the Commission at the May 1, 2017 hearing, and reserves the right to raise numerous objections to the premature filing of the Comprehensive Drilling Plan, as it fails to follow the spirit and intent of Rule 216, is an arbitrarily created area intended to favor one operator, and Crestone failed to include the involvement of necessary stakeholders prior to filing.

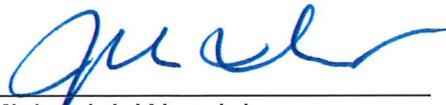
G. Time Estimate for Protest

8 North estimates that it will require approximately one (1) hour to present its evidence and testimony, in support of this Protest and in rebuttal to Crestone.

DATED this 17th day of April, 2017.

Respectfully submitted,

8 NORTH, LLC

By: 
Michael J. Wozniak
Jillian Fulcher
Evan Bekkedahl
Beatty & Wozniak, P.C.
Attorneys for Protestant
216 16th Street, Suite 1100
Denver, Colorado 80202
(303) 407-4499
mwozniak@bwenergyllc.com
jfulcher@bwenergyllc.com
ebekkedahl@bwenergyllc.com

CERTIFICATE OF SERVICE

I hereby certify that, on April 17, 2017, Beatty & Wozniak, P.C. caused 8 North's Protest of Crestone's Variance Request in Colorado Oil and Gas Conservation Commission Docket No. 170500189 to be served via electronic mail to Counsel for Crestone and the Colorado Oil and Gas Conservation Commission pursuant to Rule 509.3.(E), and by U.S. mail at the addressed listed below.



Via electronic mail and courier

Colorado Oil and Gas Conservation Commission
ATTN: Peter Gowen and James Rouse
1120 Lincoln Street, Suite 810
Denver, CO 80203

Peter.Gowen@state.co.us

James.Rouse@state.co.us

Via electronic mail and US mail

Jamie L. Jost
Kelsey H. Wasylenky
Jost Energy Law, P.C.
Attorneys for Applicant
1401 17th Street, Suite 370
Denver, Colorado 80202

