

BOULDER COUNTY BOARD OF COMMISSIONERS
RESOLUTION 2013-49

**APPROVING OIL AND GAS TRANSPORTATION IMPACT FEES AND ASSOCIATED
AMENDMENTS TO THE TRANSPORTATION SECTIONS OF ARTICLE 12 OF THE
BOULDER COUNTY LAND USE (DOCKET #DC-12-0003)**

WHEREAS, pursuant to C.R.S. §§ 30-28-112 and -116, as amended, the Board of County Commissioners of Boulder County (“the Board”) is authorized to amend the text of County’s Zoning Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to C.R.S. § 30-28-133, as amended, the Board is authorized to amend the text of the County’s Subdivision Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to other statutory authority, the Board is empowered to adopt additional regulations which are related to the control of land use, including but not limited to Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights, respectively); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power, respectively); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.; and

WHEREAS, pursuant to the above-referenced authority, by Resolution 94-185 adopted October 18, 1994, effective October 19, 1994, the Board approved a unified Boulder County Land Use Code (“the Land Use Code”), which the Board first amended by Resolution 95-27 effective March 9, 1995, and has amended on subsequent occasions thereafter; and

WHEREAS, in the present Docket (#DC-12-0003) (“the Docket”), the Boulder County Land Use Department staff proposed text amendments to the transportation sections of the Land Use Code’s regulations relating to oil and gas operations, as set forth in the memoranda and recommendations of the County Transportation and Land Use Departments to the Board dated May 9, 2013, with its attachments (collectively, “the Staff Recommendation”); and

WHEREAS, C.R.S. § 29-20-104.5 grants the Board of County Commissioners authority to legislatively adopt an impact fee as a condition of issuance of a development permit to fund expenditures on capital facilities needed to serve new development; and

WHEREAS, in Resolution 2012-16, adopted and effective on February 2, 2012, the Board of County Commissioners of Boulder County (“the Board”) adopted a temporary moratorium and directed the County Land Use Department to not accept, process, or approve any Development Plan Review application for oil and gas operations under Article 4-900 of the Land Use Code (“the Temporary Moratorium”) during this period; and the Temporary Moratorium was later extended on April 16, 2012, as reflected in Resolution 2012-46, and January 24, 2013, as reflected in Resolution 2013-18; and

WHEREAS, the Board approved the Temporary Moratorium to allow County staff the time to analyze whether the existing County Comprehensive Plan and County regulations pertaining to oil and gas activities were sufficient to protect the public health, safety, and welfare, and whether an amended Comprehensive Plan and amended regulations were necessary to adequately mitigate impacts, including increased heavy truck traffic with consequent damage to public roads and threat to the safety of other users of the county roads; and

WHEREAS, at a public hearing on December 4, 2012, the Board further directed staff to analyze whether additional text amendments would be necessary to implement transportation fees related to oil and gas development, and recommend appropriate transportation fee amounts to the Board for consideration at the January 24, 2013 public hearing; and

WHEREAS, at a public meeting on December 6, 2012, the Board conducted a public study session on the transportation system impacts of oil and gas development, where staff presented the draft results of a consultant's Oil & Gas Roadway Impact Study; and

WHEREAS, at its continued public hearing on the text of the proposed amendments on December 13, 2012, the Board found that the regulations in Docket DC-12-0003 met the criteria for text amendments contained in Article 16 of the Land Use Code, all as memorialized in Resolution 2012-142, duly adopted and signed December 20, 2012; and

WHEREAS, on January 24, 2013, the Board held a public hearing to review results of final Oil & Gas Roadway Impact Study prepared by the County's retained consultant on road impacts and associated fees, considered the setting of appropriate transportation fees for oil and gas activities in the unincorporated county and, based on the information and testimony presented, directed staff to pursue a program including appropriate and defensible fees related to the impacts of oil and gas development on the County road system for further consideration and possible adoption by the Board at a hearing prior to expiration of the temporary moratorium, which was extended to June 10, 2013 at the same hearing; and

WHEREAS, on May 16, 2013, the Board held a duly noticed public hearing to review staff's recommended impact fees for oil and gas activity in the unincorporated county and associated Land Use Code text amendments to the transportation sections of Article 12, at which hearing numerous members of the public testified in favor of an impact fee; and

