

Part II, Section 27: Administrative Review and MOU Process for Minor Oil/Gas Facilities

SECTION 27.1

A. INTENT

To establish an Administrative Special Use by Review process and procedure to allow for the Administrative Review of certain land uses that are not otherwise provided for within the Elbert County Zoning Regulations (ECZR). This Section is intended to facilitate the development of oil and/or gas facilities and resources within the unincorporated area of Elbert County, mitigate potential conflicts between existing and planned land uses, and to protect and promote the health, safety and general welfare of Elbert County residents.

B. PURPOSE

This Section of the Elbert County Zoning Regulations is to provide an administrative review process for Minor Oil and Gas Related Facilities and installations in unincorporated Elbert County.

C. APPLICABILITY

This Section shall apply to lands within the unincorporated area of Elbert County. It shall be unlawful to construct, install, or cause to be constructed or installed (including site grading), any Minor Oil and/or Gas Facility within the unincorporated portions of Elbert County without first obtaining an Elbert County Oil and/or Gas Permit.

D. AUTHORITY

This section is adopted pursuant to C.R.S. §§ 29-20-11 et seq., 34-60- 101 et seq., and 30-28-101 et seq. These standards are not intended to supersede state laws, regulations, and rules pertaining to oil and/or gas development, but rather are meant to supplement those requirements where appropriate.

E. EFFECTIVE DATE

This Section shall become effective on the date of adoption pursuant to Board of County Commissioners of Elbert County Resolution No. _____.

F. LEGAL NONCONFORMING USE: OIL AND/OR GAS OPERATIONS.

Oil and/or Gas Operations that were legally established before the effective date of these Regulations that do not conform to the regulatory provisions of this Section, and ordinary repairs and maintenance relative to the Operations, shall be allowed to continue, so long as the Operations otherwise remain legal and comply with applicable permit requirements.

1. Extension, Expansion and Alteration of Nonconforming Oil and/or Gas Operations. Legal nonconforming Oil and/or Gas Operations shall only be extended or altered in a manner that decreases or does not expand the nonconforming use.

a. Extension or Expansion On To Land Outside the Permitted Area. Any extension or expansion of a legal nonconforming oil or gas operation onto land outside the originally established area of operations shall comply with the requirements of these Oil and Gas Regulations and may require new permits, an MOU or a Special Use by review.

b. The Addition of Production Equipment. Any addition of production equipment at a well location or permanent facilities such as pumping units or well head compressors, or other minor equipment changes, are allowed, provided the Operator complies with Colorado Oil and Gas Conservation Commission (COGCC) Rule 802 and 604.c.2.A. concerning noise, rule 803 concerning lighting, All visual screening and visual mitigation shall comply with Rule 804.

2. Relocation of Nonconforming Oil and/or Gas Operations. A legal nonconforming oil or gas operation shall not be moved, in whole or in part, unless the relocation brings the Operation into compliance with the requirements of these Regulations.

3. Abandonment of Nonconforming Oil or Gas Operation. If any legal nonconforming oil or gas operation is abandoned for a period of eighteen (18) months or more, the Operation shall not be renewed until the CDS Director has determined that the renewed use will not pose a threat to public health, safety, welfare or the environment. Renewal may require new permits, an MOU or a Special Use by Review to bring the nonconforming use into compliance with the requirements of these Regulations.

4. Damage or Destruction. A legal nonconforming oil or gas operation that is damaged or destroyed by an "Act of God" or through any manner not willfully accomplished by or for the owner may be restored, regardless of the extent of damage or destruction. Restoration of the Operation shall be contingent upon the following:

- a. The owner has acquired the permits required for construction and for operation of the restored Oil and Gas Operation.
- b. The Operation shall not be restored in a manner that expands the nonconforming use.
- c. The restoration must be complete 12 months following the damage or destruction.
- d. Should the restoration exceed 12 months or attempt to expand the nonconforming use, the nonconforming use may require new permits, an MOU or a Special Use by Review to bring the nonconforming use into compliance with the requirements of the ECZR.

5. Equipment, weeds, waste, and trash requirements of Nonconforming Oil and/or Gas Operations.

All locations, including wells and surface production facilities, shall be kept free of the following: equipment, vehicles, and supplies not necessary for use on that lease; weeds; rubbish, and other waste material.

All associated equipment must be kept in good order and repair in accordance with Colorado Oil and Gas Conservation Commission (COGCC) visual mitigation requirements, and Colorado Department of Public Health and Environment (CDPHE) regulations.

Any complaints filed with Elbert County in response to the addition of production equipment will be investigated by CDS personnel or designee. Any complaints filed with COGCC shall be investigated by the COGCC designated inspector and shall be reported to the Local Government Designee (LGD).

