

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO</p> <p>1777 Sixth Street Boulder, CO 80302</p> <hr/> <p><b>Plaintiff:</b> PEOPLE OF THE STATE OF COLORADO <i>ex rel.</i> CYNTHIA H. COFFMAN, in her official capacity as Colorado Attorney General;</p> <p><b>Plaintiff:</b> THE STATE OF COLORADO;</p> <p><b>Plaintiff-Intervenor:</b> COLORADO OIL AND GAS ASSOCIATION;</p> <p><b>Plaintiff-Intervenor:</b> AMERICAN PETROLEUM INSTITUTE</p> <p>v.</p> <p><b>Defendant:</b> COUNTY OF BOULDER, COLORADO;</p> <p><b>Defendant:</b> THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY.</p>	<p>DATE FILED: March 20, 2017 3:57 PM FILING ID: 98B1969CD15A7 CASE NUMBER: 2017CV30151</p> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>CYNTHIA H. COFFMAN, Attorney General FREDERICK R. YARGER, Solicitor General* GLENN E. ROPER, Deputy Solicitor General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 Telephone: (720) 508-6000 E-Mail: fred.yarger@coag.gov, glenn.roper@coag.gov Registration Numbers: 39479, 38723 *Counsel of Record</p>	<p>Case No. 2017CV030151</p>
<p><b>The State's Motion for Summary Judgment</b></p>	

## INTRODUCTION

In 2012, the Boulder County Board of County Commissioners imposed a Moratorium on all new applications for oil or gas development. The Board has extended or re-imposed the Moratorium a total of eight times, and it has now been in place for more than five years. The Moratorium's most recent scheduled expiration date is May 1, 2017.

The Moratorium is contrary to clearly established state law. Last year, the Colorado Supreme Court unanimously determined that a local government's attempt to ban oil and gas development within its borders is operationally preempted by state law. *City of Longmont v. Colo. Oil & Gas Ass'n*, 2016 CO 29, 369 P.3d 573 (Colo. 2016); *City of Fort Collins v. Colo. Oil & Gas Ass'n*, 2016 CO 28, 369 P.3d 586 (Colo. 2016). Despite these rulings, the Board has continued to extend and enforce the Moratorium.

Because the Moratorium, on its face, defies the Colorado Supreme Court's rulings and is preempted by state law, the State of Colorado and the People of Colorado *ex rel.* Cynthia H. Coffman, Attorney General (together, the "State"), filed a Complaint seeking declaratory and injunctive relief invalidating and enjoining enforcement of the Moratorium. The State now seeks summary judgment (1) declaring that Boulder County's Moratorium on new oil and gas development is preempted and (2) permanently enjoining Defendants from enforcing the Moratorium.

## **CONFERRAL**

Under C.R.C.P. 121 § 1-15(8), counsel for the State conferred with Defendants' counsel. Defendants oppose this motion.

## **SUMMARY JUDGMENT STANDARD**

Summary judgment must be entered when there is no genuine issue as to any material fact, as shown by the pleadings and any affidavits, and the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c); *Fort Collins* ¶ 8. “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Andersen v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986)). The non-moving party must demonstrate a genuine issue of material fact through evidence that is more than “merely colorable,” and is instead “significantly probative.” *Id.*

Under C.R.C.P. 56(a), a plaintiff may move for summary judgment any time 21 days from the commencement of the action.

## **UNDISPUTED FACTS**

1. On February 2, 2012, the Board adopted Resolution 2012-16, which directed the Boulder County Land Use Department “not to accept, process, or approve any applications” for oil or gas development within the unincorporated territory of the County. Ex. 1 at 4. The Resolution was set to expire six months later, on August 2, 2012. *Id.*

2. The ostensible purpose of the Moratorium was to allow the County time to “update[ ]” its land use regulations regarding oil and gas development. *Id.*

3. As described below, the Board repeatedly extended the Moratorium’s prohibition on oil and gas development, even after the County updated its land use regulations and even after the Colorado Supreme Court issued its decisions in *Longmont* and *Fort Collins*.

4. On May 1, 2012,<sup>1</sup> the Board adopted Resolution 2012-46, extending the Moratorium by six months, through February 4, 2013. Ex. 2 at 4.

5. On December 20, 2012, the Board adopted amendments to the County’s oil and gas regulations, to take effect on the termination of the Moratorium. Ex. 3 at 3. Because the Board continued to extend the Moratorium and did not allow it to terminate, these amended regulations never went into effect. Ex. 4 at 3–5.

6. On February 5, 2013, the Board adopted Resolution 2013-18, extending the Moratorium for approximately four months, through June 10, 2013. *Id.* at 5.

7. On June 11, 2013, the Board adopted Resolution 2013-50, extending the Moratorium through June 24, 2013. Ex. 5 at 2.

8. On June 20, 2013, the Board adopted Resolution 2013-55, extending the Moratorium for 18 additional months, through January 1, 2015. Ex. 6 at 10.

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<sup>1</sup> Some Board Resolutions were adopted *nunc pro tunc* to the date of public meetings at which the Board members voted. *E.g.*, Ex. 2 at 4. Although this brief recites the dates of the Resolutions themselves, and not the dates of the public meetings, the dates are not materially different.

9. On November 25, 2014, the Board adopted Resolution 2014-88, extending the Moratorium for an additional three and a half years, through July 1, 2018. Ex. 7 at 2.

10. On May 2, 2016, the Colorado Supreme Court issued its decisions in *Longmont* and *Fort Collins*, striking down local government prohibitions on oil and gas development as preempted by state law. In particular, the *Fort Collins* case involved a five-year moratorium on hydraulic fracturing, which the Supreme Court struck down approximately two and a half years after it was enacted.

11. On May 19, 2016—two weeks after the *Longmont* and *Fort Collins* opinions were issued—the Board adopted Resolution 2016-65, “terminat[ing]” the existing moratorium and re-imposing an identical moratorium, effective immediately and with an end date six months later, on November 18, 2016. Ex. 8 at 2.

12. Although Resolution 2016-65 ostensibly “terminated” one moratorium and adopted another, the identical prohibition on oil and gas development in the County remained in place without interruption. *Id.*

13. On November 17, 2016, the Board adopted Resolution 2016-130, extending the Moratorium an additional two months, until January 31, 2017. Ex. 9.

14. On December 13, 2016, the Board adopted Resolution 2016-137, extending the Moratorium an additional three months, until May 1, 2017. Ex. 10 at 1.

15. The following summary table lists the Board Resolutions adopting or extending the Moratorium on applications for oil and gas development in the County:

<b>Plaintiffs' Exhibit</b>	<b>Board Resolution</b>	<b>Date of Resolution</b>	<b>Stated End Date of Moratorium</b>
1	2012-16	Feb. 2, 2012	Aug. 2, 2012
2	2012-46	May 1, 2012	Feb. 4, 2013
4	2013-18	Feb. 5, 2013	June 10, 2013
5	2013-50	June 11, 2013	June 24, 2013
6	2013-55	June 20, 2013	Jan. 1, 2015
7	2014-88	Nov. 25, 2014	July 1, 2018
8	2016-65	May 19, 2016	Nov. 18, 2016
9	2016-130	Nov. 17, 2016	Jan. 31, 2017
10	2016-137	Dec. 13, 2016	May 1, 2017

16. The Board has thus kept the Moratorium and its accompanying prohibition in effect for over five years, longer than the intended duration of the moratorium struck down in *Fort Collins*, which had only been in effect for approximately two and a half years when the Supreme Court issued its decision. *Fort Collins* ¶ 3.

17. The Moratorium remains in effect today, prohibiting oil or gas development applications in Boulder County. Ex. 10 at 1.

## ARGUMENT

The State is entitled to summary judgment enjoining the Board's five-year prohibition on applications for oil and gas development and invalidating the Moratorium as preempted by state law. As described below, and consistent with the Colorado Supreme Court's decisions in *Longmont* and *Fort Collins*, there are two steps to the preemption analysis, both of which are satisfied here.

*First*, oil and gas development, including the application and approval process, is an issue of mixed state and local concern such that state law preempts any conflicting local regulations. *Second*, the Moratorium operationally conflicts with state law because, on its face, it forbids what state law authorizes, thereby materially impeding or destroying state interests. The Colorado Supreme Court has held that these are both legal questions, such that no purported factual disputes can preclude summary judgment.

### **I. Oil and gas development is a matter of mixed state and local concern in which State law supersedes local regulation.**

The first step of the preemption analysis asks whether the issue addressed by a local law is a matter of statewide concern, mixed state and local concern, or purely local concern. *Longmont* ¶¶ 17–18. As to matters of purely local concern, local regulation may supersede state law. *Id.* ¶ 17. But “in matters of statewide or mixed concern, state laws supersede any conflicting local regulations, irrespective of the relative dominance of the state interest.” *Id.* ¶ 47. Put another way, as to matters of

mixed state and local concern, local government action may “coexist with a state regulation only as long as there is no conflict.” *Webb v. City of Black Hawk*, 295 P.3d 480, 486 (Colo. 2013).

The Colorado Supreme Court has consistently held over the course of two and a half decades that oil and gas development and production is an issue of mixed state and local concern. In *Voss v. Lundvall Brothers, Inc.*, 830 P.2d 1061 (Colo. 1992), for example, the court concluded that a city’s “total ban on the drilling of any oil, gas, or hydrocarbon wells,” *id.* at 1062, implicated state interests because of the “need for statewide uniformity of the regulation of oil and gas development and production,” *Longmont* ¶ 22 (discussing *Voss*). Similarly, in *Board of County Commissioners v. Bowen/Edwards Associates, Inc.*, 830 P.2d 1045 (Colo. 1992), the court held that “regulation of the land-use aspects of oil and gas developmental and operational activities within a county” is an issue of mixed state and local concern. *Id.* at 1056. Interpreting and relying on *Voss* and *Bowen/Edwards*, the Supreme Court held in *Longmont* and *Fort Collins* that “regulat[ion of] fracking” is a matter of mixed state and local concern due to “the state’s interest in the efficient and fair development of oil and gas resources in the state,” as well as the danger of creating a “ripple effect” of other municipalities enacting similar measures. *Longmont* ¶¶ 24, 28; *see also Fort Collins* ¶ 16.

As a matter of law, these same state interests compel the conclusion that the approval process for oil and gas development—including whether and how

applications are “accept[ed], process[ed], [and] approv[ed],” *see* Ex. 1 at 4—is a matter of mixed state and local concern. Efficient and fair development of oil and gas resources necessarily requires that applications for such development be accepted and processed. Dep’t of Nat. Res. Regs. 303, 305, 306, 2 CCR 404-1 (2015). A flat prohibition on oil and gas development applications (like the Moratorium) also poses the danger of “a ‘ripple effect’ across the state by encouraging other municipalities to enact their own” similar restrictions. *Longmont* ¶ 28. Thus, under binding precedent the Moratorium implicates matters of mixed state and local concern. *Id.* ¶ 18; *Fort Collins* ¶ 14. And because this is a legal question, there are no issues of material fact that could preclude summary judgment. *Longmont* ¶ 19; *Fort Collins* ¶ 15.

## **II. The Moratorium is operationally preempted because it conflicts with State law.**

The second step in the preemption analysis depends on the form of preemption at issue. Where a local government attempts to regulate oil and gas production, the applicable form of preemption is “operational conflict preemption.” *See Longmont* ¶¶ 44–54; *Fort Collins* ¶¶ 23–39. Under this form of preemption, the relevant question is whether “the operational effect of the local law conflicts with the application of state law”; if so, state law forecloses the local regulation. *Longmont* ¶ 36.

This inquiry is “in virtually all cases” a purely legal question because it consists solely of “a facial evaluation of the respective statutory and regulatory

schemes, not a factual inquiry as to the effect of those schemes ‘on the ground.’” *Fort Collins* ¶ 21; *Longmont* ¶ 42. Where, as here, a local government has prohibited oil and gas operations contrary to state law, no factual development is necessary. Thus, the operational conflict analysis here does not involve material fact issues that preclude summary judgment.

Local government action is preempted due to an operational conflict if “the effectuation of a local interest would materially impede or destroy a state interest.” *Longmont* ¶ 42; *Fort Collins* ¶ 21. This simple two-part inquiry requires (1) identification of a state interest and (2) evaluation of whether the local government action materially impedes or destroys that state interest. The Supreme Court has held that the operational conflict standard is “necessarily satisf[ie]d” where local government action either “authorizes what state law forbids or ... forbids what state law authorizes.” *Longmont* ¶ 42.

In this case, Boulder County’s Moratorium is preempted due to operational conflict. First, the Supreme Court has recognized that Colorado has a strong interest in uniform regulation of oil and gas development, as expressed in the Colorado Oil and Gas Conservation Act, §§ 34-60-101 to -130, C.R.S., and its accompanying regulations. *Longmont* ¶¶ 50–52; *Fort Collins* ¶¶ 27–29. The Act governs oil and gas development in the State and has the express purpose of “permit[ting] each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of public health,

safety, and welfare, including protection of the environment and wildlife resources.” § 34-60-102(1)(b), C.R.S. The Act also authorizes the Colorado Oil and Gas Conservation Commission (COGCC) to “make and enforce rules, regulations, and orders, and to regulate” all aspects of oil and gas development. *Longmont* ¶ 51 (citing § 34-60-105(1), C.R.S.). The COGCC has accordingly adopted an “exhaustive set of rules and regulations,” *id.* ¶ 52, covering all aspects of permitting, drilling, development, production, safety, aesthetics and noise control, and waste management. Dep’t of Nat. Res. Regs., 2 CCR 404-1 (2015).<sup>2</sup>

Together, the Act and the accompanying COGCC regulations “evidence[] a significant interest on the part of the state in the efficient and fair development, production, and utilization of oil and gas resources.” *Voss*, 830 P.2d at 1065–66. This necessarily includes a state interest in the uniform regulation of applications for oil and gas development. *See Longmont* ¶ 53; *Fort Collins* ¶ 29.

