

Boulder County Land Use Department



DC-12-0003: Amendments to Oil and Gas Development Regulations

Public Hearing for the Planning Commission to consider proposed Land Use Code amendments addressing oil and gas development within the Boulder County Land Use Code

**October 17, 2012
2:00 p.m.**

AGENDA

1. COUNTY STAFF PRESENTATION

- a. Revisions to Draft Regulations** - Kim Sanchez / Jeff Robbins (Land Use Department / Outside Counsel)
- b. Maps** - David Haines (Land Use Department, GIS)

2. PUBLIC COMMENT (3-min. allowance per individual speaker, unless time is pooled)

3. PLANNING COMMISSION DISCUSSION AND ACTION

(Provide recommendation to the Board of County Commissioners)



PUBLIC MEETINGS TO DATE

February 2 - Temporary moratorium enacted

March 1 – Moratorium extended

Moratorium in effect until February 4, 2013

BCCP Amendments

May 16 – Authorization of PC Amendments

May 31 – BCCP Open House

June 20 – Planning Commission Public Hearing

July 18 – Planning Commission Public Hearing

Aug 15 – Planning Commission Public Hearing / Adoption of BCCP Amendments

Land Use Code Amendments

Aug 7 – Open House

Aug 22 – Joint Planning Commission / Board of County Commissioners Study Session

Sep 24 – Planning Commission Public Hearing

Oct 1 – Planning Commission follow-up meeting to provide direction to staff

Oct 17 – Planning Commission Public Hearing



SCHEDULE & OPPORTUNITIES FOR INPUT

UPCOMING Planning Commission Review of Draft Regulations:

- ***October 30 at 4:00 P.M. (TBD)*** – *Planning Commission's final meeting on the Draft Regulations if they do not provide a recommendation to the BOCC today.*

Board of County Commissioners' Review of Draft Regulations:

- ***Tuesday November 13, 2012 at 4:00 P.M.*** - Staff will present the Draft Regulations to the Board of County Commissioners (BOCC). The BOCC will take public comment and provide direction to staff concerning the Draft Regulations.
- ***Wednesday November 14, 2012 at 11:00 A.M. (TBD)*** – Follow-up meeting if additional BOCC discussion and direction to staff is necessary after the November 14 public meeting [no public comment would be taken at this session].
- ***Meetings to follow will be posted on the County's oil and gas website:***
<http://www.bouldercounty.org/live/property/pages/oilgas.aspx>



TODAY'S PUBLIC HEARING

Today's Planning Commission public hearing is to consider the revised Draft Regulations, which were developed by Staff in response to the direction received from the Planning Commission on October 1.

In general discussion on October 1 largely centered on the individual components and protective measures of the Expedited vs. Standard DPR review processes and whether they achieve the same outcomes.

- **Expedited DPR** = Voluntary, if eligible / Specific Objective Standards / Air and Water Quality Protection Measures
- **Standard DPR** = Typical Review Process / Subjective, Goal-based Mitigation Plans and Criteria to Achieve Environmental and Other Protections

Primary objective of both Expedited and Standard DPR: Protection of the public



MEETINGS WITH COGCC AND INDUSTRY

- Staff has met with COGCC, COGA, and Encana and will continue to meet with Industry.
- Received letter from Encana, which we will be reviewing closely.
- Emails from public.



PROPOSED REVISIONS #1

The table (starting on p.3 of staff report) breaks down the proposed revisions to the Draft Regulations pursuant to the October 1st PC motion. The proposed revisions are also redlined in Attachment A (Draft Regulations).

Planning Commission Motion	Staff Response / Proposed Revision
1. Tables	
Consider inserting tables within the Regulations themselves (i.e., tables that break down the Standard and Expedited DPR processes, which were presented at October 1 Planning Commission)	<ul style="list-style-type: none">✓ Staff reviewed adding the tables to the Regulations. We find them very helpful in clarifying the requirements of the process but when added to the text it becomes redundant information that can make the regulations harder to follow. For that reason staff suggests:<ul style="list-style-type: none">○ That tables be included in the handouts/application materials that will implement the Regulations.✓ Alternatively, tables could be included as an appendix to the Regulations.