G. RIGHT TO ENTER

Elbert County Community and Development Services (CDS) personnel, the County Engineer, Elbert County Office of Emergency Management (OEM) personnel and the local fire protection district personnel having jurisdiction are authorized by this Section to enter and inspect a property for compliance with these regulations or an applicable MOU during normal business hours. All persons granted the authority

to enter a property shall be equipped with all Personal Protection Equipment (PPE) that is required by the Operator and comply with Operator's customary safety rules. Inspections shall require 24 hours advanced notice to the Operator prior to an inspection. However, in the event of an imminent threat to public health or safety or to the environment, attempts shall be made to contact Operator but if Operator is unreachable entry may be made without notice to the Operator.

If entry is denied, the County shall have the authority to discontinue application processing, revoke approved permits and applications, or to obtain an order from a court of competent jurisdiction to obtain entry.

H. PERMIT EXPIRATION

An approved permit issued pursuant to this Section, or an approved modification thereof, shall expire if construction of the facility or the approved modification has not commenced within two (2) years of final County approval. Extensions to this deadline may be granted by the BOCC. If an extension is not sought and approved a new permit application will be required for operations to proceed.

I. WAIVERS

The Board of County Commissioners (BOCC) or the CDS Director may grant a waiver for one or more of the requirements of this Section. A waiver may be granted for good cause shown. When, in the opinion of the CDS Director, the impacts of the requested waiver warrant input from the public, the CDS Director shall require a public hearing for the waiver request. No waiver shall be granted, when, in the opinion of the CDS Director or the BOCC, the Applicant has not provided reasonable and adequate evidence justifying the request, or if the request is determined to be based upon a self-imposed hardship, which can be rectified by means other than a waiver. A waiver shall not be unreasonably denied due excessive complexity, operational risk, time required, or costs to perform, should the request show that the health, safety and welfare of the county is not at risk. If a waiver request is denied by the CDS Director, the Applicant may appeal to the BOCC within thirty (30) days of the decision by the CDS Director. The BOCC will consider the appeal at the next available scheduled public hearing date.

J. OPERATIONAL CONFLICT(S) WAIVERS

Special exceptions to these regulations may be granted where the requirements of this division actually conflict in operation with the requirements of the Oil and Gas Conservation Act or implementing regulations. All applications where a special exception due to operational conflicts is requested shall be heard in a noticed public hearing by the board of county commissioners acting in a quasi-judicial capacity. The applicant shall have the burden of pleading and proving an actual, material, irreconcilable operational conflict between the requirements of this

division and those of the COGCC in the context of a specific application. For purposes of this section, an operational conflict exists where the county condition of approval or regulation actually conflicts in operation with the state statutory or regulatory scheme, and such conflict would materially impede or destroy the state's interest in the development, production, and utilization of oil and gas resources in the state, and the protection of the public health, safety and welfare. An operational conflict may occur where the county regulation prohibits an activity which the COGCC, or its valid regulations, has clearly authorized, or authorizes an activity which the COGCC, or its valid regulations, has clearly prohibited. Additional county requirements in areas regulated by the COGCC, which also fall within county land use powers and which are necessary to protect the public health, safety and welfare under the facts of the specific application presented, and which do not impose unreasonable burdens on the applicant, shall be presumed not to present an operational conflict. If the board of county commissioners finds, based upon competent evidence in the record, that compliance with the requirements of this division shall result in an operational conflict with the state statutory and regulatory scheme, a special exception to this division may be granted, in whole or in part, but only to that extent. The board of county commissioners may condition the approval of a special exception as necessary to protect the public health, safety and welfare by mitigating any adverse impacts arising from the grant of approval.

K. WITHDRAWAL OF AN APPLICATION

A request to withdraw an application shall be submitted, in writing, to CDS. Withdrawal of the application shall preclude reactivation. There will be no refund of application fees and/or professional review fees. The submittal of a new application and processing fee will be required in order to pursue a proposed facility that has been previously withdrawn. An application shall be considered withdrawn if the Applicant fails to respond to a request by the County for information or clarification within ninety (90) days of such request.

L. APPEALS

An appeal to a decision on the issuance of an Administrative Use Oil and/or Gas Permit made by the CDS Director shall be submitted to the BOCC within thirty (30) days following the decision by the CDS Director. The BOCC shall make a final decision no later than forty-five (45) following submission. An appeal of a final action by the BOCC on an application shall be to the Elbert County District Court.

M. LOCAL GOVERNMENT DESIGNEE

The rules of the COGCC establish a process for providing local governments with information on certain state applications pertaining to the location of roads, production facilities, and oil and gas well sites. The Elbert County BOCC shall

designate an LGD. The COGCC rules further allow local governments to designate a Local Government Designee (LGD), who will be notified by the COGCC of all oil and gas activity within the jurisdiction and will be provided information regarding such activities. The LGD for Elbert County shall be authorized to provide consultation on behalf of Elbert County on any notifications received from the COGCC and that such consultation shall be based upon the requirements of this Section and according to COGCC Rule 306 b.

SECTION 27.2 SPECIAL USE PERMIT APPLICATIONS vs. MOU PROCESS

Approval of a Special Use Permit and an Oil & Gas Permit is required for all Major Oil and/or Gas Facilities in unincorporated Elbert County. A Minor Oil and/or Gas Facility may choose to pursue either the Special Use Permit or may apply for a permit through the Administrative Use Review Process.