Second, the Moratorium materially impedes the state’s interest because it “forbids what state law authorizes.” *Longmont* ¶ 42. Specifically, state law allows operators to submit applications for oil and gas development, but the Moratorium has prohibited applications from being “accept[ed], process[ed], or approv[ed]” in Boulder County for more than five years. Ex. 1 at 4. The Moratorium thus renders the state rules and regulations “superfluous” because it prevents operators from

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<sup>2</sup> These include regulations governing applications for drilling permits. Dep’t of Nat. Res. Regs. 303, 305, 306, 2 CCR 404-1 (2015).

initiating new oil and gas development in the County, even if they abide by the state's rules and regulations. See *Longmont* ¶ 53; *Fort Collins* ¶ 30. Like the local regulations at issue in *Longmont* and *Fort Collins*, the Moratorium is preempted because it operationally conflicts with state law.

Defendants cannot escape this conclusion—as they have attempted to do through a motion to dismiss filed on March 7, 2017—by asserting that the Moratorium is only a “temporary” measure, not a permanent ban. The Supreme Court expressly considered and rejected that argument in *Fort Collins*, noting that the five-year fracking moratorium in that case “freezes a practice that ... has come to be prevalent across the state.” *Fort Collins* ¶ 34; see also *id.* ¶ 32 (discussing Fort Collins's assertion that its moratorium was “a temporary ‘time-out’ that [would] allow[ it] to study the impact of fracking and waste disposal on public health”). The same is true as to Boulder County's prohibition on applications for oil and gas development. The County's prohibition has been in place without interruption since February 2012—more than five years. There is no factual dispute on that point. The Moratorium is thus not a “temporary ‘time-out,’” but rather a “lengthy moratorium” that is “different in kind from a brief moratorium that is truly a ‘temporary time-out.’” *Id.* ¶ 35. Under the binding precedent of *Fort Collins*, the State is entitled to summary judgment.

Nor is this conclusion affected by the fact that the Fort Collins moratorium was a single five-year moratorium, whereas the Boulder County Moratorium is a

patchwork of repeated extensions and renewals. The fact that the Board self-servingly claims that it “terminated” the existing moratorium on May 19, 2016 and adopted a new identical moratorium that same day does not excuse Defendants’ actions from the force of *Fort Collins*. Boulder County’s prohibition has been continuous and uninterrupted for more than five years, regardless of the precise methodology used by the Board to enforce the prohibition or the labels it affixes to its actions. The indisputable effect of the Moratorium—including its repeated extensions and its May 2016 replacement—is thus identical to the regulation struck down in *Fort Collins*: a lengthy prohibition on oil and gas development that “(1) deleteriously affects what is intended to be a state-wide program of regulation and (2) impedes the goals of the Oil and Gas Conversation Act.” *Id.* ¶ 37. There can be no genuine dispute of material fact on that point, and the Moratorium is therefore preempted.

## CONCLUSION

The State respectfully requests that the Court grant summary judgment (1) declaring that the Moratorium’s five-year prohibition on oil and gas development applications is preempted and (2) permanently enjoining Defendants from enforcing the Moratorium or creating any similar prohibition.

Dated March 20, 2017.

CYNTHIA H. COFFMAN  
Attorney General

/s/Frederick R. Yarger

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within State's Motion for Summary Judgment upon all parties herein by Colorado Courts E-Filing this 20th day of March, 2017 addressed as follows:

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*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

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**Exhibit 1**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2012-16**

Mar. 20, 2017

## RESOLUTION 2012-16

A RESOLUTION IMPOSING A TEMPORARY MORATORIUM ON BOULDER COUNTY'S PROCESSING OF APPLICATIONS FOR PROPOSED OIL AND GAS DEVELOPMENT IN ALL OF THE UNINCORPORATED COUNTY PENDING CONSIDERATION OF AMENDMENTS TO COUNTY REGULATIONS

A. **WHEREAS**, oil and gas exploration and production is a rapidly developing and evolving industry nationwide, across Colorado, and within Boulder County, with both substantial advances in technology and significant modifications to the laws governing the industry occurring during the past few years; and

B. **WHEREAS**, the western edge of one of the most actively drilled oil and gas producing formations along the Front Range underlies the eastern portion of Boulder County; and

C. **WHEREAS**, oil and gas operations have the potential for significant and immediate impacts on the health, safety, and welfare of the citizens of Boulder County ("the County") through increased noise, odor, dust, traffic, noxious weeds, and other disturbance, as well as the potential to significantly impact the County's air, water, soil, biological quality, geology, topography, plant ecosystems, wildlife habitat, wetlands, floodplains, water, stormwater and wastewater infrastructure, drainage and erosion control, parks and open space lands, transportation infrastructure, emergency response plans, and other aesthetic values and community resources; and

D. **WHEREAS**, in its capacity as surface owner of lands managed as open space where oil and gas drilling development has occurred and continues to occur, the County Parks and Open Space Department has recently witnessed new areas not previously developed being developed by oil and gas companies, an increase in notices of intent to drill from oil and gas companies, technological changes in drilling operations that in some cases result in more land disturbance per well pad, differences in hours of operation, and associated increased impacts on plant ecosystems, wildlife habitat and migration corridors, among other environmental and natural resources; and

E. **WHEREAS**, in its role administering County floodplain regulations, the County Transportation Department is concerned about increased interest in developing oil and gas in mapped floodplain areas, posing potentially serious risks to public health and safety; and

F. **WHEREAS**, in its role managing the County transportation system under the duly adopted Boulder County Multimodal Transportation Standards, through issuance of access permits to ensure safe ingress and egress to the system, issuance of oversize/overweight vehicle permits, and other methods for managing the public rights-of-way, the County Transportation Department is concerned about a potential increase in impacts due to oil and gas development, including increased wear and tear on roads from heavy truck traffic resulting in greater need for road and bridge improvements and maintenance; and

G. **WHEREAS**, the Colorado Oil and Gas Conservation Act, C.R.S. §§ 37-60-101 et seq., declares that it is in the public interest to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a

manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources; and

H. **WHEREAS**, the Colorado Oil and Gas Conservation Act grants the Colorado Oil and Gas Conservation Commission (“COGCC”) authority to adopt statewide rules and regulations concerning the development and production of oil and gas resources and the COGCC has done so; and

I. **WHEREAS**, the Colorado Oil and Gas Conservation Act provides that it is not intended to establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations; and

J. **WHEREAS**, Colorado courts have recognized on several occasions that the Colorado Oil and Gas Conservation Act does not expressly or impliedly preempt all aspects of a county’s authority to enact land use regulations applicable to oil and gas development and operational activities within the county, and thus the County’s regulations pertaining to matters mentioned in the Colorado Oil and Gas Conservation Act are legal and valid as long as their express or implied conditions do not irreconcilably conflict with state law on the basis of operational conflicts that materially impede or destroy the state’s interest; and

K. **WHEREAS**, the County Planning Act, C.R.S. § 30-28-106, gives the County the authority to process and adopt a master plan for the physical development of the unincorporated territory of the County, and the duly adopted Boulder County Comprehensive Plan recognizes the potential impacts of oil and gas exploration, development, and production and all accessory activities and encourages such activities to be located and performed to minimize disturbance to land and water resource systems, with affected areas reclaimed and restored once the activities are completed and all other impacts minimized via all appropriate regulatory measures to the extent authorized by law; and

L. **WHEREAS**, the current Boulder County Comprehensive Plan sections addressing oil and gas activities have not been updated in many years and merit a review to determine whether amendments are necessary to reflect today’s industry, its practices, and impacts on land use, transportation, public health, parks and open space areas, and other environmental and natural resources across the County; and

M. **WHEREAS**, the Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101 et seq., provides the County with the broad authority to plan for and regulate the use of land in order to provide for orderly development and a balancing of basic human needs of a changing population with legitimate environmental concerns, all in a manner consistent with constitutional rights; and

N. **WHEREAS**, the Local Government Land Use Control Enabling Act authorizes each local government within its respective jurisdiction to plan for and regulate the use of land by, among other actions, regulating development and activities in hazardous areas; protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species; preserving areas of historical and archaeological importance; regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights; and

O. **WHEREAS**, the Board believes it has not only the right but the responsibility to plan for and regulate the use of land for the purposes laid out in the Local Government Land Use Control Enabling Act as well as those purposes specified in other applicable state and federal statutes and common law grants of authority, to best protect and promote the health, safety, and general welfare of the present and future inhabitants of Boulder County and to guide future growth, development, and distribution of land uses within Boulder County; and

P. **WHEREAS**, to that end, and pursuant to the Local Government Land Use Control Enabling Act, the County Planning Act, and various other state and federal statutory and common law grants of land use authority, the Board has from time to time adopted planning, zoning, and other regulations governing land use in the unincorporated territory of the County; and

Q. **WHEREAS**, the current regulations concerning oil and gas development in §§ 4-900 to 4-913 of the Boulder County Land Use Code were last updated years ago, prior to various changes in oil and gas production practices, prior to changes to state statutes and regulations, and prior to several relevant Colorado court decisions concerning local regulation of oil and gas activities, and therefore are ripe for review for potential amendments in light of the current significant concerns over the impacts of continuing oil and gas development activities within the County; and

R. **WHEREAS**, Boulder County staff have begun to analyze whether the existing zoning and other land use regulations pertaining to oil and gas activities are sufficient to protect the public health, safety, and welfare; and

S. **WHEREAS**, the Board estimates that the time needed to perform the prerequisite studies and planning and analyze regulatory amendments that may be necessary to mitigate the impacts of oil and gas exploration, development, and production activities, may take approximately six months to complete; and

T. **WHEREAS**, the Board reasonably anticipates that applications for additional oil and gas development may be filed in the coming months while the study is undertaken and before the County has had the opportunity to consider the outcome of the study and adopt appropriate regulatory changes; and

U. **WHEREAS**, the Board finds that it is inconsistent with its responsibilities to protect the local environment and population of the County to continue to process and review applications for oil and gas development in piecemeal fashion without thoroughly examining the current County regulations to reflect changes in state law and oil and gas production practices; and

V. **WHEREAS**, the Board is aware of the potential for further changes in state law during the 2012 legislative session, and that legislative proposals in the oil and gas regulatory area, if enacted this session, may further clarify the bounds of County regulatory jurisdiction; and

W. **WHEREAS**, if applications requesting approval to conduct oil and gas exploration, development, and production activities within the unincorporated County are submitted prior to the County having adequate time to conduct the appropriate studies, make necessary revisions to its Comprehensive Plan, be aware of any forthcoming 2012 legislative changes, and consider and process any indicated regulatory amendments, the Board believes irreparable harm may be done to the public health, safety and welfare; and

X. **WHEREAS**, the U.S. Supreme Court and the Colorado Supreme Court recognize that in the field of land use regulation, temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for development; indeed, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments and, therefore, pursuant to express and implied authority granted by the Colorado Revised Statutes and multiple Colorado and federal appellate decisions upholding temporary moratoria on land use applications while amendments are considered, the Board has the legal authority to adopt a temporary moratorium in this situation; and

Y. **WHEREAS**, in light of the foregoing recitals and findings, circumstances warrant the immediate enactment of this Resolution establishing a temporary moratorium to protect the public health, safety, and welfare, and to avoid development which, during the County's planning and land use regulation amendment process, may contravene the results of this study and process put the public at risk; and

Z. **WHEREAS**, the Board further determines that it will schedule and hold a public hearing on this temporary moratorium and related matters as soon as practicable after this Resolution's adoption, for the purposes of receiving public comment on the moratorium and considering whether to terminate, extend, or otherwise amend the moratorium.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County:

1. The submittal of notices of intent to drill and land use applications requesting approval to conduct oil and gas development activities within the unincorporated territory of the County limits is imminent. The County may not have updated regulations in place that adequately mitigate impacts of this activity or that incorporate the County's full ability to regulate in this area under evolving state statutes, regulations, and case law to protect and preserve the public health, safety and welfare. Therefore, a temporary moratorium on accepting applications is reasonable and necessary.
2. This temporary moratorium shall take effect immediately. The County Land Use Department is directed not to accept, process, or approve any applications under Article 4-900 of the Land Use Code after the effective date of this Resolution.
3. This temporary moratorium shall remain in place until August 2, 2012, unless earlier terminated or extended.
4. County staff is hereby directed to continue analyzing whether the existing County Comprehensive Plan and existing County regulations pertaining to oil and gas activities are sufficient to protect the public health, safety, and welfare, or whether an amended Comprehensive Plan and amended regulations will be necessary to adequately mitigate impacts.
5. The Board intends to hold a public hearing to take testimony on the merits of the temporary moratorium imposed by this Resolution and to determine whether the moratorium should be terminated, extended, or otherwise amended on Thursday, March 1, 2012, at 4:00 p.m., in the Board's public hearing room on the third floor of the Boulder County Courthouse, 1325 Pearl Street, Boulder, Colorado. Notice of this hearing shall be published in a newspaper of general circulation in Boulder County at

least 14 days prior to the hearing date. Should this hearing be rescheduled for any reason, the Board will publish notice of the new time, date, and location of the hearing in a newspaper of general circulation in Boulder County at least 14 days prior to the hearing date. If necessary, at the Board's discretion, this hearing may be continued one or more times.

6. The Board reaffirms that any oil and gas operations conducted without all necessary County approvals may be in violation of the Boulder County Land Use Code or other applicable County regulations.
7. This Resolution does not apply to the following:
  - a. Any complete application for oil or gas exploration, development, or production currently being processed by the Land Use Department, which may continue to be processed and reviewed as provided in the Land Use Code.
  - b. Any application for oil or gas exploration, development, or production already approved by the Land Use Department prior to the effective date of this Resolution where such approval is validly maintained thereafter.
  - c. Development which possesses either a statutory or common law vested right.
  - d. Minor modifications to existing permits.

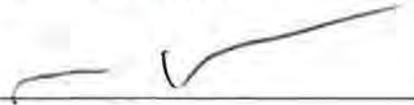
A motion to approve the foregoing Resolution imposing a temporary moratorium was made at the duly noticed public business meeting held on February 2, 2012 by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

ADOPTED on this 2 day of February, 2012, effective immediately.

BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:



Cindy Domenico, Chair



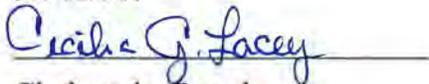
Will Toor, Vice Chair



Deb Gardner, Commissioner



ATTEST:



Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 2**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2012-46**

Mar. 20, 2017

## **RESOLUTION 2012-46**

### **A RESOLUTION CONFIRMING AND EXTENDING RESOLUTION 2012-16 IMPOSING A TEMPORARY MORATORIUM ON BOULDER COUNTY'S PROCESSING OF APPLICATIONS FOR PROPOSED OIL AND GAS DEVELOPMENT IN ALL OF THE UNINCORPORATED COUNTY PENDING CONSIDERATION OF AMENDMENTS TO THE COUNTY COMPREHENSIVE PLAN AND REGULATIONS**

**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 for a period of six (6) months, until August 2, 2012, and directed the County Land Use Department during this period 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"); 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 are sufficient to protect the public health, safety, and welfare, and whether an amended Comprehensive Plan and amended regulations are necessary to adequately mitigate impacts; and

**WHEREAS**, the Board fully specified in Resolution 2012-16 the reasons why it undertook this immediate action to impose the Temporary Moratorium, including, without limitation, the accelerated development and evolution of the oil and gas industry nationwide and in the Wattenberg Basin in the eastern portion of Boulder County and neighboring Weld County; the rapidly changing technology surrounding oil and gas drilling, involving primarily the controversial method of hydraulic fracturing ("fracking") of horizontally drilled wells; and the widespread, growing public concern over the land use, environmental, and public health impacts of fracking focusing on deteriorating air and water quality, questionable waste disposal practices, noxious odor and dust generation, intensification of erosion and other land disturbance impacts, proliferation of industrial-style extraction developments in rural and agricultural areas, increased heavy truck traffic with consequent damage to public roads, aggravation of geologic hazards such as earthquakes, safety concerns related to development in floodplains and floodways, and accelerated consumption of natural resources such as water, open space, productive agricultural land, and plant and wildlife habitat; and

**WHEREAS**, in enacting Resolution 2012-16 the Board scheduled a follow-up public hearing on the Temporary Moratorium, to be duly noticed and held on March 1, 2012, at 4:00 p.m. ("the Public Hearing"), so that the Board could receive public comment on the appropriateness of the Temporary Moratorium, and consider whether to terminate, extend, or otherwise amend the Moratorium; and

**WHEREAS**, between the time of the Board adopting the Temporary Moratorium and the Public Hearing, County staff collected information and held numerous meetings to proceed with the study and analysis directed by the Board under the Moratorium, and worked diligently to prepare and compile substantial background materials for the Board's review at the Public Hearing; and

**WHEREAS**, at the Public Hearing the Board considered the staff materials and background testimony presented by representatives of the County Land Use Department, County Parks and Open Space Department, County Transportation Department, and County Public Health, as well as the comments of many concerned members of the public, and spokespersons for environmental groups, the Colorado Attorney General's Office, and the University of Colorado's Environmental Engineering program, and other speakers; and

**WHEREAS**, following several hours of testimony, the Board indicated the need for additional time to absorb the extensive information provided at the Public Hearing before it would be in a position to give direction to County staff regarding the nature and scope of the proposed oil and gas master planning and regulatory effort; and

**WHEREAS**, at the end of the Public Hearing the Board, by spoken consensus, confirmed the necessity of keeping the Temporary Moratorium in effect until the Board had the opportunity to reflect and act upon the information from the Public Hearing; and

**WHEREAS**, the Board scheduled a continuation of the Public Hearing, for purposes of deliberating on, and giving direction regarding, the Temporary Moratorium, to be held on April 16, 2012, at 4:00 p.m., which was denominated a public meeting as no additional public testimony was then to be taken; and

**WHEREAS**, at the April 16 public meeting the Board received updated information from County staff on certain topics raised at the Public Hearing, and proceeded to provide direction regarding how County staff should proceed with the study and analysis of the County's planning and regulatory efforts addressing future oil and gas operations in unincorporated Boulder County, and further, in light of that direction, confirmed and extended the duration of the Temporary Moratorium, all as set forth in this Resolution, below.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County, based upon the Public Hearing on the Temporary Moratorium, as follows:

1. The Public Hearing has amply demonstrated that serious and legitimate concerns exist regarding the land use, environmental, and public health impacts of future oil and gas operations in the unincorporated County. Based on the Public Hearing, the Board believes that the responsible state and federal agencies may not be adequately addressing these impacts. Moreover, the County's existing planning and regulatory efforts in this area appear outdated and may not be sufficiently protecting the public health, safety, and welfare within the scope of the County's legal authority.
2. In the land use planning context, County staff, with the assistance of outside consultants (who may be retained as deemed appropriate and approved by the Board), is directed to process: (a) appropriate amendments to the Boulder County Comprehensive Plan, subject to the authorization of the County Planning Commission which County staff shall request; *and* (b) appropriate amendments to the Boulder County Land Use Code, consistent with the County's legal authority, including but not limited to considering the amendments suggested in the County Land Use Director's March 1, 2012 background paper (pp. 14-15) prepared for the Public Hearing, as well as possible transportation infrastructure/road impact fees, setbacks from open water sources, zoning to allow oil and gas operations in areas that will have the least impact, and lighting and noise controls.

The Board also authorizes staff to schedule a joint public meeting or hearing between the Board and the Planning Commission, if staff determines that such a proceeding will facilitate this land use planning and regulatory amendment process.

3. The Board emphasizes the importance of addressing the environmental impacts of oil and gas operations on air, water, and soil quality, on odor production, and from waste disposal, as well as in the context of promoting “clean” or “green” energy. The Board directs staff to consider whether such impacts and concerns can, and should, be addressed through the Land Use Code, or through possible Public Health regulations, or through alternative County efforts such as coordinating with other governmental agencies’ regulatory efforts, entering into memoranda of understanding or intergovernmental agreements with other agencies, promoting state or federal legislation, performing public education or outreach, and/or partnering with other involved organizations in the public and private sectors.
4. The Board urges staff to consider the full range of tools and responses that may be available to the County to address legitimate concerns over the impacts of oil and gas operations, particularly in areas where the County may be legally preempted from exercising its regulatory authority, or where other governmental entities are in a significantly better position to exercise their regulatory authority.
5. The Board reserves the ability, based on forthcoming information, to add planning or regulatory areas related to oil and gas development in the unincorporated County that are not specified in this Resolution, should the Board or the Planning Commission determine that other issues are important to encompass within this effort.
6. In light of the extensive work that the Board envisions staff will need to undertake to implement this Resolution, the Board concludes that the Temporary Moratorium’s length of six months, initially imposed in Resolution 2012-16, is insufficient. The Board determines, based on present information, that another six months will be necessary to appropriately amend the County’s Comprehensive Plan and Land Use Code in light of the Board’s direction herein provided. *Therefore, the Board approves extending the duration of the Temporary Moratorium as stated in Resolution 2012-12, to and including February 4, 2013.*
7. In approving this extension of the Temporary Moratorium through February 4, 2013, the Board urges staff to move expeditiously on this project, so that the Board can end the Temporary Moratorium sooner if appropriate plans and regulations are in place. Conversely, the Board reserves the right to extend the Temporary Moratorium if forthcoming circumstances indicate that additional time is reasonably necessary to study, process, and enact appropriate plans and regulations. Any change in the duration or other terms of the Temporary Moratorium shall occur at a duly noticed public hearing of the Board.

A motion to provide direction to the County staff, as stated above, and to confirm the Temporary Moratorium and extend its duration through February 4, 2013, was made at the April 16, 2012 public meeting (convened to act on the information presented at the March 1, 2012 Public Hearing), by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

**ADOPTED** on this 1st day of May, 2012, nunc pro tunc the 16<sup>th</sup> day of April, 2012.

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



*Cindy Domenico*

Cindy Domenico, Chair

*Will Toor*

Will Toor, Vice Chair

*Deb Gardner*

Deb Gardner, Commissioner

ATTEST:

*Cecilia J. Lacey*

Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 3**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2012-142**

Mar. 20, 2017

**RESOLUTION 2012-142**

**A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #DC-12-0003:  
PROPOSED TEXT AMENDMENTS TO THE BOULDER COUNTY LAND USE CODE  
RELATED TO REGULATION OF OIL AND GAS OPERATIONS**

**WHEREAS**, pursuant to C.R.S. Sections 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. Section 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 comprehensive text amendments to the Land Use Code's regulations relating to oil and gas operations, as set forth in the memoranda and recommendations of the County Land Use Department to the Board dated November 13, December 4, and December 13, 2012, with their attachments (collectively, "the Staff Recommendation"); and

**WHEREAS**, as further set forth in the Staff Recommendation, the Docket proposes the following amendments to the text of the Land Use Code: (1) enactment of a new Article 12 ("Development Plan Review for Oil and Gas Operations"), which will replace existing Article 4-900 and related definitions in Article 18 of the Code; (2) addition of two related uses in Article 4-500 of the Code (a

new Industrial Use in Article 4-506 entitled "Major Oil and Gas Operations," and a new Utility and Public Service Use in Article 4-514 entitled "Gas and/or Hazardous Pipelines"); (3) amendment of the Utility Service Facility Use in Article 4-514(P) of the Code ("Utility Service Facility"); and (4) addition of a new Article 4-1205 prohibiting any matters covered under proposed Article 12 from being appealed to the Board of Adjustment (collectively, "the Proposed Amendments"); and

**WHEREAS**, the Proposed Amendments have been diligently studied and developed under a temporary moratorium on oil and gas operations in the unincorporated County, which the Board imposed on an emergency basis on February 2, 2012 (as memorialized in Resolution 2012-16), reaffirmed following an extensive public hearing held on March 1, 2012, and formally extended until February 4, 2013 in official public action taken on April 16, 2012, as memorialized in Resolution 2012-46 ("the Temporary Moratorium"); and

**WHEREAS**, the Proposed Amendments have been drafted to implement the Boulder County Planning Commission's ("the Planning Commission") adoption of Docket BCCP-12-0001, Boulder County Comprehensive Plan amendments addressing oil and gas operations and development, which the Planning Commission approved on August 15, 2012 following public hearings held on June 20 and July 18, 2012; and

**WHEREAS**, following the Planning Commission's August 15, 2012 adoption of Docket BCCP-12-0001, and a joint public study session on prospective oil and gas regulations convened between the Planning Commission and the Board on August 22, 2012, County staff developed a first draft of the Proposed Amendments, on which the Planning Commission held a duly-noticed public hearing on September 24, October 1, and October 17, 2012; and

**WHEREAS**, on October 30, 2012, the Planning Commission took official public action to recommend approval of the Proposed Amendments in the Docket, and certified the Docket to the Board for ensuing public hearings, consideration, and action; and

**WHEREAS**, on November 13 and 15, as continued to December 4 and 13, 2012, the Board held a duly noticed public hearing on the Docket as certified to it by the Planning Commission ("the Public Hearing"), at which time the Board considered the documents and testimony presented by the County Land Use Department staff, and by a large number of members of the public, all as reflected on the official record of the Public Hearing; and

**WHEREAS**, at its Public Hearing on December 4, 2012 the Board took public testimony not only on the Proposed Amendments, but on the appropriate length of the Temporary Moratorium (due to expire on February 4, 2013) in light of the Proposed Amendments and the anticipated administrative demands necessary to implement the Amendments, should they be enacted, and determined to make a decision on the Temporary Moratorium's duration at a public hearing to be held on January 24, 2013; and

**WHEREAS**, at the Public Hearing, the Board directed staff to analyze whether any additional text amendments are necessary to implement transportation fees and propose such amendments, if any, at the public hearing to be held on January 24, 2013; and

**WHEREAS**, at its Public Hearing, the Board also directed staff to estimate the permit and other fees that will be necessary to administer the Proposed Amendments, as well as recommend appropriate transportation fees, and present the recommended fee amounts to the Board for discussion and adoption at the public hearing to be held on January 24, 2013; and

**WHEREAS**, based on the Public Hearing, the Board finds that the Proposed Amendments in the Docket, specifically in the form attached to and incorporated into this Resolution as Exhibit A.1 through A.5 (collectively "the Exhibits"), 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 Public Hearing; and

**WHEREAS**, the Board thus concludes that the Proposed Amendments in the Docket, as set forth in the Exhibits to this Resolution, should be approved for incorporation into the Land Use Code, to be effective as further provided in this Resolution, below.

**NOW, THEREFORE, BE IT RESOLVED** that the Proposed Amendments in the Docket (DC-12-0003), as set forth in the Exhibits attached to and incorporated into this Resolution, are hereby approved for incorporation into the Land Use Code, to be effective on the Temporary Moratorium termination date specified in Resolution 2012-46, as that termination date may be extended at the public hearing on January 24, 2013. The Board authorizes the County Land Use Department to make appropriate clerical corrections to portions of the Land Use Code not specifically amended herein, as may be necessary to incorporate the Proposed Amendments into the Land Use Code.

**BE IT FURTHER RESOLVED** that the Board of County Commissioners will undertake a review of the implementation of the Proposed Amendments in the Docket (DC-12-0003), to include input from Planning Commission, approximately one year after their effective date.

**BE IT FURTHER RESOLVED** that, pursuant to C.R.S. Section 30-28-125, the Board authorizes the Clerk to the Board to arrange for the immediate transmittal of this Resolution, with its Exhibits, to the County Clerk and Recorder, for filing and appropriate indexing with that official, so that the Clerk and Recorder may make this Resolution, with its Exhibits, accessible to the public. This transmittal should state recording Reference **No. 2735571**, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal supplements and amends.