WHEREAS, throughout the several hearings concerning impacts of new oil and gas development on the county transportation system, the Board has indicated that the Greater Wattenberg Area ("GWA") is experiencing large scale development of oil and gas resources including numerous wells, processing facilities, and transportation pipelines and associated facilities construction, and this development is anticipated to increase in the Boulder County portion of the GWA in the near future; and

WHEREAS, the Board believes that energy development results in specifically identifiable and measurable growth-related capital facility costs which can and should be accurately measured; and

WHEREAS, there are no other land use activities in the area of the county where oil and gas development occurs that generate similar levels of heavy truck traffic on the county transportation system; and

WHEREAS, the tax and other revenues generated from new oil and gas development do not generate sufficient funds to provide the necessary transportation capital facilities to safely accommodate and serve new development; and

WHEREAS, the Board believes that without a mechanism requiring new oil and gas development to pay a reasonable, fair, and equitable share of the costs incurred by the County to address the capital impacts of new oil and gas development on the County's transportation system, heavy truck traffic generated by new oil and gas activity will degrade the system causing it to become inefficient, inconvenient, and less safe; and

WHEREAS, the Board has determined that existing taxpayers will bear the costs, both financial and safety, associated with the County's delaying or postponing current and future capital investments elsewhere on the county transportation system in order to address roadway impacts associated with new oil and gas development, that this delay will result in additional road infrastructure deterioration and decreased safety of other roads users, and that the costs associated with these delays are a direct impact of new oil and gas development; and

WHEREAS, the Board has determined if new oil and gas development is not charged its reasonable, fair, and equitable share of the costs, then existing taxpayers will bear the burden of building capital improvements resulting in a subsidy of new oil and gas development by the taxpayers at large; and

WHEREAS, the Board believes the impact fees established by this Resolution are a rational system for identifying capital facility costs incurred by the County in providing capital facility investments made necessary by new oil and gas development, and are a fair and equitable system for charging such new development its fair share of the costs capital facilities made necessary by new oil and gas development related traffic.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Boulder County, based upon the May 16, 2013 public hearing and all related hearings preceding it, that:

1. The recommended impact fees in the FHU/BBC Boulder County Oil and Gas Roadway Impact Study dated January 14, 2013, as amended and augmented based on further input from staff and industry in accordance with staff's presentation at the May 16, 2013 hearing, adequately quantify the reasonable impacts of proposed oil and gas development on existing capital facilities and establish the impact fees at a level no greater than necessary to defray such impacts directly related to that proposed development. Further, none of the impact fees will be imposed to remedy any deficiency in capital facilities that exists without regard to oil and gas development.
2. The following schedule of impact fees is hereby adopted:
 - a. Roadway Deterioration Impact Fee – \$17,300 per well
 - b. Roadway Deterioration Impact Fee – \$700 per well pad
 - c. Roadway Safety Impact Fee – \$4,000 per well
 - d. Cost of Project Delay (Poor Roads) Impact Fee – \$8,600 per well
 - e. Cost of Project Delay (Road Safety) Impact Fee – \$8,000 per well

3. All impact fees will be imposed and shall be collected as a prerequisite to issuance of a Development Plan Review (“DPR”) Construction Permit. By way of illustration only, the sum of all five types of transportation impact fee imposed on a DPR Construction Permit involving one new well on one new pad is $\$17,300 + \$700 + \$4,000 + \$8,600 + \$8,000 = \$38,600$.
4. As stated in the companion Land Use Code text amendments the Board approved on May 16, 2013, no individual landowner will be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fees are imposed.
5. Proceeds of impact fees collected by the County may only be expended on capital facilities located in that part of the county transportation system that overlays the oil and gas development area studied by FHU/BBC in their Final Report dated January 14, 2013, namely the unincorporated area bordered by US 36 to the south, SH 119 and US 287 to the west, and the county line to the east and to the north.
6. In accordance with C.R.S. § 29-20-104.5(4), capital facilities include any improvement or facility that is directly related to any service that Boulder County is authorized to provide, has an estimated useful life of five years or longer, and is required by the general policy of Boulder County pursuant to a resolution or ordinance, such as the Capital Improvement Program approved annually by the Board.
7. In accordance with C.R.S. § 29-20-104.5(7), an applicant for a Development Plan Review permit who believes that Boulder County has improperly applied the adopted schedule of impact fees in this Resolution may pay the fees imposed and proceed with development without prejudice to the applicant’s right to challenge the fee imposed under rule 106 of the Colorado rules of civil procedure.
8. To ensure reasonable certainty, stability, and fairness in the use to which moneys generated by the impact fees are put, and in accordance with the impact fee enabling act, C.R.S. § 29-20-104.5(5), all impact fees shall be collected and accounted for in accordance with the land development charges statute, C.R.S. §§ 29-1-801–804. Specifically, all moneys collected shall be deposited in an interest-bearing account which clearly identifies the category, account, or fund of capital expenditure for which such impact fee was imposed. Each such category, account, or fund shall be accounted for separately. Any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account. At least once annually, Boulder County shall publish on its official web site, in a clear, concise, and user-friendly format information detailing the allocation by dollar amount of each impact fee collected to an account or among accounts, the average annual interest rate on each account, and the total amount disbursed from each account, during Boulder County’s most recent fiscal year.
9. The Board commits to review the impact fees no later than three years after the fees take effect under this Resolution and to adjust the fees as appropriate at that time, based on review of the drilling activity in the county during that period, advances in drilling technology such as increased recycling of the water used in hydraulic fracturing operations, observations as to the prevalence of piping rather than trucking