SECTION 27.3 MINOR AND MAJOR FACILITIES DEFINED

A. Minor Oil and/or Gas Facility

1. A Minor Oil and/or Gas Facility includes the following:
 - a. Well pad with 1 or more wells; intermediate lines from the wellhead, storage tanks, separators, or tank batteries;
 - b. Gathering lines as defined by COGCC.
 - c. Flow lines as defined by COGCC.
 - d. Ancillary equipment – including, but not limited to: buildings, structures, and improvements associated with or required for the operation of a well site, pipeline, or compressor facility. Ancillary facilities include but are not limited to, well pads, tank batteries, combustion equipment and pits and excluding gathering lines.
 - e. Temporary storage and construction staging yards in place for less than 12 months.
 - f. Non-commercial field injection or disposal well that does not meet the definition of a Major Facility.
 - g. Fresh water storage and distribution systems.
2. Any conversion of an existing oil and/or gas well to a water disposal well in an existing facility shall require a new application.

B. Major Oil and/or Gas Facility Defined

1. A Major Oil and/or Gas Facility includes, but is not limited to, the following:
 - a. Any facility that consolidates, markets or transports production oil or gas or production fluids from one or more Minor Oil and/or Gas Facilities;
 - b. Any water treatment, water recycling, open storage pit or disposal facility to manage flow back and produced water.
 - c. Storage and construction staging yards in place for longer than 12 months.
 - d. Worker camps and related temporary living facilities for oil and gas crew members;
 - e. Any oil and/or gas facility that does not meet the definition of a Minor Oil and/or Gas Facility;
 - f. Export or sales pipelines used to transfer oil or gas to 3rd party transportation;
 - g. Pipelines or storage terminals.
 - h. Use of an injection well for the commercial disposal of produced water.
2. A major application where the impacts are of short duration and which impacts are quantifiable may be addressed as a minor application at the discretion of the CDS Director, following an evaluation meeting with the County Engineer, County Planners and other affected agencies, and subject to BOCC concurrence.
 - a. *An example of this might be a pipeline where construction has a start and a finish and the surface impacts are largely limited to the construction period.*

- C. The process for all Major Oil and/or Gas Facilities or for a Minor Oil and/or Gas Facility that chooses not to engage in an MOU shall be subject to Part II, Section 17: Special Use by Review of these regulations.

SECTION 27.4 OVER THE COUNTER PERMITS – OIL AND/OR GAS FACILITIES

A. Seismic Testing Permit.

Any entity proposing to conduct seismic testing must first acquire a Seismic Testing Permit from CDS provided the following information is submitted:

1. An executed Road Use and Maintenance Agreement with the Elbert County Public Works Department.
2. Map showing the location of proposed seismic activity
3. Certificate of Notice shall be provided to CDS. Notices shall be consistent with COGCC Surface Owner Notification Rules 305.a. and 305.c.
4. Payment of fee.

B. Recompletion or Re-fracturing Permit.

Any recompletion to a new production interval or re-fracturing must first acquire a Recompletion or Re-fracturing Permit. The Applicant is responsible for notifying surrounding Surface Owners in accordance with COGCC Surface Owner Notification Rules 305.a. and 305.c. All notifications must be completed at least fourteen (14) days prior to proposed activity with a notarized affidavit for "proof of mailing" delivered to CDS at least fourteen (14) days prior to proposed activity. This permit is an over the counter permit provided the following information is submitted:

1. An executed Road Use and Maintenance Agreement with the Elbert County Public Works Department.
2. Map showing the location of proposed activity
3. Provision of approved state permit
4. Payment of fee

SECTION 27.5 MEMORANDUM OF UNDERSTANDING INTENT (for Minor Oil and/or Gas Facilities)

- A. It is Elbert County's intent to facilitate the development of oil and gas resources within the unincorporated area of Elbert County while mitigating potential negative impacts to surrounding property owners and Elbert County residents. It shall be Elbert County's policy to attempt to enter into a Memorandum of Understanding (MOU) with oil and gas production companies proposing a Minor

Oil and/or Gas Facility within the County. The MOU shall incorporate the Best Management Practices (BMPs) for all proposed Minor Oil and/or Gas Facilities. No MOU will be effective unless approved by the BOCC at a public hearing. All terms of the MOU shall be incorporated into State permit forms 2 and 2A by the applicant prior to the issuance of a County permit.

- B. Once an MOU has been executed by the parties, the MOU and BMP's shall apply to all subsequent oil and/or gas facilities of the Operator within Elbert County, except, any site-specific amendments shall only apply the site for which such site specific amendments were granted. If the CDS Director determines that differences in the characteristics of a subsequent facility or conditions at an Operator's proposed location require an amendment of the MOU, the CDS Director may:
1. Negotiate an amendment(s) of the MOU, which will only be applicable to the site specific facility. The CDS Director shall present the amendment(s) to the BOCC for approval; or
 2. Require the Operator to negotiate a new MOU in accordance with these regulations.