A motion to approve the Proposed Amendments in the Docket (#DC-12-0003), as set forth above, was made at the Public Hearing by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

**ADOPTED** this 20th day of December, 2012.



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

*Cindy Domenico*  
\_\_\_\_\_  
Cindy Domenico, Chair

(Excused)  
\_\_\_\_\_  
Will Toor, Vice Chair

*Deb Gardner*  
\_\_\_\_\_  
Deb Gardner, Commissioner

ATTEST:

*Cecilia G. Lacey*  
\_\_\_\_\_  
Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 4**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2013-18**

Mar. 20, 2017

## RESOLUTION 2013-18

### **A RESOLUTION CONFIRMING AND EXTENDING THE TEMPORARY MORATORIUM IMPOSED IN RESOLUTIONS 2012-16 AND 2012-46 PERTAINING TO BOULDER COUNTY'S PROCESSING OF OIL AND GAS DEVELOPMENT APPLICATIONS IN THE UNINCORPORATED COUNTY**

**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 for a period of six months, until August 2, 2012, 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

**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; and

**WHEREAS**, the Board fully specified in Resolution 2012-16 the reasons why it undertook this immediate action to impose the Temporary Moratorium, including, without limitation, the accelerated development and evolution of the oil and gas industry nationwide and in the Wattenberg Basin in the eastern portion of Boulder County and neighboring Weld County; the rapidly changing technology surrounding oil and gas drilling, involving primarily the controversial method of hydraulic fracturing ("fracking") of horizontally drilled wells; and the widespread, growing public concern over the land use, environmental, and public health impacts of fracking focusing on deteriorating air and water quality, questionable waste disposal practices, noxious odor and dust generation, intensification of erosion and other land disturbance impacts, proliferation of industrial-style extraction developments in rural and agricultural areas, increased heavy truck traffic with consequent damage to public roads, aggravation of geologic hazards such as earthquakes, safety concerns related to development in floodplains and floodways, and accelerated consumption of natural resources such as water, open space, productive agricultural land, and plant and wildlife habitat; and

**WHEREAS**, in enacting Resolution 2012-16 the Board scheduled a follow-up public hearing on the Temporary Moratorium, to be duly noticed and held on March 1, 2012, so that the Board could receive public comment on the appropriateness of the Temporary Moratorium, and consider whether to terminate, extend, or otherwise amend the Moratorium; and

**WHEREAS**, between the time of the Board adopting the Temporary Moratorium and the public hearing on March 1, 2012, County staff collected information and held numerous meetings to proceed with the study and analysis directed by the Board under the Moratorium, and worked diligently to prepare and compile substantial background materials for the Board's review at the public hearing; and

**WHEREAS**, at the public hearing on March 1, 2012, the Board considered the staff materials and background testimony presented by representatives of the County Land Use Department, County Parks and Open Space Department, County Transportation Department, and County Public Health, as well as the comments of many concerned members of the public, and

spokespersons for environmental groups, the Colorado Attorney General's Office, and the University of Colorado's Environmental Engineering program, among other speakers; and

**WHEREAS**, following several hours of testimony, the Board indicated the need for additional time to absorb the extensive information provided at the March 1 public hearing before it would be in a position to give direction to County staff regarding the nature and scope of the proposed oil and gas master planning and regulatory effort; and

**WHEREAS**, at the end of the public hearing on March 1, 2012, the Board, by spoken consensus, confirmed the necessity of keeping the Temporary Moratorium in effect until the Board had the opportunity to reflect and act upon the information from the public hearing; and

**WHEREAS**, the Board scheduled a continuation of the public hearing, for purposes of deliberating on, and giving direction regarding, the Temporary Moratorium, to be held on April 16, 2012, which was conducted as a public meeting as no additional public testimony was then to be taken; and

**WHEREAS**, at the April 16 public meeting the Board received updated information from County staff on certain topics raised at the March 1 public hearing, and proceeded to provide direction regarding how County staff should proceed with the study and analysis of the County's planning and regulatory efforts addressing future oil and gas operations in unincorporated Boulder County, and further, in light of that direction, confirmed and extended the duration of the Temporary Moratorium until February 4, 2013, all as set forth in Resolution 2012-46; and

**WHEREAS**, after the April 16 public meeting on the moratorium extension, County staff developed a first draft of proposed amendments to the Boulder County Comprehensive Plan, denominated as Docket BCCP-12-0001, Boulder County Comprehensive Plan amendments addressing oil and gas operations and development; and

**WHEREAS**, after public hearings held on May 16, June 20, and July 18, on August 15, 2012 the Planning Commission approved Docket BCCP-12-0001; and

**WHEREAS**, following the Planning Commission's August 15, 2012 adoption of Docket BCCP-12-0001, and a joint public study session on prospective oil and gas regulations convened between the Planning Commission and the Board on August 22, 2012, County staff developed a first draft of proposed oil and gas review regulatory amendments to the Land Use Code, denominated as Docket DC-12-0003, to implement the Boulder County Planning Commission's direction reflected in Docket BCCP-12-0001; and

**WHEREAS**, the Planning Commission held duly-noticed public hearings on the proposed regulatory amendments in Docket DC-12-0003 on September 24, October 1, and October 17, 2012; and

**WHEREAS**, on October 30, 2012, the Planning Commission took official public action to recommend approval of Docket DC-12-0003, and certified the Docket to the Board for ensuing public hearings, consideration, and action; and

**WHEREAS**, on November 13 and 15, as continued to December 4 and 13, 2012, the Board held duly noticed public hearings on Docket DC-12-0003 as certified to it by the Planning Commission, at which time the Board considered the documents and testimony presented by the

County Land Use Department staff, and by a large number of members of the public, all as reflected on the official record of the public hearing; and

**WHEREAS**, at the public hearing on December 4, 2012, the Board took public testimony on the amendments proposed in Docket DC-12-0003 and also on the appropriate length of the Temporary Moratorium (then due to expire on February 4, 2013), and determined in light of that testimony to convene another public hearing to make a decision on the length of the Temporary Moratorium considering the complexity and extent of the proposed regulations and the anticipated administrative demands involved in their implementation, which hearing the Board scheduled for January 24, 2013; and

**WHEREAS**, at the December 4 public hearing 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 also estimate the permit application fees necessary to administer the Proposed Amendments, and recommend appropriate transportation and application processing fee amounts to the Board for consideration at the January 24, 2013 public hearing; 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, in that the existing text was in need of amendment; the Proposed Amendments were not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments were in accordance with the Boulder County Comprehensive Plan, all as set forth in and supported by the record of the public hearing, and the Board thus concluded that the proposed amendments in Docket DC-12-0003 should be approved for incorporation into the Land Use Code, to be effective on the Temporary Moratorium termination date specified in Resolution 2012-46, as that termination date might be extended at a public hearing on January 24, 2013; and

**WHEREAS**, the Board's decisions and direction to staff at the December 13, 2012 continued public hearing were 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, and considered the setting of appropriate transportation fees for oil and gas activities in the unincorporated county, and also considered the adequacy of the length of the Temporary Moratorium in terms of finalizing the regulations approved in Docket DC-12-0003 and developing a plan to administer those regulations, at which hearing numerous members of the public testified; and

**WHEREAS**, at the January 24, 2013 hearing, staff presented an Implementation Work Plan as further described in the Staff Recommendation of the same date, which stated that in order for the County staff to be equipped to start processing oil and gas development applications under the adopted regulations many tasks needed still to be accomplished, including, without limitation, development of a Request for Qualifications and hiring of outside expertise; staff training; coordination with involved departments and agencies such as affected fire protection districts; preparation of application materials, handouts, and information for the public; development and adoption of planning and permit fees, as well as inspection schedules; updating internal databases and tracking systems; coordination with industry on submission of

applications; and coordination with the Colorado Oil and Gas Conservation Commission (“COGCC”) to harmonize new state rules with new county regulations; and

**WHEREAS**, the County Staff thus recommended to the Board at the January 24, 2013 public hearing that the adopted regulations not be effective until June 10, 2013, and the Temporary Moratorium be extended until that date, to allow the staff sufficient time to prepare to accept applications under the new regulations and to ensure that applications would be processed as effectively and efficiently as possible; and

**WHEREAS**, based on the information and testimony presented at the January 24, 2013 public hearing, the Board determined that it was reasonable and appropriate to extend the Temporary Moratorium for the additional limited time requested by the County Staff, and direct the 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, as further set forth in this Resolution, below.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County, based upon the January 24, 2013 public hearing to review results of the County consultant’s final Oil & Gas Roadway Impact Study, as follows:

1. Staff is directed to use the findings and recommendations in the Study to propose the maximum legally defensible impact fee or an alternative equally effective cost recovery mechanism, to be considered by the Board after a public hearing in two to three months, thus prior to the end of the Temporary Moratorium.
2. Staff is also directed to recommend to the Board at that public hearing, the time and date of which is yet to be determined, any necessary amendments to the transportation sections of the oil and gas regulations approved in Docket DC-12-0003, to conform to the proposed impact fee or other cost recovery mechanism.

A motion to provide direction as stated above to the County staff was made at the January 24, 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 public hearing to consider the adequacy of the length of the Temporary Moratorium, in terms of finalizing regulations under Docket DC-12-0003 and developing a plan to administer those new regulations, to include discussion of setting appropriate permit review and related fees necessary to administer the regulations, as follows:

1. The Board continues to urge staff to consider the full range of tools and responses that may be available to the County to address legitimate concerns over the impacts of oil and gas operations, particularly in areas where the County may be legally preempted from exercising its regulatory authority, or where other governmental entities are in a significantly better position to exercise their regulatory authority.
2. In light of the extensive work that the Board envisions staff will need to undertake to implement the recently enacted Land Use Code amendments in Docket DC-12-0003, integrate the new county regulations with the new COGCC regulations on setbacks and groundwater monitoring, and implement the findings of the Roadway Impact Study via

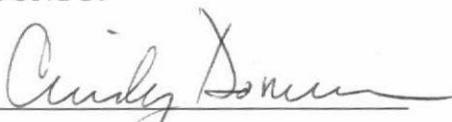
an impact fee or other equally effective cost recovery mechanism, the Board concludes that the Temporary Moratorium's length of one year, initially imposed in Resolution 2012-16 and later extended in Resolution 2012-46, is insufficient. The Board determines, based on present information, that extending the moratorium for approximately four additional months, specifically to June 10, 2013, is reasonable and necessary.

3. In approving this extension of the Temporary Moratorium to June 10, 2013, the Board urges staff to move expeditiously, so that the Board can end the Temporary Moratorium sooner if appropriate plans and regulations are in place. Conversely, the Board reserves the right to extend the Temporary Moratorium if forthcoming circumstances indicate that additional time is reasonably necessary to study, process, and enact appropriate plans and regulations. Any change in the duration or other terms of the Temporary Moratorium shall occur at a duly noticed public hearing of the Board.

A motion to confirm the Temporary Moratorium and extend its length by approximately four months, to June 10, 2013, was made at the January 24, 2013 public hearing by Commissioner Gardner, seconded by Commissioner Jones, and passed by a 3-0 vote of the Board.

**ADOPTED** on this 5<sup>th</sup> day of February, 2013, nunc pro tunc the 24<sup>th</sup> day of January, 2013.

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

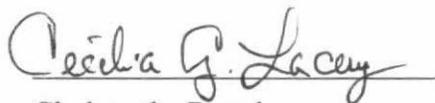
  
Cindy Domenico, Chair

  
Deb Gardner, Vice Chair

  
Elise Jones, Commissioner



ATTEST:

  
Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 5**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2013-50**

Mar. 20, 2017

## RESOLUTION 2013-50

### **EXTENDING UNTIL JUNE 24, 2013 THE TEMPORARY MORATORIUM IMPOSED IN RESOLUTION 2013-18 PERTAINING TO BOULDER COUNTY'S PROCESSING OF OIL AND GAS DEVELOPMENT APPLICATIONS IN THE UNINCORPORATED COUNTY**

**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 for a period of six months, until August 2, 2012, 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

**WHEREAS**, on April 16, 2012, upon further consideration after additional public hearings and meetings, the expiration of the Temporary Moratorium was extended to February 4, 2013, for the reasons set forth in Resolution 2012-46; and

**WHEREAS**, on January 24, 2013, upon further consideration after additional public hearings and meetings, the expiration of the Temporary Moratorium was further extended to June 10, 2013, for the reasons set forth in Resolution 2013-18; and

**WHEREAS**, in response to numerous requests from the public for an opportunity to address the Board on matters concerning oil and gas development in Boulder County, the Board scheduled a hearing for May 16, 2013 to take public testimony; and

**WHEREAS**, after hearing the public testimony on May 16, 2013, the Board indicated a desire to consider the written and verbal testimony received and give staff further direction at a public meeting on May 21, 2013 and asked staff to bring forward options at that meeting for amending the Land Use Code to allow for phased development of oil and gas in Boulder County; and

**WHEREAS**, at the public meeting on May 21, 2013, the Board did not vote to further extend the Temporary Moratorium but directed staff to continue analyzing options for amending the Land Use Code to allow for phased development of oil and gas and, further, to analyze whether such amendments could be adopted prior to June 10, 2013; and

**WHEREAS**, at a duly noticed joint session of Planning Commission and the Board of County Commissioners on June 5, 2013, the two bodies heard a staff presentation on options for phasing in oil and gas development, to be implemented through text amendments to Article 12 of the Land Use Code under Docket DC-12-0003; both bodies listened to several hours of public testimony; and, after the Board left the hearing room, Planning Commission deliberated and ultimately voted 4-3 against recommending that the Board adopt the phasing program; furthermore, Planning Commission unanimously requested the Board reconsider extending the Temporary Moratorium; and

**WHEREAS**, County Commissioner Gardner was unable to attend the public hearing on June 5<sup>th</sup> due to a previously planned trip; and

**WHEREAS**, following several hours of public testimony on May 16, 2013, and June 5, 2013, the Board convened a duly noticed public meeting on June 6, 2013, which meeting Commissioner Gardner was again unable to attend due to the same previously planned trip, and at which meeting the Board indicated the need for additional time to absorb the extensive information provided before it would be in a position to take further action regarding county regulation of oil and gas development, given the need to absorb the extensive public testimony received at the May 16th and June 5th hearings, voluminous written comments received prior to those hearings, and the Planning Commission actions at the June 5th hearing, as well as a strong preference that major decisions on Boulder County regulation of oil and gas development be considered and acted on by the full Board; and

**WHEREAS**, the Board desires to schedule a meeting of the full Board for the soonest practical date after Commissioner Gardner's return and has determined that date to be June 18<sup>th</sup>.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County as follows:

1. To allow time for Commissioner Gardner to return and participate in further deliberations and action, the Board hereby tables Docket DC-12-0003 (phasing text amendments) to the time and date certain of 4:30 p.m. on June 18, 2013, and hereby extends the expiration date of the Temporary Moratorium to June 24, 2013.