PROPOSED REVISIONS #2

2. Public Notice to Neighbors

- | | |
|--|---|
| <ul style="list-style-type: none">• Notice should be sent to tenants as well as owners, if the parcel owner does not reside on the property• Expand notice area based off potential impact and bump from 1500 feet to ½ mile (2,640 feet)• Add more details on exactly what activity will be happening in the description provided at the pre-application notice phase | <ul style="list-style-type: none">✓ New language addressing residents added to Section 12-400(H)(2)(d): where physical address is different from the Assessor's address for owner, mail to both.✓ Notice area increased to ½ mile (Section 12-400(H)(1).✓ Additional information included in notice that will be mailed at pre-application stage (Section 12-400(H)(3))✓ Deleted certified mailing requirement in Section 12-500.E |
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PROPOSED REVISIONS #3

3. Show all closed and former wells

Applicants should show all closed and former wells in addition to current wells and operations within one mile in their application materials.

✓ Requirement to show all producing, closed, abandoned, and shut-in wells on site plan added to Section 12-500(G).



PROPOSED REVISIONS #4

Planning Commission Motion

4. Mitigation Plans

- Consider adding some of the mitigation plans required in Standard to Expedited process in order to ensure that the outcome of the two processes is the same
- Still want to keep Expedited DPR process expedited and viable for operators

Staff Response / Proposed Revision

- ✓ Added language to Sections 12-602 and 12-703 making it clear that County is empowered to make the determination as to whether there are impacts and if they have been mitigated adequately.
- ✓ Agricultural Land Mitigation (Section 12-602(E)) and Land Disturbance (Section 12-602(F)) standards were brought into Expedited DPR process. Agricultural Land Mitigation is a placeholder for now; staff is working on drafting more precise language than what is in the Standard DPR process so that efficacy of the Expedited process will not be compromised with this addition.
- ✓ Geologic hazards, natural resources, wetlands, surrounding land uses are addressed in the Expedited eligibility/siting criteria (Section 12-601(B))
- ✓ Scenic and rural character concerns are addressed, to some degree, in the Expedited siting setbacks from property lines and occupied structures although it is possible that these protective setbacks may cause the wellhead to be located in a more sensitive visual area; Staff considers this a trade-off in that more protective air and water quality measures will be obtained in exchange for a less desirable location from a visual aspect.



PROPOSED REVISIONS #4 (CONT.)

Planning Commission Motion

4. Mitigation Plans

- Consider adding some of the mitigation plans required in Standard to Expedited process in order to ensure that the outcome of the two processes is the same
- Still want to keep Expedited DPR process expedited and viable for operators

- ✓ Cultural and historic resources are often clustered with the structures on a property so this, too, is to some degree covered in the Expedited process through the Expedited DPR's siting criteria. Other cultural/archaeological sensitive areas are often found along stream corridors which are addressed by the increased setbacks from surface water.
- ✓ Recreational activity is not directly addressed in Expedited but most recreational activity will occur or near open space lands so impacts on recreational activities can be addressed through surface use agreements between the County and the operator
- ✓ Staff accepts that there are clear trade-offs made in the Expedited review, in that air and water quality measures that the County could not otherwise require can be voluntarily gained through the Expedited process.
- ✓ Both Expedited and Standard DPR processes require mitigation in the form of the General Conditions of Approval listed in Section 12-800.
- ✓ Staff retains the ability to reclassify a proposed Expedited DPR application if application of Expedited criteria fails to adequately mitigate a proposed well.



PROPOSED REVISIONS #5

Planning Commission Motion

Staff Response / Proposed Revision

5. Neighborhood Meetings

- Consider adding Neighborhood Meeting requirement to Expedited DPR process
- Refine outcomes / expectations of neighborhood meeting
- Consider additional information to neighbors through meetings vs. mailings

- ✓ Given initial feedback from industry that even a 450day process may not be viewed as “expedited” enough to be worth pursuing, staff incorporated a “neighborhood mailing” rather than a “neighborhood meeting” into the Expedited DPR at Section 12-400(H)(3)(A).
- ✓ Section 12-601(C) was split to distinguish between referral to government agencies and notice to surrounding property owners and tenants (notice is now to people within 2,640 feet) and will include information regarding where they can access application materials
- ✓ For Standard DPR, the Neighborhood meeting is conducted by the applicant and is intended to be informational although it will allow neighbors to voice concerns
- ✓ For Standard DPR, required applicant to provide a summary of the comments that were expressed at the neighborhood meeting (Section 12-702(A))