SECTION 27.6 ADMINISTRATIVE MOU PROCESS FOR MINOR OIL AND/OR GAS FACILITY

- A. The applicant shall schedule an initial meeting with CDS to:
1. Discuss the Administrative Review Process and MOU versus the Special Use Review process for oil and gas permitting in Elbert County;
 2. Obtain a copy of the Oil & Gas Development Permit Application Form;
 3. Receive the Elbert County MOU, including the BMP's Checklist attached as "Addendum A";
 4. Receive a copy of the Elbert County Road Operations and Maintenance Agreement;
 5. Receive a checklist of items required for the Pre-Application Meeting;
 6. Receive a copy of this Section; and
 7. Receive a copy of the estimated fees associated with oil and gas permitting.

B. Pre-Application Meeting.

Once the Applicant has submitted all necessary items required for a Pre-Application Meeting and made payment of the pre-submittal fee to CDS, CDS shall review the Pre-Application items within five (5) business days of submission by the Applicant and shall schedule the Pre-Application Meeting within 10 working days. The Applicant, CDS staff and other appropriate County agencies (such as local fire district, Elbert County Public Health, the Elbert County Engineer) shall meet to discuss:

1. The proposed facility and BMPs to be included in the MOU;
2. Proposed haul routes;
3. The Road Operations and Maintenance Agreement;
4. The Emergency Response and Safety Plan (ERSP);
5. Proposed development timeline;
6. The checklist of items required for the formal submission of the Application;
7. Estimated fees and any additional expenses related to the application review and processing.

The jurisdictional fire protection district shall be notified so that they may be present to discuss items required under fire code and for safe access to the site.

Following the Pre-Application Meeting, CDS will prepare copies of the MOU, the Emergency Response and Safety Plan (ESRP) and Road Operations and Maintenance Agreement for the Applicant and notes from the Pre-Application Meeting. It is the Applicant's responsibility to coordinate with the Elbert County Public Works Department to finalize the Road Operations and Maintenance Agreement and the local fire protection district to finalize the ERSP.

C. Application and Required Submittal Items (from checklist).

The completed Oil & Gas Development Permit Application form, appropriate fees, and items required from the checklist generated at the Pre-Application Meeting, shall be reviewed for completeness within five (5) Elbert County business days (Monday through Thursday) of receipt by CDS. A complete Application shall include all submittal requirement listed below and any additional elements as determined in the pre-application meeting. All

application elements shall also be provided to CDS in PDF format burned on a CD/DVD or flash drive. The Applicant is responsible for sending a certified letter of notification to surrounding property owners in accordance with COGCC regulations.

D. Submittal Requirements

A complete application for an Administrative Use by Special Review hearing must contain the following:

1. Letter of Intent requesting the Administrative Use by Special Review and MOU application process for oil and gas in Elbert County and fully describing the intended use of the property. The letter must be signed by the property owner or authorized representative (can be the applicant) and a copy of the owner's deed must be included in the submittal. If applicant is not owner then a notarized letter of authority must be included from the owner.
2. A narrative and site plan prepared by a qualified professional in accordance with the requirements for such application, dependent upon the size and nature of the proposal.
3. A fee established by the Board of County Commissioners shall be established and paid to the CDS (Check made payable to Elbert County).
4. A Drainage Report produced by a Colorado Registered Professional Engineer, if required, for the Administrative Special Use as determined by CDS and the County Engineer.
5. Traffic Report/Study conforming to the requirements as set forth by Elbert County Road and Bridge/Public Works and the Elbert County Engineer and a signed and notarized Road Operations and Maintenance Agreement.
6. Cost estimate of public improvements such as sidewalks, roadway and/or drainage improvements, etc., if required, as determined by CDS, Public Works and the County Engineer.
7. An appropriate number of 11" x 17" reductions of the site plan as determined by CDS.
8. Letter from the appropriate water and sanitation districts and fire district stating the availability to serve the proposal. If subject property is not serviced by a water and sanitation district then proof of sufficient water and acceptable sanitary system as outlined by Elbert County Health and Environment and/or CDEHP and the County Engineer.

9. Type or method of fire protection with input from applicable fire jurisdiction and an ESRP.
10. Noxious Weed Management Plan
11. Dust Mitigation Plan
12. Facility Close Out Plan
13. Material Handling & Spill Prevention Plan
14. Waste Management Plan
15. Oil & Gas Operations Plan
16. Visual and Noise Mitigation Plan
17. Additional information may be requested by CDS as appropriate to the request including but not limited to a weed control plan, a dust mitigation plan, a, and information required above may be waived by the CDS Director if it is deemed to be inappropriate to the request.
18. Where submittal requirements are identical or are substantially duplicative of submittal requirements of the COGCC, the applicants may be permitted, at the discretion of the CDS Director, to submit the forms and/or documents submitted to the COGCC to satisfy these requirements.