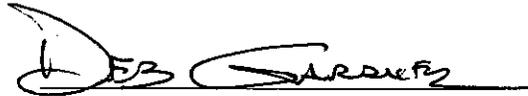
A motion to this effect was made at the June 6<sup>th</sup> public meeting by Commissioner Domenico, seconded by Commissioner Jones, and passed by a 2-0 vote of the Board, with Commissioner Gardner excused.

**ADOPTED** on this 11<sup>th</sup> day of June, 2013, nunc pro tunc the 6<sup>th</sup> day of June, 2013.

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



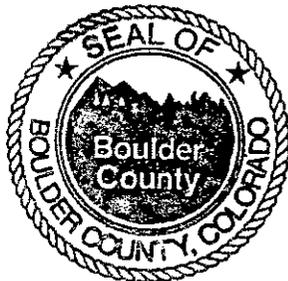
Cindy Domenico, Chair



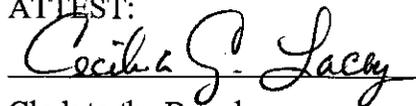
Deb Gardner, Vice Chair



Elise Jones, Commissioner



ATTEST:



Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 6**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2013-55**

Mar. 20, 2017

**RESOLUTION 2013-55**

**EXTENDING BY 18 MONTHS THE TEMPORARY MORATORIUM IMPOSED IN RESOLUTION 2012-16 AND CONTINUED IN 2012-46, 2013-18, AND 2013-50 PERTAINING TO BOULDER COUNTY'S PROCESSING OF OIL AND GAS DEVELOPMENT APPLICATIONS IN THE UNINCORPORATED COUNTY AND TABLING INDEFINITELY PHASING AMENDMENTS PROPOSED AS PART OF DOCKET DC-12-0003**

**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 for a period of six months, until August 2, 2012, 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

**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; and

**WHEREAS**, the Board fully specified in Resolution 2012-16 the reasons why it imposed the Temporary Moratorium, including the accelerated development and evolution of the oil and gas industry nationwide and in the Wattenberg Basin in the eastern portion of Boulder County and neighboring Weld County; the rapidly changing technology surrounding oil and gas drilling, involving primarily the controversial method of hydraulic fracturing ("fracking") of horizontally drilled wells; and the widespread, growing public concern over the land use, environmental, and public health impacts of fracking and the associated rapid increase in oil and gas production such as deterioration of air and water quality, questionable waste disposal practices, noxious odor and dust generation, intensification of erosion and other land disturbance impacts, proliferation of industrial-style extraction developments in rural and agricultural areas, increased heavy truck traffic with consequent damage to public roads, aggravation of geologic hazards such as earthquakes, safety concerns related to development in floodplains and floodways, and accelerated consumption of natural resources such as water, open space, productive agricultural land, and plant and wildlife habitat; and

**WHEREAS**, in enacting Resolution 2012-16, the Board scheduled a follow-up public hearing on the Temporary Moratorium for March 1, 2012, so that the Board could receive public comment on the appropriateness of the Temporary Moratorium and consider whether to terminate, extend, or otherwise amend the Temporary Moratorium; and

**WHEREAS**, between the Board's adoption of the Temporary Moratorium and the public hearing on March 1, 2012, county staff collected information and held numerous meetings to proceed with the study and analysis directed by the Board under the Temporary Moratorium and worked diligently to prepare and compile substantial background information materials for the Board's review at the public hearing; and

**WHEREAS**, at a duly noticed public meeting on March 1, 2012, the Board considered the staff materials and background testimony presented by representatives of the County Land Use Department, County Parks and Open Space Department, County Transportation Department, and County Public Health; the Board also considered the comments of many concerned members of the public, spokespersons for environmental groups, the Colorado Attorney General's Office, the University of Colorado's Environmental Engineering program, and other speakers; and

**WHEREAS**, the Board set a further public hearing for April 16, 2012, at which the Board received updated information from county staff on certain topics raised at the March 1 public meeting and additional testimony that demonstrated serious and legitimate concerns existed regarding the land use, environmental, and public health impacts of future oil and gas operations in the unincorporated county. Based on the information, the Board believed that the responsible state and federal agencies may not have been adequately addressing the impacts of oil and gas development in the county and that the county's existing planning and regulatory efforts in the area were outdated and did not sufficiently protect the public health, safety, and welfare within the scope of the county's legal authority; and

**WHEREAS**, at the April 16, 2012 public meeting, the Board extended the expiration of the Temporary Moratorium to February 4, 2013, as reflected in Resolution 2012-46, whereby the Board directed county staff, with the assistance of outside consultants, to process appropriate amendments to the Boulder County Comprehensive Plan and to the Boulder County Land Use Code, including consideration of possible transportation impact fees, setbacks from open water sources and other resources, zoning to allow oil and gas operations in areas that would have the least impact, and lighting and noise controls; and

**WHEREAS**, after the April 16 public meeting on the moratorium extension, county staff developed a first draft of proposed amendments to the Boulder County Comprehensive Plan, denominated as Docket BCCP-12-0001, Boulder County Comprehensive Plan amendments addressing oil and gas operations and development; and after public hearings held on May 16, June 20, and July 18, the Planning Commission approved Docket BCCP-12-0001 on August 15, 2012; and

**WHEREAS**, following the Planning Commission's August 15, 2012 adoption of Docket BCCP-12-0001, and a joint public study session on prospective oil and gas regulations convened between the Planning Commission and the Board on August 22, 2012, county staff developed a first draft of proposed oil and gas regulatory amendments to the Land Use Code, denominated as Docket DC-12-0003, to implement the Boulder County Planning Commission's direction reflected in Docket BCCP-12-0001; and

**WHEREAS**, the Planning Commission held duly-noticed public hearings on the proposed regulatory amendments in Docket DC-12-0003 on September 24, October 1, and October 17, 2012; the Planning Commission took official public action to recommend approval of Docket DC-12-0003 on October 30, 2012, certifying the Docket to the Board for ensuing public hearings, consideration, and action; and

**WHEREAS**, on November 13 and 15, as continued to December 4 and 13, 2012, the Board held duly noticed public hearings on Docket DC-12-0003 as certified to it by the Planning Commission, at which time the Board considered the documents and testimony presented by the Land Use Department staff, and by a large number of members of the public, all as reflected on the official record of the public hearing; and

**WHEREAS**, at the public hearing on December 4, 2012, the Board took public testimony on the amendments proposed in Docket DC-12-0003 and also on the appropriate length of the Temporary Moratorium (then due to expire on February 4, 2013), and determined in light of that testimony to convene another public hearing to make a decision on the length of the Temporary Moratorium considering the complexity and extent of the proposed regulations and the anticipated administrative demands involved in their implementation, which hearing the Board scheduled for January 24, 2013; and

**WHEREAS**, at the December 4 public hearing 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 also estimate the permit application fees necessary to administer the Proposed Amendments, and recommend appropriate transportation and application processing fee amounts to the Board for consideration at the January 24, 2013 public hearing; 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, in that the existing text was in need of amendment, the Proposed Amendments were not contrary to the intent and purpose of the Land Use Code, and the Proposed Amendments were in accordance with the Boulder County Comprehensive Plan, all as set forth in and supported by the record of the public hearing, and the Board thus concluded that the proposed amendments in Docket DC-12-0003 should be approved for incorporation into the Land Use Code, to be effective on the Temporary Moratorium termination date specified in Resolution 2012-46, as that termination date might be extended at a public hearing on January 24, 2013; and

**WHEREAS**, the Board's decisions and direction to staff at the December 13, 2012 continued public hearing were 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 the final Oil & Gas Roadway Impact Study prepared by the county's consultant on road impacts and associated fees, and considered the setting of appropriate transportation fees for oil and gas activities in the unincorporated county, and also considered the adequacy of the length of the Temporary Moratorium in terms of finalizing the regulations approved as noted in Resolution 2012-142 and developing a plan to administer those regulations, at which hearing numerous members of the public testified; and

**WHEREAS**, at the January 24, 2013 hearing, staff presented an Implementation Work Plan as further described in the Staff Recommendation of the same date, which stated that for the county staff to be equipped to start processing oil and gas development applications under the adopted regulations, many tasks still needed to be accomplished, including development of a Request for Qualifications and hiring of outside expertise; staff training; coordination with involved departments and agencies such as affected fire protection districts; preparation of application materials, handouts, and information for the public; development and adoption of planning and permit fees, as well as inspection schedules; updating internal databases and tracking systems; coordination with industry on submission of applications; and coordination with the Colorado Oil and Gas Conservation Commission ("COGCC") to harmonize new state rules with new county regulations; and

**WHEREAS**, the county staff thus recommended to the Board at the January 24, 2013 public hearing that the adopted regulations not be effective until June 10, 2013 and the Temporary Moratorium be extended until that date to allow the staff sufficient time to prepare to accept applications under the new regulations and to ensure that applications would be processed as effectively and efficiently as possible; and

**WHEREAS**, based on the information and testimony presented at the January 24, 2013 public hearing, the Board determined that it was reasonable and appropriate to extend the Temporary Moratorium for the additional time requested by the county staff, and directed staff to propose appropriate and legally defensible fees addressing the impacts of oil and gas development on the county road system for further consideration and possible adoption by the Board prior to the new expiration date of the Temporary Moratorium on June 10, 2013, all as reflected in Resolution 2013-18; 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 the associated regulations, and the Board adopted certain impact fees as well as the proposed companion text amendments to Article 12, all as reflected in Resolution 2013-49; and

**WHEREAS**, in response to numerous requests from the public for an opportunity to address the Board on the potential public health and safety impacts of oil and gas development in Boulder County, the Board also scheduled a hearing for May 16, 2013 to take public testimony; at the May 16, 2013 hearing, much of the public testimony related to a desire to continue the Temporary Moratorium for an additional two years because continued profound and unresolved concerns exist as to the impact of oil and gas development in the county even if it were subject to the county's newly developed regulations, especially given the widespread uncertainty regarding the possible negative public health impacts of fracking operations in developed and populated areas; and after hearing the public testimony on May 16, 2013, the Board indicated a desire to consider the written and verbal testimony received and give staff further direction at a public meeting on May 21, 2013; and

**WHEREAS**, at the public meeting on May 21, 2013, the Board directed staff to continue analyzing options for amending the Land Use Code in a manner that may address the public health and safety concerns expressed by the public at the May 16, 2013 hearing; one specific option the Board asked staff to explore was an option for phased development of oil and gas to be put in place prior to the June 10 expiration of the Temporary Moratorium; and

**WHEREAS**, at a duly noticed joint session of Planning Commission and the Board of County Commissioners on June 5, 2013, the two bodies heard a staff presentation on options for phasing in oil and gas development, to be implemented through text amendments to Article 12 of the Land Use Code; both bodies listened to several hours of public testimony, all of which related to continued public health concerns about oil and gas development, the concern that any phasing plan would be inadequate for addressing these concerns, and the desire to continue the Temporary Moratorium; and, after the Board left the hearing room, Planning Commission deliberated and ultimately voted 4-3 against recommending that the Board adopt a phasing program; furthermore, Planning Commission unanimously requested the Board consider further extending the Temporary Moratorium; and

**WHEREAS**, County Commissioner Gardner was unable to attend the public hearing on June 5<sup>th</sup> due to a previously planned trip out of the country; and

**WHEREAS**, the Board convened a duly noticed public meeting on June 6, 2013, which meeting Commissioner Gardner was again unable to attend due to the same previously planned trip, and at which meeting the Board indicated the need for additional time to absorb the extensive information provided before it would be in a position to take further action regarding county regulation of oil and gas development, given the extensive public testimony received at the May 16<sup>th</sup> and June 5<sup>th</sup> hearings, hundreds of written comments received prior to those hearings, and the Planning Commission actions at the June 5<sup>th</sup> hearing, as well as a strong preference that major decisions on Boulder County regulation of oil and gas development be considered and acted on by the full Board; and

**WHEREAS**, to allow for Commissioner Gardner to participate in further deliberations and action, at the June 6<sup>th</sup> meeting the Board scheduled a subsequent meeting of the full Board for the soonest feasible date after her return, June 18<sup>th</sup>, and consequently the Board voted to table the phasing amendments until June 18, 2013 and by Resolution 2013-50 extended the Temporary Moratorium to June 24, 2013; and

**WHEREAS**, also on June 6, 2013, after presentation by the Land Use Department Director at a duly noticed public business meeting, the Board approved various permit and inspection fees as a reasonable and appropriate general approximation of the direct and indirect costs of administering the recently adopted regulations in Article 12 of the Land Use Code, all as reflected in Resolution 2013-54; and

**WHEREAS**, the Board held a duly noticed public hearing on June 18, 2013, on the topic of further extending the Temporary Moratorium, at which it considered some 1,100 written comments, the majority of which were similar to those raised at the public hearings on May 16 and June 5, and at which hearing Commissioner Gardner affirmed that since returning she had listened to the tapes of the hearings she missed on June 5<sup>th</sup> and 6<sup>th</sup>; and

**WHEREAS**, at the June 18<sup>th</sup> public hearing the Board made a series of statements and findings as summarized below; and

**WHEREAS**, since December 20, 2012, when the Board signed and adopted Resolution 2012-142 approving updated oil and gas regulations on air and water quality among many other subjects, the Board has received continually updated information regarding the potential harmful effects of oil and gas development on public health, safety, and welfare that justify further study and consideration, and while this new information indicates that the regulations recently adopted were a necessary step toward protecting public health and the environment, it also indicates that the adopted regulations may not be sufficiently comprehensive or restrictive to adequately protect public health and safety; and