jjost@jostenergylaw.com

kwasylenky@jostenergylaw.com

EXHIBIT A

Reference Map of Application Lands

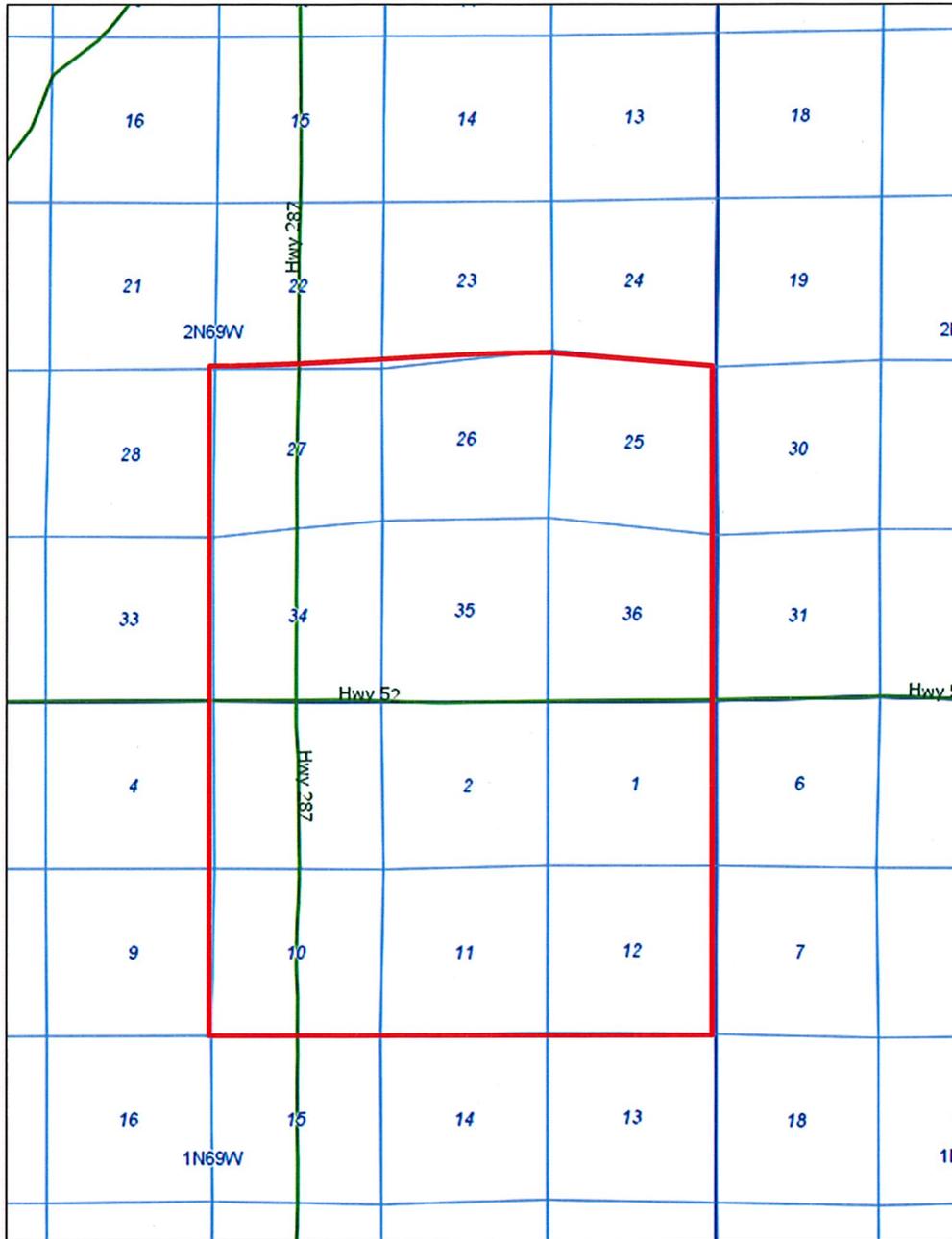


EXHIBIT B



8 NORTH

Proposed Crestone 'CDP'
8 North Leasehold

Scale: 1:40,800	PRJ: GCS NAD83
Date: 4/17/2017	Author: ECP

Legend

Crestone CDP Area 8 North Leasehold

1 inch = 3,400 feet

0 850 1,700 3,400 5,100 6,800 Feet



7

Receive Updates



Boulder County adopts strongest set of regulations on oil and gas development in the State of Colorado

Boulder County Colorado sent this bulletin at 03/23/2017 05:19 PM MDT

Having trouble viewing this email? [View it as a Web page.](#)



For Immediate Release
March 23, 2017

Boulder County Commissioners' Office
Barb Halpin, Public Information Officer
303-441-3500

Boulder County adopts the strongest set of regulations on oil and gas development in the State of Colorado

The regulations will apply to oil and gas development applications filed after May 1, 2017

Boulder County, Colo. - At a public meeting on Thursday, March 23, the Board of County Commissioners voted to adopt new regulations for oil and gas operations in the unincorporated areas of Boulder County. The new regulations are considered to be the most stringent in the state of Colorado and will serve to employ the county's land use authority to protect local public health and the environment. The regulations will apply to oil and gas development applications filed after May 1, 2017.

- The [full 40-min. video recording of the public meeting](#) is available under the 2 p.m. Land Use Department Public Meeting: Docket DC-16-0004 Amendments to Oil and Gas Development.
- A copy of the [staff presentation](#) which provides an overview of the regulations and the extensive public process that went into drafting the regulations is available on the [county's oil and gas website](#).
- A [copy of the final draft regulations](#) that were adopted today

During their deliberations, the county commissioners expressed their continued regret and frustration that state law preempts local control in many areas of oil and gas development. They also affirmed their ongoing multi-pronged approach to gaining more local control over oil and gas extraction activities.

The first prong in protecting Boulder County's community and environmental interests was accomplished today by adopting the toughest possible regulations anywhere in the state of Colorado. Additional areas of focus will be discussed at a public meeting scheduled for Tuesday, April 25 at 11 a.m. in the Commissioners' Hearing Room in Boulder.

Statements from the Board of County Commissioners

"Without a tough set of regulations in our Land Use Code, we risk losing the ability to protect our community from oil and gas activity that is currently allowed under state law," said **Deb Gardner**, Chair of the Boulder County Commissioners. "If we didn't adopt these regulations today, and we lost the lawsuit currently filed against us by the Colorado Attorney General and members of the oil and gas industry, our old outdated regulations would stand in place - and we can't afford to have that happen."

Commissioner **Elise Jones** said, "We and the State of Colorado do not agree on where the authority over local drilling operations should lie. But, by working with staff, legal counsel, and members of the public for many years to get these regulations as protective as possible, we are confident that these new regulations are by far the most comprehensive and protective local regulations in Colorado. While we wish we could completely control or prevent all aspects of oil and gas development within Boulder County, we are doing everything we can under the current law to protect our local air, water, public health, and the environment with these new regulations."