E. Exhibit requirements

The Administrative Use by Special Review Plan shall be a photographic mylar or equivalent (prepared such that the text/line work does not bleed, flake, or scratch off) on 24" x 36" single/double matte mylar.

The drawing shall be in upper case sans serif with a minimum 12-point font unless otherwise approved by the CDS Director or designee and contain the following information:

- a. Project name, type of proposal (Administrative Use by Special Review Plan), legal description of the Plan's land area, date of the drawing, scale and north arrow.

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- b. Vicinity map with north arrow (scale of 1"=2,000' preferred) with an emphasis on the major roadway network within one (1) mile of the proposal.
- c. The existing zoning of the property, as well as the zoning and residential density of all adjacent properties.
- d. The graphic location, dimensions, maximum heights and gross impact area of all existing and proposed structure(s) and grading/work yard area.
- f. Existing and proposed finished grade topography at two foot (2') contours or less, tied to a datum acceptable to the County.
- g. All proposed curb cut and driveway locations and dimensions, off-street parking locations, and types of surfacing, such as asphalt paving, gravel, etc.
- h. Public and private utility service lines and/or main lines with appurtenances.
- i. All walks, open and recreation areas, with a description of these improvements.
- j. Location of outdoor trash receptacle systems.
- k. Provision for access by emergency vehicles.
- l. Location and dimensions of all existing access points on immediately adjacent properties.
- m. Location and dimension and surface treatment of drainage easements, volume capacity of all drainage ponds, and the size of the outlet restrictor(s).
- n. An illustrative landscape plan showing locations and general types of all proposed landscaping materials, including fences, walls, planters and any other landscaping features.
- o. A Signage Plan describing and illustrating the size, location, type and material of all signs if applicable.
- p. Location, type and height of lighting devices.
- q. Representative architectural elevation plans of all sides of proposed structures which show building heights, colors and general textures of materials to be used on the exterior of the proposed structures.

- r. Board of County Commissioner's signature block.
- s. Additional requirements may be required or waived at the discretion of the CDS Director.
- t. Applicant signature block.

F. Processing of Administrative Applications for Oil and/or Gas Operations

Administrative special use applications for oil and/or gas operations will be reviewed and approved administratively by the CDS Director. The CDS Director shall make a decision on an administrative special use application within 30 days of the day that a complete application is submitted. The final decision on the application by the CDS Director shall be based upon a determination by the CDS Director that all necessary information has been received, which may include receipt of any applicable waiver requests, and upon consultation with the County Engineer, Elbert County Road and Bridge, Local Fire District and Elbert County Health Department and MOU has been formally approved by the BOCC.

- a. Because the MOU is considered a contract with Elbert County each MOU shall require approval from the BOCC. Only the first MOU of an operator may require a BOCC presentation – all subsequent, unmodified MOUs of an operator shall be included on the BOCC consent agenda.
- b. For an operator's first application and MOU, the applicant shall be available to make a single presentation to the Planning Commission for informational purposes Planning Commission desires such presentation. As this is an administrative process the Planning Commission shall not vote on the application. The Planning Commission presentation shall occur within fourteen (14) days of CDS acceptance of the application.
- c. The BOCC shall review the MOU and make a ruling on it at their next regularly scheduled meeting following the Planning Commission presentation.
- d. The Planning Commission presentation, if any and the BOCC approval of the MOU shall happen within 30 days of the day that the application is accepted by CDS.

- e. An appeal of any decision made by the CSD Director shall be heard by the Board of County Commissioners. The Director, at his or her sole discretion, is authorized to elevate any administrative applications for consideration as a Special Use application for review by the Planning Commission and for final action by the BOCC.
- f. An appeal of a final action by the BOCC on any applications for oil and/or gas operations shall be to the Elbert County District Court.

SECTION 27.7 AMENDMENTS TO A PREVIOUSLY EXECUTED MEMORANDUM OF UNDERSTANDING FOR OIL AND/OR GAS FACILITIES

An MOU may be amended when there is a demonstrated need to accommodate site specific circumstances including, but not limited to, topography, geology, geography, reservoir management, historical site, location of surface waters and surface owners concerns.

Amendments to an existing, approved MOU must be approved by the BOCC at a public hearing. An amended MOU is for a specific project or location and does not invalidate or modify any other MOU executed by the operator. The hearing dates will be scheduled at the earliest possible date as agenda openings are available and notification requirements allow.

SECTION 27.8 MODIFICATIONS

Modifications to a permitted Major Oil and/or Gas Facility that would lead to a significant increase in noise associated with the facility's operations, change the visual impact of the facility, or, for a period greater than six (6) months, impinge upon a surface area beyond that originally impacted by the facility require the submittal of a new permit application. Modifications of such facilities that do not have such impacts do not require a new permit application but must be approved by CDS.