**WHEREAS**, air quality and the effect of emissions of pollutants is of major concern to public health, safety and welfare; and oil and gas facilities are known to generate numerous types of air pollutants, including volatile organic compounds ("VOCs"), diesel particulate matter, silica dust, methane and other harmful pollutants such as benzene; and

**WHEREAS**, the United States Environmental Protection Agency (the "EPA") recognizes that the health effects of VOCs include eye, nose, and throat irritation; headaches, loss of coordination; nausea; damage to liver, kidney, and central nervous system; cancer in

animals; and some VOCs are suspected or known to cause cancer in humans; furthermore, VOCs and nitrogen oxides together combine in the presence of sunlight to form ground-level ozone or “smog”, a cause of respiratory inflammation and irritation, a trigger for asthma symptoms, and premature mortality; and

**WHEREAS**, the health effects associated with benzene include acute and chronic nonlymphocytic leukemia, acute myeloid leukemia, chronic lymphocytic leukemia, anemia, and other blood disorders and immunological effects; and

**WHEREAS**, the EPA has already designated nine counties in Colorado’s Front Range including Boulder County as nonattainment areas due to high levels of ozone, a designation for areas out of compliance with the national health-based primary or secondary ambient air quality standard for criteria pollutants under the Clean Air Act’s National Ambient Air Quality Standards; and

**WHEREAS**, CDPHE’s Air Pollution Control Division has conducted five stakeholder meetings over the past few months to review proposed regulatory changes that are anticipated to be presented to the Colorado Air Quality Control Commission (“AQCC”) in August, with the proposed changes seeking to improve the effectiveness of Colorado’s air quality program, address the growth in oil and gas development, and reduce oil and gas emissions in Colorado; specifically, revisions under consideration would address the control of emissions including ozone precursors by further regulating storage tanks, capturing emissions, and reducing fugitive emissions by increasing identification and repair of leaks; and

**WHEREAS**, at an air quality rulemaking stakeholder meeting in late January 2013, the Colorado Department of Public Health and Environment (“CDPHE”) reported that in 2008 oil and gas sources accounted for 47% (454.6 tons per day) of all VOCs emitted statewide and that more than half of these statewide emissions (240 tons per day) were emitted in the Front Range; and

**WHEREAS**, the CDPHE stakeholder process includes representatives from industry, environmental organizations and public entities, among others, and the state rule development process has the potential to develop information that could lead to improvements in the county’s regulatory language and implementation; and

**WHEREAS**, results of a study released in January of 2013 by the National Oceanic and Atmospheric Administration found that nearly half of ozone-forming pollutants in the Town of Erie, a substantial portion of which lies within Boulder County, come from oil and gas drilling activity; and

**WHEREAS**, results released in February of 2013 of the first phase of a study by the Utah Department of Environmental Quality on the Uinta Basin winter ozone and air quality concluded that 98-99% of VOC emissions and 57-62% of nitrogen emissions in that basin came from oil and gas production, with natural gas production yielding the highest percentage of VOC emissions and in that area recorded ozone levels were nearly double the federal health standard; and

**WHEREAS**, in April 2013, the Wyoming Department of Health released results of a study of possible health effects linked with higher amounts of ground-level ozone in Sublette County, an area where oil and gas development has increased dramatically recently, using 2008-2011 data, which indicated that for every 10 parts per billion increase in the eight-hour maximum

ground-level ozone there was a 3% increase in local health clinic visits due to respiratory-related complaints the following day; in addition, EPA designated Sublette County as nonattainment for ozone last year for the first time ever; and

**WHEREAS**, results of a study presented to the Regional Air Quality Council in May 2013 compared emissions of VOCs and nitrogen in the Front Range of Colorado in 2008 to projected emissions in 2018, and found that while all other sources of such emissions were projected to decrease, emissions attributable to oil and gas production are projected to increase dramatically, both in absolute terms and as a percentage of total VOCs emitted; and

**WHEREAS**, the EPA has recently proposed updates, to be finalized later in 2013, to its 2012 VOC performance standards for storage of oil and natural gas during the production process, before such liquids are moved to a pipeline, sold, or disposed of; and which EPA recognizes is a source of several toxic air pollutants, including benzene and VOCs; and

**WHEREAS**, the uncertain risks of fracking to public health, safety and welfare are of such concern to numerous other agencies that multiple studies are currently underway, including an EPA analysis of fracking's potential impact on drinking water resources (including public water supplies); a National Science Foundation review of the health impacts of fracking in conjunction with the University of Colorado; a CDPHE study in tandem with Colorado State University of the health effects of oil and gas emissions in the Front Range; and the Geisinger Health System of Pennsylvania study on the health impacts of fracking; and the New York Department of Health of the health impacts of fracking; and

**WHEREAS**, local governments also have authority to enact regulations protective of public water supplies and to impose water quality standards and water body setbacks associated with oil and gas development; and

**WHEREAS**, COGCC received in 2012 approximately 400 reports of oil and gas spills associated with oil and gas wells; these spills included 63 instances which had groundwater impacts, 22 spills which had surface water impacts, and a total of 66 spills which required ground or surface water remediation; further, 94 spills required contaminated soil to be excavated, and 32 other spills that required further soil remediation; and

**WHEREAS**, C.R.S. § 25-7-128 grants local governments, including statutory counties, express authority to enact local air pollution resolutions or ordinances, which include emission control regulations that are the same as or more restrictive than state emission control regulations; and

**WHEREAS**, arising out of the express authority granted statutory counties by C.R.S. § 25-7-128 to regulate air quality, as well as its general police power authority to protect public health, safety, and welfare, the Board may impose or extend a temporary moratorium of limited duration necessary to gather additional information to facilitate effective governmental decision making on appropriate regulations; and

**WHEREAS**, if applications requesting approval to conduct oil and gas exploration, development, and production activities within the unincorporated county are submitted prior to the county having adequate time to conduct the appropriate studies, review results of other studies and any resulting changes in state or federal regulations, and consider and process any indicated regulatory amendments regarding air quality, irreparable harm will be done to the public health, safety, and welfare; and

**WHEREAS**, extending the Temporary Moratorium to review and revise existing air pollution regulations in Boulder County pursuant to the express power granted to the Board by C.R.S. § 25-7-128 is necessary to prevent irreparable harm to public health, safety, and welfare because of both the known and unknown hazards caused by emissions of ozone precursors, now directly linked to oil and gas development through a consensus of recently concluded and ongoing studies performed by governmental agencies at both the federal and state levels; and

**WHEREAS**, further delay in accepting applications for oil and gas operations is reasonable, appropriate, and necessary given the complexity of technical information critical for the Board to make informed decisions to protect the public and the environment in a manner harmonized with those of the federal and state governments; and

**WHEREAS**, such regulations are necessary to protect residents of Boulder County from uses of property that are hazardous and injurious to health, safety, and welfare and to prevent activities and conditions in the county that create an unreasonable risk of harm to others, a concern that has been expressed by numerous county citizens through testimony and written correspondence; and

**WHEREAS**, the Board estimates that the time needed for staff to analyze the studies performed by governmental agencies at both the federal and state levels, to perform the prerequisite studies, and to analyze regulatory amendments that may be necessary to protect public health, safety, and welfare is approximately 18 months; and

**WHEREAS**, the Board notes the potential for further changes in state law during the 2014 legislative session, the potential for rulemaking changes by the COGCC, and the potential for changes in state law as a result of the resolution of pending cases concerning local governmental authority to regulate certain aspects of oil and gas development, all of which may further clarify the bounds of local regulatory jurisdiction; and

**WHEREAS**, the Board notes the potential for further changes in air quality regulations at the state level as a result of the anticipated 2013 AQCC rulemaking as well as recent changes to federal storage tank requirements that have not yet taken effect; these changes have the potential to develop information that could lead to improvements in county regulatory language and implementation, as well as amendments to better harmonize with the state and federal regulatory regime; and

**WHEREAS**, the Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101 et seq., provides the county with the broad authority to plan for and regulate the use of land in order to provide for orderly development and a balancing of basic human needs of a changing population with legitimate environmental concerns, all in a manner consistent with constitutional rights; and

**WHEREAS**, the Local Government Land Use Control Enabling Act authorizes each local government within its respective jurisdiction to plan for and regulate the use of land by, among other actions, regulating development and activities in hazardous areas; protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species; preserving areas of historical and archaeological importance; regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and otherwise planning for and regulating the use of land so as

to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights; and

**WHEREAS**, the Board believes it has not only the right but the responsibility to plan for and regulate the use of land for the purposes laid out in the Local Government Land Use Control Enabling Act as well as those purposes specified in other applicable state and federal statutes and common law grants of authority, to best protect and promote the health, safety, and general welfare of the present and future inhabitants of Boulder County and to guide future growth, development, and distribution of land uses within Boulder County; and

**WHEREAS**, the Colorado Oil and Gas Conservation Act, C.R.S. §§ 37-60-101 et seq., declares that it is in the public interest to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the State of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources; and

**WHEREAS**, the Colorado Oil and Gas Conservation Act grants the COGCC authority to adopt statewide rules and regulations concerning the development and production of oil and gas resources and the COGCC has done so; and

**WHEREAS**, the Colorado Oil and Gas Conservation Act and the rules promulgated thereunder provide that neither the Act nor the regulations are intended to establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations; and

**WHEREAS**, Colorado courts have recognized on several occasions that the Colorado Oil and Gas Conservation Act does not expressly or impliedly preempt all aspects of a county's authority to enact regulations applicable to oil and gas development and operational activities within the county, and thus the county's regulations pertaining to matters mentioned in the Colorado Oil and Gas Conservation Act are legal and valid as long as their express or implied conditions do not irreconcilably conflict with state law on the basis of operational conflicts that materially impede or destroy the state's interest; and

**WHEREAS**, the U.S. Supreme Court and the Colorado Supreme Court recognize that temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for regulation and development; indeed, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments and, therefore, pursuant to express and implied authority granted by the Colorado Revised Statutes and multiple Colorado and federal appellate decisions upholding temporary moratoria on land use applications while amendments are considered, the Board has the legal authority to adopt a temporary moratorium in this situation; and

**WHEREAS**, the Board acknowledges the existence of oil and gas mineral property rights within its unincorporated areas and that owners of those interests, at the expiration of the Temporary Moratorium, may develop those interests as permitted by then applicable federal, state, and county laws and regulations; however, the Board understands that these minerals will remain in place during the duration of a moratorium and that they will be available for future resource development, and thus a limited delay in extraction is legal, necessary, and appropriate when balanced against the Board's fundamental duty as elected officials to protect public health,

safety, welfare, and the environment from potential adverse impacts of oil and gas exploration and development, and to minimize potential land use conflicts between those activities and current or planned land uses; and

**WHEREAS**, in light of the foregoing, circumstances warrant the immediate enactment of this Resolution extending the Temporary Moratorium for 18 months to protect the public health, safety, and welfare and the environment.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County as follows:

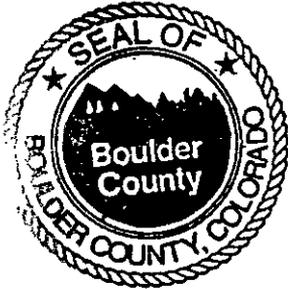
1. County staff shall analyze whether the existing county regulations pertaining to air quality standards and siting and setback regulations for oil and gas operations are sufficient to protect the public health, safety, and welfare and whether amending such regulations pursuant to the county's statutory authority is necessary to adequately mitigate the impacts and hazards associated with oil and gas development.
2. Because of the extensive work staff will need to undertake, the serious and profound concerns of county citizens about the potential health and safety hazards presented by future oil and gas development in the county, the additional health and safety information that will become available in the near future through scientific study of oil and gas operations, and potential federal and state legal and regulatory changes that may impact county regulatory authority related to oil and gas operations, extending the Temporary Moratorium until January 1, 2015, is reasonable and necessary to protect the public health, safety, and welfare of the county and prevent irreparable harm.
3. In addition, county staff shall consider and develop a full range of tools and responses available to the county to address the impacts of oil and gas operations on air quality, including the following staffing and programs which shall be presented to the Board for further direction and final approval within the next three months:
  - a. additional staff or third party consultants necessary to review and process DPR permit applications in a manner that fully implements the requirements of the county's recently adopted regulations;
  - b. additional staff or third party consultants necessary to adequately inspect current and future wells with approved DPR permits;
  - c. additional staff or outside consultants to fulfill Local Government Designee duties;
  - d. a memorandum of understanding with COGCC and any other interested local governments on regulatory matters related to oil and gas development as authorized by the Oil and Gas Conservation Act; and
  - e. formation of an advisory group on scientific and technical issues to help inform future county decisions on oil and gas development; and
  - f. completion of air and water quality sampling prior to additional oil and gas development.
4. Any oil and gas operations conducted without all necessary county approvals may be in violation of the Boulder County Land Use Code or other applicable county regulations.

5. As before, the Temporary Moratorium does not apply to the following:
- a. Any complete application for oil or gas exploration, development, or production currently being processed by the Land Use Department, which may continue to be processed and reviewed as provided in the Land Use Code.
  - b. Any application for oil or gas exploration, development, or production already approved by the Land Use Department prior to the effective date of this Resolution where such approval is validly maintained thereafter.
  - c. Development that possesses either a statutory or common law vested right.
  - d. Minor modifications to existing permits.

A motion to this effect was made at the June 18<sup>th</sup> public meeting by Commissioner Domenico, 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 Docket DC-12-0003 dealing with text amendments to Article 12 of the Land Use Code to require phasing of oil and gas development, as presented to the joint session of Planning Commission and the Board on June 5, 2013, is hereby tabled indefinitely. A motion to this effect was made at the June 18<sup>th</sup> public meeting by Commissioner Gardner, seconded by Commissioner Domenico, and passed by a 3-0 vote of the Board.

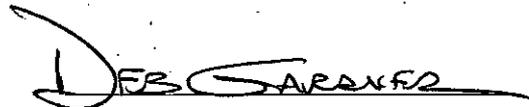
**ADOPTED** on this 20<sup>th</sup> day of June, 2013, nunc pro tunc the 18<sup>th</sup> day of June, 2013.



