

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

**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. This Section is intended to facilitate the development of oil and 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.

**A. 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.

**B. 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.

**C. EFFECTIVE DATE**

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

**D. NON-CONFORMING USES**

An approved oil and/or gas facility which obtained approval prior to the effective date of this Section shall be allowed to continue its use so long as the use does not cease for an uninterrupted period of thirty six (36) months. Should the thirty-six month period lapse, all associated equipment must be removed and disposed of, or 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.

The 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 minimizes noise impacts through the use of mufflers and minimizes visual impacts by painting or screening. 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).

Nothing herein shall be construed as a regulatory requirement to close or abandon an existing oil and/or gas facility.

**E. 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) 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, entry may be made without notice to the Operator.

**F. 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. No extensions to this deadline will be granted. A new permit application is required.

**G. WAIVERS**

The 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.

**H. 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.

**I. APPEALS**

An appeal to a decision on the issuance of a Administrative Use Permit made by the CDS Director shall be submitted to the BOCC within thirty (30) days following the decision by the CDS Director. An appeal of a final action by the BOCC on an application shall be to the Elbert County District Court.

**J. 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 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 or 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.
  - h. Surface discharge of produced and flow back water.
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. If the actual use of the injection well is for the commercial disposal of produced water, then it is a Major Oil & Gas facility.

**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 3<sup>rd</sup> party transportation;
  - g. Pipelines or storage terminals.
2. A major application for which 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, and subject to BOCC concurrence.

- 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 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 for all properties within 500 feet of proposed activity.
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 property owners within 1000 feet of the oil and/or gas facility desiring to perform recompletion or re-fracturing activities by sending a certified letter to such property owners. 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.

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.

- B. For those production companies that have an approved MOU with Elbert County only the first MOU shall be presented to the Planning Commission as detailed in 27.6. D of this Section. The permitting process following the first approved permit will then be administrative and based upon the application submitted it may be: approved, approved with conditions or denied by the BOCC.
- C. Once an MOU has been executed by the parties, the MOU and BMP's may 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 all only be applicable to the site specific facility. The CDS Direction 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 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 Emergency Response and Safety Plan (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. 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 a 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 and applicant (if different from property owner), 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 state 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 CDEHP and the County Engineer.
9. Type or method of fire protection with input from applicable fire jurisdiction and an ESRP.
10. Owner(s) of Record signature block.
11. Noxious Weed Management Plan

12. Dust Mitigation Plan
13. Facility Close Out Plan
14. Material Handling & Spill Prevention Plan
15. Waste Management Plan
16. Oil & Gas Operations Plan
17. Visual and Noise Mitigation Plan
18. 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.

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. 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.
- 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 r 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.

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

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.

**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 27.9 PERFORMANCE STANDARDS FOR ALL OIL AND/OR GAS FACILITIES**

The following Performance Standards shall apply, where appropriate, to all oil and/or gas facilities within Elbert County, including those covered by an 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 licensed civil 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 may require the operator to provide on-going maintenance to correct road damage. On-going maintenance may include, but is not limited to, the following:
- a. Graveling;
  - b. improving shoulders and/or;
  - c. 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.
- 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 licensed Colorado civil 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. The LGD will post the public COGCC results on the Elbert County website for public information with the permission of the landowner.

- 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 and the appropriate Conservation District, as applicable.
- K. Setbacks – If setbacks are less than 1000', a setback mitigation plan shall be provided by the Applicant.
- L. Clustering of facilities – For minor oil and gas facilities, it is the County's objective to consolidate production facilities whenever practicable. Clustering of multiple well production facilities will encourage the development of underground infrastructure and provide visual mitigation against the proliferation of equipment pads. Exceptions to this objective may be granted when one or more of the following factors apply in a manner such that the clustering of wells is rendered impractical:
  - 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
- M. 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.