Modification of a facility, other than normal or routine maintenance shall not be allowed without the required approval of a Special Use Permit for a Minor or Major Oil and/or Gas Facility, pursuant to this Section or Part II, Section 17 of these regulations.

SECTION 27.9 ROUTINE MAINTENANCE

Normal or routine maintenance of a facility will not subject a facility to additional permits or criteria. "Normal or routine maintenance" does not include any modification of the facility that would lead to a significant increase in noise

associated with the facility's operations, change the visual impact of the facility, or, for a period greater than twelve (12) months, impinge upon a surface area beyond that originally impacted by the facility.

SECTION 27.10 TRANSFER OF PERMIT

An Elbert County Oil and Gas Permit may be transferred only with the written consent of the County. The County shall ensure, in approving any transfer, that the proposed transferee can and will comply with all the requirements, terms, and conditions contained in the Oil and Gas Permit and these Regulations, and with appropriate state and federal regulations and conditions; that such requirements, terms, and conditions remain sufficient to protect the health, welfare and safety of the public and the environment; and that a guaranty of financial security can be made to the satisfaction of the County.

SECTION 27.11 PERFORMANCE STANDARDS FOR ALL OIL AND/OR GAS FACILITIES

A Minor Oil and/or Gas Operation in Elbert County shall comply with the following performance standards in addition to those set forth in the MOU:

- A. Transportation Impact Mitigation – The mitigation of traffic impacts should include a plan for traffic control, on-going road maintenance, track mats, obtaining all necessary permits and improving or re-constructing County roads as necessary.
- B. Traffic Impact Analysis – The Transportation Impact Analysis shall clearly identify the potential impacts to Elbert County roads and bridges pertaining to the facility's construction, operation and traffic generation. Such analysis shall be prepared by a Colorado licensed transportation engineer in accordance with the Elbert County Construction Standards and Specifications Manual or other criteria as provided by the Elbert County Public Works Department and/or the County Engineer.
- C. Traffic Control Plan – A Traffic Control Plan shall be prepared for each phase of construction activity where County roads and bridges will be utilized for the transportation of materials to the site for construction and/or operations. The Traffic Control Plan shall include the following information:
 - 1. Method for handling traffic;
 - 2. Haul route plan and operations schedule;
 - 3. Detour plan, if necessary;
 - 4. Existing road and bridge condition survey and photos.

- D. Construction Drawings for Public Road Improvements – Should public road improvements be required to accommodate an oil and/or gas facility or its operation, construction drawings prepared by a Colorado Registered Professional Engineer are required to be submitted and approved by the Elbert County Public Works Department and/or the County Engineer prior to the issuance of an Oil and/or Gas Development permit. All drawings shall be prepared in conformance with the Elbert County Construction Standards and Specification Manual. Adequate financial assurances shall be required for the construction or re-construction of all public roads or improvements. The following permits are typically required prior to construction of public improvements:
1. Construction Permit;
 2. Right-of-Way Work Permit;
 3. Erosion and Storm Water Quality Control Permit;
 4. Roadway Use Permit for Overweight Vehicles.
- E. Maintenance – the County shall require the operator to provide on-going maintenance to correct road damage caused by the Operator's Oil and Gas Activities. On-going maintenance may include, but is not limited to, the following:
1. Graveling;
 2. improving shoulders and/or;
 3. paving as determined by the Traffic Impact Analysis.
- F. Dust Control Measures – The Operator shall be responsible for dust mitigation during all phases of operational activity as stated in COGCC Rule 805.c. Operators shall employ practices for control of fugitive dust caused by their operations. Such practices shall include but are not limited to the use of speed restrictions, regular road maintenance, and restriction of construction activity during high-wind days. Additional management practices such as road surfacing, wind breaks and barriers, or automation of wells to reduce truck traffic may also be required if technologically feasible and economically reasonable to minimize fugitive dust emissions.
- G. Site Access – An access permit issued by the Elbert County Public Works Department is required to access a property from a County road. Access routes shall, to the extent feasible, minimize visual impact on the public, taking into account the needs of the surface owner. Should the access be from a State highway or municipal roadway, the Applicant shall secure an access permit from the appropriate entity. Access permits are revocable upon

issuance of a stop work order or if other violations of the Elbert County Oil and Gas Development Permit occur. The permitting and construction of site accesses shall comply with the Elbert County Construction Standards and Specifications Manual.