water to well sites in Boulder County, and any other factors the Board deems relevant. Further, if the Board learns of other land use activities generating similar levels of heavy truck traffic on the county transportation system to oil and gas development, the Board will consider broadening its transportation impact fee program accordingly.

10. The Board will periodically evaluate whether the fees should be increased to keep up with inflation.
11. If an oil and gas operation has not commenced within three years of the date of final DPR approval, where an operator has paid any applicable transportation impact fees and the DPR approval has lapsed under the applicable provision of Article 12 of the Land Use Code, upon request by the operator the County shall refund all such impact fees.
12. In administering the impact fee program, the County Transportation Director and his designees are hereby authorized to take all further actions necessary to carry out the intent and purposes of this Resolution.

A motion to adopt the impact fees proposed above was made at the May 16, 2013 public hearing by Commissioner Jones, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Boulder County, based upon the May 16, 2013 public hearing to consider the companion amendments to the Land Use Code necessary due to conform Article 12 to the impact fee, that:

1. The proposed amendments set out in Exhibit A, attached hereto and incorporated herein by this reference, meet the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text is in need of amendment, the proposed amendments are not contrary to the intent and purpose of the Land Use Code, and the proposed amendments are in accordance with the Boulder County Comprehensive Plan, all as set forth in and supported by the record of the May 16, 2013 public hearing, and the Board thus concludes that the proposed amendments should be approved for incorporation into the Land Use Code, to be effective on the Temporary Moratorium termination date specified in Resolution 2013-18.

A motion to amend the Land Use Code was made at the May 16, 2013 public hearing by Commissioner Jones, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Boulder County that, if any section, subsection, sentence, clause, phrase or portion of this Resolution or the attached Exhibit A is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The Board hereby declares that it would have adopted this Resolution and the attached Exhibit A and each section, subsection, sentence, clause, or portion herein despite the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions, would be declared invalid or unconstitutional.

ADOPTED on this 6th day of June, 2013, nunc pro tunc the 16th day of May, 2013.

**BOARD OF COUNTY
COMMISSIONERS OF BOULDER
COUNTY:**



Cindy Domenico

Cindy Domenico, Chair

(Excused)

Deb Gardner, Vice Chair

Elise Jones

Elise Jones, Commissioner

ATTEST:

Walter Fyler

Clerk to the Board

EXHIBIT A

Amendments to transportation regulations in Boulder County Land Use Code, Article 12

12-500 General Application Submittal Requirements for Expedited DPR and Standard DPR

N. Transportation Plan. The Applicant shall submit a report establishing compliance with the transportation standards in Section 12-602(D) (for expedited DPR applications) or Section 12-703(K) (for standard DPR applications) and which also contains the following information:

1. Map indicating proposed trip routes for all traffic serving the oil and gas operation during all phases of well development and operations.
2. For each segment of the proposed route in Boulder County, the types, sizes, weight, number of axles, volumes, and frequencies (daily, weekly, total) and timing (times of day) of all vehicles to be used for the proposed oil and gas operation must be indicated.
3. Operational measures to minimize impacts to the public including, but not limited to, time of day, time of week, vehicle fuel and emissions reduction technology, noise minimization, and traffic control safety measures.
4. Maintenance practices on the proposed route during pad construction, drilling, and completion activities, including without limitation, grading of unpaved roads, dust suppression, vehicle cleaning necessary to minimize re-entrained dust from adjacent roads, snow and ice management, sweeping of paved roads/shoulders, pothole patching, repaving, crack sealing, and chip sealing necessary to maintain an adequate surface of paved roads along the proposed route.
5. Any physical infrastructure improvements the Applicant believes may be necessitated by the proposed oil and gas operation to ensure public safety for all modes of travel along travel routes to and from the site.