Commissioner **Cindy Domenico** added, "Like everyone we've heard from over the past several years, we are very concerned about the potential for expanded oil and gas activity in Boulder County. The intensive drilling operations that we see along the Northern Front Range of Colorado are heavily industrial in nature. We need to have in place strong new regulations that maximize our ability to use our land use authority – one of the few local control tools we have under current state law - to protect our residents and the environment."

"This is an important step in our approach to addressing concerns about oil and gas development raised by our residents," added Commissioner **Domenico**. "But this is only one piece of the puzzle. We will continue to examine every option available to us."

"The oil and gas industry has already sent lawyers to Boulder County to claim that these new regulations go too far," added Commissioner **Gardner**. "We felt there was too much at stake for our residents to expose them to our outdated regulations and leave the county vulnerable to much more intensive drilling operations than when we passed our last set of regulations in 2012."

Commissioner **Jones** closed by saying, "The regulations are not enough, but they are necessary. We acknowledge that they alone do not give us enough control over what happens within the boundaries of Boulder County when it comes to oil & gas development. On April 25 we will talk about the many other ways that we are working to address this effort on all fronts."

Background

In May 2016, Colorado Supreme Court rulings invalidated fracking bans and long-term moratoria. These rulings called into question a Boulder County moratorium that was

scheduled to expire in July 2018.

After the Colorado Supreme Court rulings, Boulder County terminated its prior moratorium and adopted a new, temporary moratorium, which is set to expire May 1, 2017. Early in 2017, the Colorado Attorney General and oil and gas industry groups challenged the county's latest moratorium in court.

The county enacted the new moratorium in order to provide the county with enough time to review and update the oil and gas regulations that were adopted in 2012, and to prepare for implementation of those regulations. In the time since the last regulations were adopted, significant changes have taken place in the ways that industry extracts oil and gas in communities along the Colorado Front Range. Specifically, the trend is towards large-scale, consolidated facilities that leave a much larger footprint and have much greater impact on the communities in which they reside.

The new 2017 regulations address these (and other) concerns that were not adequately covered under the 2012 regulations:

- Industry's shift toward large-scale, consolidated facilities
- Concerns with intensity of oil and gas development
- Additional information about impacts
- Rulemaking at the State level (Governor's Task Force, etc.)
- Concerns with impacts on community and environment

What will the new regulations do?

Under the approved regulations, the County will require **Special Use Review** for all new oil and gas development in unincorporated Boulder County.

The new regulations are:

- **Comprehensive** – They ask for detailed information and plans from operators in order to fully evaluate impacts and assess site-specific circumstances related to each oil and gas development application. They ask for alternative site locations.
- **Inclusive** – The regulations require extensive notice to surrounding landowners, provide multiple opportunities for public input, including a neighborhood meeting and public hearings in front of the Planning Commission and Board of County Commissioners.
- **Protective** – The regulations will closely scrutinize all proposed oil and gas development and hold operators to a high standard. The county will use 17 criteria to evaluate potential impacts on the surrounding area and the environment.
- **Specific** – The regulations provide details on conditions of approval and mitigation measures that the county may impose to reduce the impacts on neighboring landowners and preserve the county land and environment.
- **Enforceable** – all approved oil and gas development will be subject close monitoring and operators will be required to comply with all requirements and mitigation measures.

Some of the more defining components new regulations include options for:

- Air quality monitoring
- Hydrocarbon emissions control measures, including use of infra-red cameras to detect and repair leaks of equipment used on the well site

- Water well sampling and testing
- Conditions of approval that will reduce impacts to the site/area/resources, including change in location, use of pipelines to reduce truck traffic, reduction of the number of wells, adjustment of pad dimensions, use of shared infrastructure, visual buffering/landscaping, etc.
- Disruption payments to surrounding occupants of residential structures who are affected by drilling activities – an operator would be required to pay the cost to rent a replacement home for the number of months construction and drilling take place, plus the cost to move away and back
- Emergency preparedness and response plan
- Reporting, monitoring, and inspections

[View Commissioners' Meeting Documents and Records >>](#)

For more information about the county's role in oil and gas development, visit the county's [Oil and Gas Development webpage](#).



@ 2017 All rights Reserved - Boulder County

[Manage Preferences](#) | [Unsubscribe](#) | [Help](#)



Powered by