- H. Financial Assurance Required – The Transportation Impact Analysis, along with the associated construction drawings and a cost estimate prepared by a Colorado Registered Professional Engineer, shall determine the requirements/details of the Road Operations and Maintenance Agreement with the County or other applicable jurisdiction. Such Agreement shall be accompanied by a form of financial assurance acceptable to the County.
- I. Groundwater Baseline Sampling and Monitoring – Groundwater baseline sampling and monitoring shall be performed by the Operator in accordance with COGCC Rules, Section 609 – Statewide Groundwater Baseline Sampling and Monitoring. The LGD for Elbert County will request from the Director of the COGCC that all analytical results and surveyed well locations be forwarded to the LGD. If the well owner permits it, the LGD will post the COGCC well sampling results on the Elbert County website
- J. Noxious Weed Management – Operators shall ensure compliance with the Colorado Noxious Weed Act C.R.S. § 35-5-5 *et seq.*. Operators shall be responsible for on-going site and access road noxious weed control during construction and operation of the facility. The selection of a re-seeding mix and the method(s) for appropriate weed control shall be determined through documented consultation with the property owner, the Natural Resources Conservation Service, Elbert County Public Works and the appropriate Conservation District, as applicable.
- K. Setbacks – At minimum, setbacks shall conform to COGCC regulation. Setbacks in excess of state minimums may be agreed upon in the MOU.
- L. Wildlife and Wildlife Habitat -- The Oil and Gas Operation shall not cause significant degradation of wildlife or sensitive wildlife habitat.
- M. Livestock and Livestock Grazing -- The Oil and Gas Operation shall not cause significant impact to livestock, grazing permits, or grazing permittees. Fencing or other agreements between private grazing operations and the Oil and Gas Operator may be used to satisfy this requirement.
- N. Recreation Impacts -- The Oil and Gas Operation shall not cause significant degradation in the quality or quantity of recreational activities in the County such as hunting, hiking, skiing or related activities.

O. Water Quality

1. No Significant Degradation. The Oil and Gas Operation shall not cause significant degradation in the quality or quantity of surface waters from the addition of non-point source pollution.
 2. Water Wells. The Oil and Gas Operation shall not cause significant degradation in the water quality or water pressure of any public or private water wells.
- P. Waterbody Setbacks-- Activities associated with the Oil and Gas Operation shall adhere to COGCC Rules 317B, 324A, 1204(4) and 1002.e.2., and any other current future and/or rules that shall apply.
- Q. Cultural and Historic Resources -- The Oil and Gas Operation shall not cause significant degradation of cultural or historic resources.
- R. Wildlife Hazards -- The Oil and Gas Operation shall not cause a significant risk of wildfire hazard.
- S. Geological Hazards -- The Oil and Gas Operation shall not cause a significant risk of geologic hazards.

SECTION 27.12 CLUSTERING OF FACILITIES/MULTIWELL PADS

All Operators shall comply with COGCC Rule 604.C.2.E. which states the following: Where technologically feasible and economically practicable, Operators shall consolidate wells to create multi-well pads, including shared locations with other Operators. Multi-well production facilities shall be located as far as possible from Building Units.

1. Topographic characteristics of the site
2. Natural resource constraints (e.g.wetlands)
3. The location of utilities or similar services
4. Technical issues related to the development or management of the mineral resource
5. Other site conditions beyond the control of the applicant
6. Safety concerns
7. Inability to obtain surface use agreements

- A. Nothing contained in this section shall be construed so as to require the closure or abandonment of any existing oil or gas well currently operating in accordance with COGCC requirements.

SECTION 27.13 FALSE OR INACCURATE INFORMATION

The BOCC may revoke approval of an Administrative Use Permit for an oil and/or gas facility if false misleading, deceptive, or inaccurate information was provided during the permitting process. Prior to such action, the Applicant, CDS personnel, and the public shall be provided with an opportunity to be heard at a public meeting before the BOCC, at least ten (10) days after CDS provides written notice to the Applicant. If the BOCC then determines that the Applicant, its authorized representatives, or employees, knowingly or recklessly provided information or documentation upon which approval was based, that was false, misleading, deceptive, or inaccurate, the BOCC may revoke the Administrative Use Permit approval or impose additional conditions.

SECTION 27.14 DEFINITIONS

The application of the following terms and associated definitions shall be limited to those applications submitted under this section of the ECZR. These terms and definitions do not modify, alter or replace any other terms or definitions included within other sections of these Zoning Regulations.

Abandonment: The permanent abandonment of a well, based on the operator's filing of abandonment with the Colorado Oil and Gas Conservation Commission (COGCC).
Presumption of permanent abandonment of a "Major Oil and Gas Facility" shall be based upon non-use or non-operation for eighteen months without notification to the Director of Community & Development Services of the intent to resume operations under specified conditions. All associated equipment shall be removed from the site.

Access Road: A road located on private property between the site on which an oil and gas facility is located and the roadway serving such a facility, constructed in accordance with the private road standards as specified in the Elbert County Standards and Specification Manual.

Act of God: An event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution; an inevitable accident.

Administrative: An expedited permitting process for applicants who are eligible for and have agreed to pursue the MOU process with Elbert County.

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Applicant: That person, corporation or other legal entity possessing the legal right to develop the mineral resource or their "Authorized Representative" who applies for an "Oil and Gas Development Permit (OGDP)" from Elbert County.

Authorized Representative: One authorized to make binding representations on behalf of the Applicant.

Ancillary Equipment- shall mean all of the equipment, buildings, structures, and improvements associated with or required for the operation of a well site, pipeline, or compressor facility. Ancillary facilities include but are not limited to, well pads, tank batteries, combustion equipment and pits and excluding gathering lines.