PROPOSED REVISIONS #6 & #7

6. Water Quality - Sampling qualifications

Sampling should be done by professionally qualified third parties, not by operators

- ✓ New Section 12-602(C)(3) requires professional qualified independent contractor to evaluate water quality and abandoned well assessments instead of operator (in reality probably contracting this out to a 3rd party anyway)

7. Transportation requirements

- Add compliance with multi-modal standards to Expedited DPR process
- Are the Transportation mitigation measures different in the Expedited v. Standard processes?
- Provide an update regarding Transportation Impact Fee Study at October 17th hearing

- ✓ Staff is reworking the Transportation requirements with input from the Transportation Department. Changes may include: a) bringing in language to allow Transportation Department the ability to require off-site infrastructure improvements where necessitated by a proposed new well for both Expedited and Standard processes; and b) ability to provide a fee in lieu of off-site infrastructure for expedited
- ✓ Idea is that there would be no practical difference between the impacts from the two processes; the fee that can be paid in Expedited will make that process more streamlined and certain for applicants who elect that option.
- ✓ Update regarding Oil & Gas Roadway Impact Study (see status memo from Transportation Department and Oil & Gas Roadway Impact Study RFP – Attachment K)



PROPOSED REVISIONS #8

Planning Commission Motion

8. Expedited DPR siting criteria

- Setbacks are too small in the Expedited DPR

Scenario 1: As proposed in Draft Regulations

Scenario 2: 1500 ft setback from occupied structures (do not distinguish between residences and schools, hospitals, etc.)

Scenario 3: Commissioner Young's suggestion-

- 1 football field from property line (300 ft)
- 2 football fields from occupied structures (600 ft)
- 3 football fields from water wells (domestic, commercial, irrigation) (900 ft)
- 3 football fields from surface water bodies (900 ft)

➤ Maps will be discussed in detail following presentation of the rest of this table.



PROPOSED REVISIONS #9

9. Air quality

- Section 12-602.A.1 and A.2 should be squared up formatting-wise with Section 20-703.B.1 and B.2
 - Title of paragraph should be “general duty to minimize VOC emissions”
 - Consider whether regulations should allow for better than 98% VOC destruction or “best available practicable technology”
 - Are we adequately addressing non-VOC emissions? E.g., silica sand dust, other dust suppression
- ✓ Made suggested edits and formatted Air Quality section consistently between Expedited and Standard DPR processes
 - ✓ Regarding why 98% is pushing the bar, Mike Matheson (County’s technical consultant) provided the following response: 98% VOC combustion destruction is no longer a “custom” technology. Rather, it is a “premium” level that can be readily purchased sometimes at extra cost. 95% is now rather standard combustion control technology. The industry is moving toward 98% + control. However, it is important to keep in mind that 98% is not always 98%. Upset conditions or maintenance problems can cause short term destruction efficiency to decrease all the way to zero. Machines break sometimes therefore it is possible that over a period of time these down periods will lead to an overall combustion destruction of less than 98%. Even machines with 100% VOC combustion destruction, which can be found for some applications, will break down.
 - ✓ General operation standard Section 12-800(G) is broad enough to address silica sand dust issue. Mike Matheson (County’s technical consultant) also notes that silica issue is most pressing to on-site operators, rather than neighbors, and is addressed through OSHA.



PROPOSED REVISIONS #10, #11, & #12

Planning Commission Motion	Staff Response / Proposed Revision
10. Noise requirements	
Add noise requirements to Expedited DPR process	<ul style="list-style-type: none"> ✓ Compliance with State regulations is required for noise ✓ Removed from Standard DPR (only) and added to General Conditions of Approval (Section 12-800(O)) ✓ After consultation with COGCC, staff removed proposed residential designation language from noise standard
11. Water quality	
<ul style="list-style-type: none"> • Why 6-year cap on testing? 	<ul style="list-style-type: none"> ✓ Staff will continue to monitor studies and information including EPA's current Study on the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources expected release for peer review in 2014, as well as continue to follow USGS and EPA's Pavillion monitoring. ✓ Added requirement to Section 12-602(2)(c) for follow-up sampling to be conducted at time of final reclamation of oil and gas location, similar to language in COGCC straw man. ✓ Director also has the discretion to require further water well sampling at any time in response to complaints from water well owners.
12. Emergency dispatch	
Make sure this means local dispatch, not company headquarters somewhere in another state	<ul style="list-style-type: none"> ✓ Made edit to require local contact in Section 12-703(D)(2)(a).