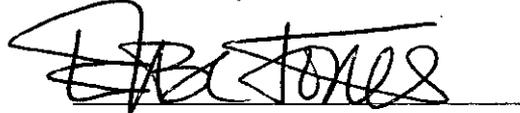
**BOARD OF COUNTY  
COMMISSIONERS OF BOULDER  
COUNTY:**



Cindy Domenico, Chair



Deb Gardner, Vice Chair



Elise Jones, Commissioner

ATTEST:



Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 7**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2014-88**

Mar. 20, 2017

## RESOLUTION 2014-88

### **Amending the Temporary Moratorium Imposed in Resolution 2012-16, as Extended and Amended in 2012-46, 2013-18, 2013-50, 2013-55, and 2014-56, Pertaining to Boulder County's Processing of Oil and Gas Development Applications in the Unincorporated County**

#### Recitals

A. In July 2013, the Board of Commissioners extended the County's temporary moratorium on processing oil and gas applications in the unincorporated county (the "Moratorium") until January 1, 2015, as reflected in Resolution 2013-55.

B. On July 12, 2014, the Board held a status update hearing on the Moratorium. The Board did not extend the length of the Moratorium at that time, but did make various limited amendments to the terms of the Moratorium, as reflected in Resolution 2014-56.

C. In light of the impending expiration date of the Moratorium, the Board held a public hearing in Longmont on November 10, 2014 to take public testimony on whether to extend or otherwise amend the Moratorium (the "Public Hearing").

D. At the beginning of the Public Hearing, prior to public testimony, County staff updated the Board on a number of issues. This update included a synopsis of recent scientific study results and the status of many ongoing studies, most of which are focused on better understanding air and water quality impacts of drilling and production activities. The update also summarized the findings of field inspections of existing oil and gas production sites in the unincorporated area undertaken over the past several months by Boulder County Public Health staff. Staff noted various areas where the County's regulations need further revision to reflect an evolving understanding of the industry's impacts, new and improving technology available to mitigate some of those impacts, and changes to state regulations from recent rulemakings conducted by the Colorado Oil and Gas Conservation Commission ("COGCC") and the Air Quality Control Commission ("AQCC"). In addition, staff noted the ongoing work of the Governor's Task Force on State and Local Regulation of Oil and Gas Operations, whose final recommendations may result in legislative changes, as well as ongoing litigation involving Longmont, Fort Collins, and Broomfield progressing through the state courts, final disposition of which could affect local authority to regulate oil and gas development.

E. Nearly 80 members of the public testified in person at the November 10<sup>th</sup> hearing, with the vast majority in support of extending the Moratorium. In addition, since the June 12, 2014 hearing, the Board has received more than 1,200 written comments from the public, again with the overwhelming majority in support of extending the Moratorium.

F. The Board did not make any decisions on November 10, 2014, deferring deliberation until a public meeting convened November 13, 2014. On this date, the Board considered the substantial public comment emphasizing the serious and profound concerns of citizens regarding the potential health, environmental, and safety hazards presented by future oil and gas development in the County; the additional health, environmental, and safety information that will become available in the near future through scientific study of oil and gas operations; the opportunities for improving County regulations by revisiting all applicable sources of land use authority, including zoning, phasing, and comprehensive planning; and potential legal

changes that could alter and further County regulatory authority related to oil and gas operations. All three commissioners underscored the imperative to complete the studies currently underway that assess the health, environmental, and safety impacts from hydraulic fracturing on people and the environment before the Board can lift the Moratorium.

G. In particular, the Board noted the importance of the National Science Foundation's "AirWaterGas" study, which is focused on oil and gas development in the Rocky Mountain region, led by CU-Boulder, and includes participation from a number of other Colorado universities and federal research institutions such as the National Oceanic and Atmospheric Administration, the National Renewable Energy Laboratory, and the University Center for Atmospheric Research. According to the NSF, the merits of this study "include (1) examination of the effects of natural gas development on water and air resources by analyzing trade-offs between local, regional, and national costs and benefits in environmental, social, and economic domains (social-ecological systems); (2) review of industry practices for hydraulic fracturing, well drilling and casing, and gas collection infrastructure for best management practices recommendations natural gas infrastructure; (3) investigation of the hydrologic processes that determine impacts of natural gas extraction on groundwater withdrawal and contaminant transport in drinking water aquifers and surface waters (water quantity); (4) characterization of the potential risks of fracturing fluid migrating to drinking water aquifers, the injection or discharge of flowback and produced water, and the mitigation of these risks by treatment of the flowback and produced waters (water quality); (5) improved spatial and temporal monitoring of air pollutants by a combination of high-resolution mobile sampling and the use of personal air monitors as an example of "citizen science" feeding data to air quality models that assess the local, regional, and national implications of natural gas development (air quality); and (6) quantitative and qualitative assessment of the health risks, both chemical and non-chemical, associated with water and air exposure." The Board noted that the AirWaterGas Study is not projected to be completed until 2017, and that the County will need a period of time after its publication to review the results and modify its Land Use Code related to oil and gas development accordingly.

H. The Board noted with approval the recommendation from staff to update the emergency notification process operators must follow in the case of a spill or release, based on staff experience responding to recent incidents on existing oil and gas sites within the County.

I. Also as part of the Board's deliberations on November 13, 2014, all three commissioners stressed the need to create a community action plan or "dashboard" to help reduce the county's reliance on carbon-based energy and to foster a community commitment to reducing the amount of fossil fuels consumed in Boulder County.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Boulder County as follows:

1. **Extension of Termination Date.** For the reasons set forth herein, as communicated by the Board at the November 13, 2014 hearing, and based upon previously stated reasons for Resolution 2012-16 and all of its extensions, the Board hereby extends the Moratorium imposed in Resolution 2012-16, as extended and amended in 2012-46, 2013-18, 2013-50, 2013-55, and 2014-56, until close of business on July 1, 2018, as reasonable and necessary to protect the public health, safety, and welfare of the County and prevent irreparable harm.

2. **Emergency Response Procedures for Spills and Releases.** In the event of a spill or release which threatens or has the potential to impact waters of the state, the operator must contact Boulder County emergency dispatch and the Land Use Director immediately.
3. **Updates to County Regulations.** County staff shall continue to analyze whether existing County regulations pertaining to air quality standards and siting and setback regulations for oil and gas operations are sufficient to protect the public health, safety, and welfare and whether amending such regulations pursuant to the County's legal authority is necessary to adequately mitigate the impacts and hazards associated with oil and gas development. Specifically, staff is directed to revisit the use of zoning powers, phasing powers, and comprehensive planning techniques; ensure adequate protection of the floodplain; evaluate the impacts and possible mitigation methods for multi-well pads and similarly intensively developed ancillary facilities; propose all changes necessary to conform County regulations with the most recent state rules from COGCC and AQCC; and assess the risks posed by concrete vaults. In addition, as the scientific community publishes study results – from studies mentioned in the staff recommendation written for the Public Hearing as well as all other studies which inform the ways in which the County can best exercise its regulatory authority – staff is directed to analyze appropriate amendments to County regulations.
4. **Direction to County Sustainability Office.** The Sustainability Office is hereby directed to pursue a plan to increase tools available to county residents to better obtain and measure their carbon emission reduction, with the goal of increasing the commitment of and ability for county residents to take part in more sustainable energy choices.

A motion to this effect was made at the 25 of November, 2014 public meeting by Commissioner Jones, seconded by Commissioner Gardner, and passed by a 2-0 vote of the Board.

*[Signature page follows.]*

ADOPTED on this 25 day of Nov., 2014.

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

(Excused)

Cindy Domenico, Chair

Deb Gardner

Deb Gardner, Vice Chair

Elise Jones

Elise Jones, Commissioner



ATTEST:

Cecilia G. Lacey  
Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 8**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2016-65**

Mar. 20, 2017

## RESOLUTION 2016-65

Terminating the Temporary Moratorium First Enacted by Resolution 2012-16, as Extended and Amended by Resolutions 2012-46, 2013-18, 2013-50, 2013-55, 2013-56, 2014-88, and 2015-23; Establishing a New Moratorium on Processing Oil and Gas Development Applications until November 18, 2016

### Recitals

A. On May 2, 2016, the Colorado Supreme Court handed down its decision in *City of Fort Collins v. Colorado Oil and Gas Association*, overturning that city's 5-year voter-approved moratorium on fracking and the storage of fracking waste within the city. As a result of the *Fort Collins* decision, the legal status of Boulder County's current moratorium on processing oil and gas development permit applications is uncertain.

B. In addition to the *Fort Collins* decision, since the County last considered its temporary moratorium in a public hearing, a number of statewide efforts ongoing at that time affecting local regulation of oil and gas development have concluded.

- i. To avoid a number of proposed statewide ballot measures in the 2015 fall election which would have clarified and increased local control of oil and gas development, the Governor established a Task Force on State and Local Regulation of Oil and Gas Development. While the Task Force produced a few positive recommendations for changes at the state level, overall the results were disappointing for those who seek greater local control over industrial operations close to homes, schools, and residents, as well as those operations that threaten sensitive environmental and natural resources.
- ii. The Colorado Oil and Gas Conservation Commission ("COGCC") conducted several rulemakings in which the County participated. These rulemakings concerned development in the floodplain, how complaints to COGCC get processed and resolved, operator submission of information on potential oil and gas development for incorporation into local comprehensive plans, and local government collaboration with operators concerning large scale oil and gas facilities. COGCC rejected most of the County's input on critical local concerns about protecting our floodplains from oil and gas operations and mitigating the impacts of large scale facilities.
- iii. In the 2015 and 2016 legislative sessions, the County worked closely with several state legislators and other interested parties to get legislation passed which delegated localities more control over oil and gas development. Ultimately, the legislature failed to clarify local government's land use authority to protect health, safety, welfare, and the environment in a manner sufficient to address each localities' unique land use patterns, economic vitality, and quality of life.
- iv. The rulemaking completed by the Colorado Air Quality Control Commission ("AQCC") on air quality requirements for certain oil and gas operations in early 2014 was a step forward, with new requirements on methane emissions

and leak detection and repair. But the AQCC did not incorporate all of our local government coalition's recommendations into the final rules.

- v. Applying the current statutory and regulatory framework governing oil and gas development in Colorado, state courts have now resolved (or, in the case of Broomfield, will resolve in the immediate future) all outstanding litigation between localities and industry and between localities and the state.

C. Since the County last considered its temporary moratorium, industry technologies and practices have evolved significantly, including in ways of great concern to local residents, schools, and others proximate to oil and gas operations. For example, the average number of wells per pad is increasing dramatically, creating large scale facilities generating land use and environmental impacts on neighbors significantly different in nature and extent than when we last updated our regulations.

D. Consequently, the County's current oil and gas regulations need to be updated to ensure our local regulations do not conflict with new state laws, to better reflect new industry practices, and to best protect public health, safety, welfare, and the environment in Boulder County.

E. Staff anticipates the time needed to analyze necessary amendments to our regulations, as well as develop a plan to administer the new regulations including reviewing appropriate permit and impact fees, is approximately six months in total. This timeframe assumes approximately one month for hiring technical expertise and internal staff meetings; two months for drafting, referral to interested third parties, and public review of those drafts; one month to notice and conduct Planning Commission hearings; one month for BOCC hearings; and one month to train staff to implement the new regulations.

**NOW, THEREFORE**, the Board resolves:

1. The temporary moratorium first enacted by Resolution 2012-16, as extended and amended by Resolutions 2012-46, 2013-18, 2013-50, 2013-55, 2013-56, 2014-88, and 2015-23 is hereby terminated.

2. A new temporary moratorium is reasonable and necessary to protect the public health, safety, and welfare of the County and prevent irreparable harm. The new moratorium begins on the date of this Resolution and ends at the close of business on November 18, 2016. The purpose of the moratorium is to allow time to formulate and publicly review necessary amendments to current County land use and environmental regulations governing oil and gas development in the unincorporated area.

3. Per section 16-100 of the Land Use Code, staff is directed to analyze existing County regulations governing oil and gas development and whether amending such regulations pursuant to the County's legal authority is necessary to adequately mitigate the associated impacts and hazards to best protect the public health, safety, welfare, and environment. In doing so, without limitation staff is directed to revisit the use of land use and zoning powers and comprehensive planning techniques; evaluate the Expedited and Standard Development Plan Review structure; ensure adequate protection of the floodplain; evaluate the impacts and possible mitigation methods for multi-well pads and similarly intensively developed ancillary facilities; propose all changes necessary to conform County regulations with the most recent state rules from COGCC and AQCC; analyze necessary improvements concerning pipelines; analyze necessary improvements concerning an adequate water supply for drilling, completion, and operations phases; review all fees applicable to oil and

gas development, including permit review fees and impact fees; and make any other conforming changes throughout the Land Use Code.

4. Exhibit A (Categories of Exemption from the Moratorium, Process for Requesting an Exemption, and Process for Evaluating Exemption Requests) is incorporated herein by this reference.

5. Staff shall set and notice a public hearing to occur no later than 45 days from the date of this Resolution for the purpose of deciding whether the new moratorium imposed by this Resolution should be terminated or otherwise amended.

6. Staff is directed to move expeditiously, such that the Board can end the temporary moratorium sooner if appropriate plans and regulations are in place. Any change in the duration or other terms of the temporary moratorium shall occur at a duly noticed public hearing of the Board.

\* \* \*

A motion to this effect was made at the May 19, 2016 public meeting by Commissioner Gardner, seconded by Commissioner Domenico, and passed by a 3-0 vote of the Board.