12-602.D and 12-703.K (changes will be same to Expedited and Standard sections)

Transportation, Roads, Access Standards, and Fees.

1. The Applicant's Transportation Plan must be designed and implemented in its entirety to ensure public safety for all modes of travel along travel routes to and from the site and maintain quality of life for other users of the county transportation system, adjacent residents, and affected property owners.
2. The Transportation Department may require the Applicant use a particular route for some or all of the pad construction, drilling, and completion phases of the oil and gas operation.
3. Operational measures included in the Applicant's transportation plan shall be designed to minimize impacts to the public.
4. Maintenance practices on the proposed route during pad construction, drilling, and completion activities must be designed and implemented to adequately minimize impacts of the oil and gas operation by: ensuring public safety for all modes of travel; maintaining quality of life for other users of the county transportation system, adjacent residents, and affected property owners; minimizing impacts on air quality; and protecting the integrity of county transportation infrastructure.
5. Unless traffic safety, visual or noise concerns, or other adverse surface impacts clearly dictate otherwise, existing private roads on or near the site of the proposed oil and gas operation shall be used in order to minimize land disturbance.
6. Access roads on the site and access points to public roads shall be built and maintained in accordance with the engineering specifications and access road standards defined in the Boulder County Multimodal Transportation Standards. With the exception of Article 4 concerning transportation system impact analysis, all of the Boulder County Multimodal Transportation Standards apply to oil and gas development unless the Transportation Director determines a particular section is inapplicable to oil and gas based on the particular facts and circumstances.
7. Prior to issuance of a Development Plan Review Construction Permit, the Transportation Department shall ensure that:
 - i. All applicable permits shall be obtained including without limitation:
 1. access permits
 2. oversize/overweight permits
 3. right of way construction permits
 - ii. All applicable fees have been paid including without limitation:
 1. access permit, oversize/overweight permit, and right of way construction permit fees
 2. any impact fees adopted by the Board of County Commissioners via separate resolution intended to mitigate the cumulative impacts of oil and gas truck traffic on the county transportation system.
 - iii. The Applicant has updated its Transportation Plan in accordance with any conditions of approval placed on the DPR approval.

8. Oil and gas operations must minimize impacts to the physical infrastructure of the county transportation system. In some cases, the addition of or improvements to physical infrastructure may be necessitated by the proposed oil and gas operation. Taking into account the information submitted by the Applicant under 12-500.N.5, the County Transportation Department will make the final determination of the necessary transportation system infrastructure improvements and associated costs. Any such physical infrastructure improvements required by the County Transportation Department must be (a) necessary to ensure public safety for all modes of travel along travel routes to and from the site; (b) directly attributable to the proposed oil and gas operation; and (c) based upon application of the standards defined in the Boulder County Multimodal Transportation Standards. Any costs to improve county transportation system infrastructure necessitated by the proposed oil and gas operation shall be the responsibility of the Applicant. The County shall perform the work or arrange for it to be performed at the Applicant's expense prior to commencement of the applicable phase of oil and gas operations. No Applicant shall be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee or other similar development charge is imposed.
9. The Applicant may request the Director place a DPR application on hold in order to discuss alternate routes, alternate approaches to impact mitigation, or provide additional information to the Transportation Department. The Applicant may also request the Director reclassify an Expedited DPR application as a Standard DPR application in accordance with 12-400.F.
10. Should an Applicant's oil and gas operations result in any damage to the county transportation system that requires immediate repair to ensure public safety, the Applicant must immediately report such damage to the Transportation Department. Necessary repairs and associated costs shall be determined by the Transportation Department, and such repair costs shall be the responsibility of the Applicant. The County shall perform the work or arrange for it to be performed as soon as possible. By way of example only, repairs might include replacing signage or traffic control devices damaged by a large truck attempting to navigate a tight corner, replacing failing culverts, sweeping tracked mud from the road, or fixing potholes.