PROPOSED REVISIONS #13

Planning Commission Motion	Staff Response / Proposed Revision
13. Emergency Preparedness Plan Referrals	
Include Boulder County Sheriff, Office of Emergency Management (OEM), and local fire protection district	<ul style="list-style-type: none">✓ Made edit to require referrals to these agencies at Section 12-703(D)(2).✓ Staff received the following input from OEM and is reviewing how best to incorporate it into the regulations:



PROPOSED REVISIONS #14, #15, #16

Planning Commission Motion	Staff Response / Proposed Revision
14. Emergency Plan	
<ul style="list-style-type: none"> ✓ Need more disclosure regarding toxic waste that might get spilled on the surface ✓ Commissioner Blum's comment: does section on chemical disclosure (Section 12-800(E)) mesh correctly with Emergency Preparedness Standards (Section 12-703(D))? ✓ Provide permanent record of what has been injected into well 	<ul style="list-style-type: none"> ✓ Added new provisions (i) and (j) regarding disclosure of chemicals to Section 12-703(D)(2). ✓ Collapsed 20-800 (e) (former chemical disclosure general condition of approval) into emergency preparedness plan at Section 12-703(D).
15. Flammable material	
Clarify 12-800.K - flammable material condition of approval	<ul style="list-style-type: none"> ✓ Deleted specification that only land within 25 feet need be clear of flammable material.
16. Financial guarantees / enforcement	
<ul style="list-style-type: none"> • Refine when financial guarantees are required and released • Does 2-year release make sense? Make longer. • Commissioner Cohen's comments: financial security provisions good but need more details on intent and mechanisms • Commissioner Holwick's comment on enforcement: Need to square these sections up so they work together, e.g., reclamation • Responsible party concerns 	<ul style="list-style-type: none"> ✓ Comprehensive edit to Enforcement provision in Section 12-1300) ✓ Dropped two-year reference. ✓ Added Director discretion language covering release of financial security.



PROPOSED REVISIONS #17

17. Duration of Approved DPR

- ✓ After consultation with the COGCC, Staff changed the effective approval period for a DPR in Section 12-1200(D) from two (2) years to three (3) years since this is the timeframe for the Oil & Gas Location Assessment (OGLA – “Form 2A”). The timeframe in the regulations was always intended to sync with the approval period of the State’s permit.



PROPOSED REVISIONS #18

18. Fees

- | | |
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| <ul style="list-style-type: none">• What fees will be required and when?• Ensure applicant pays for any necessary consultants• Financial security• Possibility of passing the cost of baseline studies on to industry | <ul style="list-style-type: none">✓ Staff to implement fees once regulations become final.✓ Fees will be based on the amount of staff time necessary to implement the reviews.✓ Staff needs to evaluate resources that will be needed; will likely need assistance/consultants on Air Quality and Water Quality reviews✓ There is a consultant provision in the regulations (Section 12-702.C). The County will submit a RFP to have people in line to hire as consultants during the review. |
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PROPOSED REVISIONS #19, #20, #21

19. Consider Commissioner Holwick and Commissioner Blaugrund's submitted comments	
See emails dated Monday October 1, 2012 – Attachment J	✓ Incorporated some of the recommended edits
20. Consider Commissioner Shanks comments (email dated Monday October 1, 2012)	
See email dated Monday October 1, 2012 – Attachment J	✓ Incorporated some of the recommended edits
Planning Commission Motion	
Staff Response / Proposed Revision	
21. Consider Nancy Hall's comments (submitted at September 24, 2012 Planning Commission)	
Less submissive language; "more rigor"	✓ Incorporated some of the recommended edits



ACTION REQUESTED FROM PLANNING COMMISSION

In order to keep on schedule under the time constraints of the moratorium, staff requests that the Planning Commission either:

(1) take final action tonight (approve and recommend approval to the Board of County Commissioners), *or*

(2) provide direction to staff on desired changes to the latest draft and table the subject docket to October 30, 2012 at 4:00 p.m. for final action at that time.





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