ADOPTED on this 19<sup>th</sup> day of May, 2016.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:



[Signature]

Elise Jones, Chair

[Signature]

Cindy Domenico, Vice Chair

[Signature]

Deb Gardner, Commissioner

ATTEST:

[Signature]

Clerk to the Board

## Exhibit A

### **Categories of Exemption from the Moratorium, Process for Requesting an Exemption, and Process for Evaluating Exemption Requests**

---

1. **Types of Work Exempted.** The Temporary Moratorium does not apply to the following:
  - a. Any complete application for oil or gas exploration, development, or production currently being processed by the Land Use Department, which may continue to be processed and reviewed as provided in the Land Use Code.
  - b. Any application for oil or gas exploration, development, or production already approved by the Land Use Department prior to the effective date of this Resolution where such approval is validly maintained thereafter.
  - c. Development that possesses either a statutory or common law vested right.
  - d. Minor modifications to existing permits.
  - e. Plugging and abandonment of existing facilities, with the exception that associated rerouting of flowlines, gathering lines, or other pipelines will be subject to section 4-514.E of the Land Use Code, unless the Director waives one or more of the requirements of that section as inapplicable in light of the nature and extent of the proposed work.
  - f. Work on existing oil and gas facilities which the Land Use Director in his sole discretion deems necessary to either (i) repair facilities impacted by acts of God such as, without limitation, the flooding and severe weather events of September 2013, (ii) reconfigure or relocate facilities in a manner that better protects public health, safety, and welfare and the environment, or (iii) perform routine maintenance and repairs. In determining whether work is "routine maintenance or repairs," the Director may consider whether the work will require other county permits, such as floodplain development permits. For purposes of this Section, "oil and gas facilities" means the site and associated equipment used for the production, transportation, treatment, and/or storage of oil and gas and waste products; or an individual well pad built with one or more wells and operated to produce liquid petroleum and/or natural gas, including associated equipment required for such production; or gathering lines, and ancillary equipment including but not limited to drip stations, vent stations, pigging facilities, chemical injection stations and valve boxes; or any other oil and gas operation which may cause significant degradation. In no case may the Land Use Director approve repairs, reconfiguration, or relocation under this subsection where the work would involve drilling a new well or hydraulic fracturing.

2. **Request for Exemption.** If an oil and gas operator believes certain activity is not subject to the temporary moratorium given the exceptions listed in Section 5 as amended by this Resolution, the operator must submit a request for exemption in writing to the Land Use Director. Unless waived by the Land Use Director for good cause shown, the request must include at a minimum:

- a. a site plan showing the existing and planned location of the facilities;
- b. a description of the desired work;
- c. the reason(s) why the work is not subject to the moratorium including any benefit to public health, safety, and welfare and the environment;
- d. the time and dates when the work would occur;
- e. the duration of the work;
- f. any mitigating measures to reduce impacts to neighbors and other affected parties;
- g. a list of all parties that will receive notice from the operator prior to commencement of work;
- h. documentation that the operator can obtain and maintain all other required local, state, or federal permits, including without limitation county Floodplain Development Permits and any permits required by COGCC, CDPHE, and the U.S. Army Corps of Engineers.

3. **Process for Evaluating Exemption Request.** Work eligible for an administrative exemption from the moratorium may only proceed upon written approval of the Land Use Director.

- a. In evaluating a request for an exemption, the Director will use the Standard DPR Approval Standards in section 12-703 of the Boulder County Land Use Code as well as the pipeline regulations in 4-514.E as a guide. Where two or more of the standards in 12-703 or 4-514.E conflict when applied to the proposed work, the Director shall analyze the applicability and importance of each of the conflicting standards under the specific facts of the application and make a reasonable attempt to balance the conflicting standards in reaching a decision.
- b. In considering an exemption request, the Director shall notify adjacent property owners. The Director shall not issue the approval for seven days following such notification and shall consider any comments received by the public. To the extent necessary, the Director may refer requests for administrative exemptions from the moratorium to other agencies. In his sole discretion, the Director may waive this notice requirement for good cause shown (for example, necessary and routine maintenance and repairs not likely to affect adjacent property owners).
- c. Where appropriate given the nature and extent of the proposed work, the Director may impose reasonable conditions of approval to mitigate impacts, using sections 12-703, 12-800, and 4-514.E, as a guide.

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 9**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2016-130**

Mar. 20, 2017

## RESOLUTION 2016-130

Extending the Temporary Moratorium First Enacted by  
Resolution 2016-65 on an Emergency Basis.

### Recitals

A. The temporary moratorium enacted on May 19, 2016, on processing oil and gas development applications expires November 18, 2016. The Board of County Commissioners (the "Board") established the moratorium to allow time for staff to formulate and present for public review necessary amendments of current land use and environmental regulations governing oil and gas development.

B. During the moratorium period, County staff accomplished the following: consultation with technical experts, industry representatives, state permitting agencies, County departments, and members of the public; County Planning Commission review in a public hearing and a public meeting; and drafting of amended and updated oil and gas regulations for presentation to the Board.

C. Staff presented amended and updated oil and gas regulations to the Board at a public hearing on November 15, 2016.

D. Following input from staff and the public at the November 15, 2016, hearing, the Board gave staff direction to further inquire into and develop amendments to the proposed regulations. The Board directed staff was directed to research and provide responses for Board review in numerous areas, including but not limited to the following: financial statements, bonding, and other financial assurances of performance for safe operation, clean-up of spills or other environmental contamination, and post-production reclamation; further environmental quality testing of air, water and soil, including baseline testing and more extensive testing and monitoring during production; requirements for management of produced water and other waste; economic analysis of disruption payments to landowners affected by drilling and construction; and leak detection technology for pipelines.

E. Staff will be unable to conduct the requested research or draft appropriate regulatory amendments before the expiration of the moratorium on November 18, 2016. Accordingly, the Board voted to extend the existing moratorium on an emergency basis until the end of January, 2017, so that a public hearing could be set to determine the status of the moratorium. The Board requested that staff find a date for the public hearing and determined that only written public comments will be accepted for that hearing. Finally, the Board determined it would consider a formal written resolution regarding the moratorium extension at the public meeting scheduled November 17, 2016.

**NOW, THEREFORE**, the Board resolves:

1. The temporary moratorium enacted by Resolution 2016-65 is extended on an emergency basis.
2. An emergency extension of the temporary moratorium is reasonable and necessary to protect the public health, safety, and welfare of the County and prevent irreparable harm. The purpose of the moratorium is to allow time to finalize necessary amendments to current County land use and environmental regulations governing oil and gas development in unincorporated areas.

3. The Board shall consider whether to terminate or further extend the moratorium at a duly noticed public hearing on December 13, 2016, at 11:30 AM. The Board will consider all written comments received prior to the public hearing and will not take verbal testimony during the hearing.

4. The Board requests that staff present at the December 13, 2016, hearing an estimate of time it will need to develop amendments to the proposed regulations according to the requests made by the Board at the November 15, 2016, public hearing.

A motion to this effect was made at the November 17th, 2016 public meeting by Commissioner Gardner, seconded by Commissioner Domenico, and passed by a 3-0 vote of the Board.

ADOPTED on this 17<sup>th</sup> day of November, 2016, nunc pro tunc November 15, 2016.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:



A handwritten signature in blue ink, appearing to read "Elise Jones", written over a horizontal line.

Elise Jones, Chair

A handwritten signature in blue ink, appearing to read "Cindy Domenico", written over a horizontal line.

Cindy Domenico, Vice Chair

A handwritten signature in blue ink, appearing to read "Deb Gardner", written over a horizontal line.

Deb Gardner, Commissioner

ATTEST

A handwritten signature in blue ink, appearing to read "Wade Ryder", written over a horizontal line.

Clerk to the Board

*People of Colorado ex rel. Cynthia H. Coffman, et al.,*

*v.*

*County of Boulder, Colorado, et al.*

DATE FILED: March 20, 2017 3:57 PM

FILE ID: 98B1969CD15A7

CASE NUMBER: 2017CV30151

**Exhibit 10**

to State's Motion for Summary Judgment:

**Board of County Commissioners of Boulder County  
Resolution 2016-137**

Mar. 20, 2017

## RESOLUTION 2016-137

Extending the Moratorium on Processing Oil and Gas Development Applications first Enacted by Resolution 2016-65.

### Recitals

A. On November 15, 2016, the Boulder County Board of County Commissioners ("Board") extended the temporary moratorium on processing oil and gas development applications first enacted May 19, 2016, by Resolution 2016-65, on an emergency basis through January 31, 2017.

B. The moratorium was extended to allow staff to research and incorporate numerous additional matters into the proposed amended oil and gas permitting regulations presented to the Board on November 15, 2016. Because the temporary moratorium was scheduled to expire November 18, 2016, the Board imposed an emergency extension to allow time for staff and the public to comment on the need for and length of a moratorium extension.

C. At a duly noticed public meeting on December 13, 2016, the Board considered a presentation from staff and written comments from the public.

D. Staff recommended that the moratorium be extended to allow for the research and drafting necessary to complete amendments to the draft regulations requested by the Board and to allow for concurrent planning and efforts to prepare staff to process oil and gas development applications when the moratorium terminates. Staff recommended the moratorium be extended to and through May 1, 2017.

E. Staff proposed to present a revised draft of the regulations at a public hearing on March 14, 2017. This timeframe allows for finalization and adoption of the proposed regulations alongside implementation planning before the termination of the moratorium on May 1, 2017.

**NOW, THEREFORE,** the Board resolves:

1. The temporary moratorium first enacted by Resolution 2016-65 is extended to and through May 1, 2017.

2. The extension of the moratorium is reasonable and necessary to protect the public health, safety, and welfare of the County and prevent irreparable harm. The purpose of the moratorium extension is to allow time to finalize and adopt amendments to the current County land use and environmental regulations governing oil and gas development in unincorporated areas.

3. Staff will present a revised set of amendments to the regulations at a public hearing March 14, 2017, at 2:00 p.m. and will concurrently prepare for implementation of the new regulations when adopted and at the termination of the moratorium.

A motion to this effect was made at the December 13, 2016 public meeting by Commissioner Gardner, seconded by Commissioner Domenico, and passed by a 3-0 vote of the Board.

ADOPTED on this 15 day of December 2016.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:



Handwritten signature of Elise Jones in black ink.

Elise Jones, Chair

Handwritten signature of Cindy Domenico in black ink.

Cindy Domenico, Vice Chair

Handwritten signature of Deb Gardner in black ink.

Deb Gardner, Commissioner

ATTEST:

Handwritten signature of Andrea J. Lacey in black ink.

Clerk to the Board

## Exhibit A

### **Categories of Exemption from the Moratorium, Process for Requesting an Exemption, and Process for Evaluating Exemption Requests**

---

1. **Types of Work Exempted.** The Temporary Moratorium does not apply to the following:
  - a. Any complete application for oil or gas exploration, development, or production currently being processed by the Land Use Department, which may continue to be processed and reviewed as provided in the Land Use Code.
  - b. Any application for oil or gas exploration, development, or production already approved by the Land Use Department prior to the effective date of this Resolution where such approval is validly maintained thereafter.
  - c. Development that possesses either a statutory or common law vested right.
  - d. Minor modifications to existing permits.
  - e. Plugging and abandonment of existing facilities, with the exception that associated rerouting of flowlines, gathering lines, or other pipelines will be subject to section 4-514.E of the Land Use Code, unless the Director waives one or more of the requirements of that section as inapplicable in light of the nature and extent of the proposed work.
  - f. Work on existing oil and gas facilities which the Land Use Director in his sole discretion deems necessary to either (i) repair facilities impacted by acts of God such as, without limitation, the flooding and severe weather events of September 2013, (ii) reconfigure or relocate facilities in a manner that better protects public health, safety, and welfare and the environment, or (iii) perform routine maintenance and repairs. In determining whether work is "routine maintenance or repairs," the Director may consider whether the work will require other county permits, such as floodplain development permits. For purposes of this Section, "oil and gas facilities" means the site and associated equipment used for the production, transportation, treatment, and/or storage of oil and gas and waste products; or an individual well pad built with one or more wells and operated to produce liquid petroleum and/or natural gas, including associated equipment required for such production; or gathering lines, and ancillary equipment including but not limited to drip stations, vent stations, pigging facilities, chemical injection stations and valve boxes; or any other oil and gas operation which may cause significant degradation. In no case may the Land Use Director approve repairs, reconfiguration, or relocation under this subsection where the work would involve drilling a new well or hydraulic fracturing.

2. **Request for Exemption.** If an oil and gas operator believes certain activity is not subject to the temporary moratorium given the exceptions listed in Section 5 as amended by this Resolution, the operator must submit a request for exemption in writing to the Land Use Director. Unless waived by the Land Use Director for good cause shown, the request must include at a minimum:
  - a. a site plan showing the existing and planned location of the facilities;
  - b. a description of the desired work;
  - c. the reason(s) why the work is not subject to the moratorium including any benefit to public health, safety, and welfare and the environment;
  - d. the time and dates when the work would occur;
  - e. the duration of the work;
  - f. any mitigating measures to reduce impacts to neighbors and other affected parties;
  - g. a list of all parties that will receive notice from the operator prior to commencement of work;
  - h. documentation that the operator can obtain and maintain all other required local, state, or federal permits, including without limitation county Floodplain Development Permits and any permits required by COGCC, CDPHE, and the U.S. Army Corps of Engineers.
3. **Process for Evaluating Exemption Request.** Work eligible for an administrative exemption from the moratorium may only proceed upon written approval of the Land Use Director.
  - a. In evaluating a request for an exemption, the Director will use the Standard DPR Approval Standards in section 12-703 of the Boulder County Land Use Code as well as the pipeline regulations in 4-514.E as a guide. Where two or more of the standards in 12-703 or 4-514.E conflict when applied to the proposed work, the Director shall analyze the applicability and importance of each of the conflicting standards under the specific facts of the application and make a reasonable attempt to balance the conflicting standards in reaching a decision.
  - b. In considering an exemption request, the Director shall notify adjacent property owners. The Director shall not issue the approval for seven days following such notification and shall consider any comments received by the public. To the extent necessary, the Director may refer requests for administrative exemptions from the moratorium to other agencies. In his sole discretion, the Director may waive this notice requirement for good cause shown (for example, necessary and routine maintenance and repairs not likely to affect adjacent property owners).
  - c. Where appropriate given the nature and extent of the proposed work, the Director may impose reasonable conditions of approval to mitigate impacts, using sections 12-703, 12-800, and 4-514.E, as a guide.