Best Management Practices (BMP): Established techniques used in conducting mineral extraction operations which eliminate or minimize adverse impacts to public health, the environment, wildlife and cattle, landowners, and natural resources; which enhance the value of natural and landowner resources; and which reduce conflicts. BMPs are intended to promote the best practices or solutions in the conduct of operations.

BOCC: Elbert County Board of County Commissioners.

Casing- Pipe cemented in the well to seal off formation fluids and to keep the hole from caving in.

CDS: Elbert County Community & Development Services Office

Closed Loop Drilling Fluid System- In a closed-loop drilling system, the reserve pit is replaced with a series of storage tanks that separate liquids and solids.

COGCC: Colorado Oil and Gas Conservation Commission

Commercial Disposal Well: shall mean a facility whose primary objective is disposal of Class II oil & gas related waste from a third party for financial profit.

Drilling Fluid: Fluid used to lubricate the drill string, line, the walls of a well, flush cuttings to the surface and create enough hydrostatic weight to prevent blowouts.

Elbert County Business Days: Monday through Thursday

Facility: The terms "facility" or "facilities" are defined here as including oil and gas wellsites, flowlines, tank batteries, compressor stations, pits/ponds, below-grade tanks, dehydration units, vapor recovery units (VRUs), and associated roads.

Flowback Water: Recovered fracturing fluids are referred to as flowback water.

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Flowlines: Shall mean those segments of pipe from the wellhead downstream through the production facilities ending at: in the case of gas lines, the gas metering equipment.

Gathering lines: Shall mean a pipeline and equipment described below that transports gas from a production facility (ordinarily commencing downstream of the final production separator at the inlet flange of the custody transfer meter) to a natural gas processing plant or transmission line or main. The term "gathering line" includes valves, metering equipment, communication equipment, cathodic protection facilities, and pig launchers and receivers, but does not include dehydrators, treaters, tanks, separators, or compressors located downstream of the final production facilities and upstream of the natural gas processing plants, transmission lines, or main lines.

Hydraulic Fracturing: The process of using high pressure to pump sand laden gelled fluid into subsurface rock formations in order to improve flow of Oil and/or gas into a well bore.

Injection Well: An injection well is a vertical pipe in the ground into which other liquids, or gases are pumped or allowed to flow. Injection wells are regulated via the clean water act.

LGD: Local Government Designee

Legal Nonconforming Use: refers to uses and structures which were begun or constructed when the law allowed for them but have since become noncompliant due to a change in legislation. Such structures and uses are allowed to continue to exist and be deemed "legal" while limiting expansion or dormancy of the nonconforming use. Also called "Grandfathered".

MOU: Memorandum of Understanding between oil and/or gas production companies and Elbert County memorializing Best Management Practices that have been agreed to by both parties.

Oil and Gas Activities: All activities associated with Oil and/or Gas Operations and/or an Oil and/or Gas Facility as defined in this section.

Oil and/or Gas Operations: Exploration for oil and/or gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and/or gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of pipelines, flowlines, and gathering systems; any construction, site preparation, storage and/or staging, or reclamation activities associated with such operations; a centralized facility for oil and/or gas production, water injection, water transfer or recycling, or water pumping, and associated facilities; or any other related activity.

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Elbert County Oil and/or Gas Permit: A permit issued by Elbert County after the Applicant has successfully completed the Special Use Permit process for a Minor or Major Oil and/or Gas Facility. Issuance of an Oil and/or Gas Development Permit authorizes the Applicant to begin oil and gas production activities on the site.

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

Open Storage Pit: Manmade water storage pond-uncovered-used to store fluids associated with Hydraulic Fracturing.

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

Produced Water: Produced water is a term used to describe water that is produced when oil / gas are extracted from the ground. Oil and gas reservoirs have a natural water layer that lies under the hydrocarbons. Oil reservoirs frequently contain large volumes of water, while gas reservoirs tend to have smaller quantities. To achieve maximum oil recovery, additional water is often injected into the reservoirs to help force the oil to the surface. Both the formation water and the injected water are eventually produced along with the oil and therefore as the field becomes depleted the produced water content of the oil increases.

Road Use and Maintenance Agreement: The operator shall enter into a Road Use and Maintenance Agreement with the County Public Works Department. The Operator's obligation under the Road Use and Maintenance Agreement are subject to the provisions of the Elbert County Construction Standards and Specification Manual.

Surface owner: The person or persons or corporation, the majority stock of which is held by a person or persons who hold legal or equitable title to the land surface.

Transportation Impact Analysis: A study prepared by a certified transportation engineer report that identifies the potential impacts to County roads and bridges related to the oil and/or gas facility's construction, operation, and traffic generation. The mitigation of traffic impacts should include a plan for traffic control, on-going road maintenance, track mats, obtaining all necessary permits, and improving or re-constructing County roads as necessary.

Wellhead: The equipment attached to the casing of an oil, gas, or injection well