

**OIL AND GAS REGULATIONS**

400 Main Street, Suite B

Walsenburg, Colorado 81089

719-738-1220 ext. 103



**SECTION 6.00**

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### 6.01 RESERVED

### OIL AND GAS\* “GENERALLY”

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\* **State Law References:** Oil, gas, mineral rights, C.R.S. § 30-11-301 et seq.; oil and natural gas, C.R.S. § 34-60101 et seq.

### 6.02 AUTHORITY OF ARTICLE

This article is authorized by C.R.S. §§ 29-20-101 et seq., 34-60-101 et seq., and 30-28-101 et seq.

### 6.03 PURPOSE OF ARTICLE

This article is enacted to protect and promote the health, safety, values, convenience, order, prosperity or general welfare of the present and future residents of the county. It is the county's intent by enacting this article to facilitate the development of oil and gas resources within the unincorporated area of the county while mitigating potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that under state law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Owners of subsurface mineral interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests, subject to compliance with the provisions of this article and any other applicable statutory and regulatory requirements. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner and to have adverse land use impacts upon their property, associated with the development of the mineral estate, mitigated through compliance with this article [or other regulatory agency rules and regulations](#). Should it be established by competent evidence that a proposed major or minor facility cannot be operated in compliance with this article, [the county could deny such a facility](#) county land use approval for such a facility may be denied.

### 6.04 DEFINITIONS

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Also, see Section 17.00 for additional definitions.

*Abandonment* means the permanent abandonment of a well and shall be based on the operator's filing of abandonment with the Colorado Oil and Gas Conservation Commission (COGCC).

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Presumption of permanent abandonment of a major facility shall be based upon nonuse or non-operation for one year without notification to the Board of County Commissioners (BOCC) of the intent to resume operations under specified conditions.

*Agent* means one authorized to make binding representations on behalf of the applicant.

*Agricultural* means currently in use for farm or ranch purposes, including pasture and assessed in the Huerfano County Assessor's records as agricultural land.

*Applicant* means that person, corporation or other legal entity possessing the legal right to develop the mineral resource or any other use proposed in connection thereof for the site in question.

*Best Management Practices* means proven techniques used in conducting mineral extraction operations which eliminate or minimize adverse impacts to public health and the environment, landowners, and natural resources; which enhance the value of natural and landowner resources; and which reduce conflicts. BMP's are dynamic and intended to promote excellence in the conduct of operations.

*Centralized Facility* means a facility serving multiple well pads consisting of one or more compressors, generators and / or water, gas or oil treatment equipment.

*Code* means the Huerfano County Land Use Code.

*CDO* means the Colorado Division of Wildlife.

*COGCC* means the Colorado Oil and Gas Conservation Commission.

*Corridor* means the tracts of land within which a pipeline right-of-way is located.

*Critical use hours* means that time of day when disturbance is most likely to increase stress to and negatively impact wildlife.

*Critical use period* means that portion of the year (weeks or months) when disturbance is most likely to increase stress to and negatively impact wildlife.

*Designated agent* means an agent designated by the applicant, owner or lessee.

*Drainage plan* means a written description and depiction on site the plan for the collection, transport, treatment and discharge of stormwater runoff.

*Drilling Operation* means any work or actual operation undertaken for the purposes of carrying out any of the rights, privileges or duties of a lessee for drilling of an oil well, gas well, or cathodic protection well, and by the actual operation of drilling in the ground.

*Easement* means authorization by a property owner for the use of a designated portion of his~~the~~ir property by another, for a specified purpose.

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*Equipment* means machinery or structures located on well pads or right-of-ways including but not limited to wellheads, separators, dehydration units, heaters, meters, storage tanks, compressors, pumping units, internal combustion engines, and electric motors.

*Facility* means a site and equipment associated with a site used for the production, transportation, treatment, and/or storage of oil and gas and waste products [allowed](#).

*Flowline* means a pipeline connecting an individual well to production equipment or a pipeline connecting individual production equipment to a gathering line that transports gas, oil, or produced water. Pipelines over 10" requires an HB-1041 application, Section 7.03.03.

*Gas well* means a well capable of producing natural gas. **Oil well co2 well?**

*Gathering line* means a pipeline receiving produced gas, oil, or produced water from more than one well pad and thereafter transporting gas, oil, or water to a transmission line or centralized facility.

*Grading plan* means a plan view and cross section of existing and proposed contours, cuts and fills, topsoil storage location and stabilization methods, and maximum slopes.

*Heavy equipment* means drilling rigs, completion rigs, construction equipment, and individual truck/trailer combination vehicles with a gross vehicle weight exceeding 5 tons.

*Improvement* means any new construction activity or addition of equipment or materials to a site.

*Lessee* means the entity entitled under an oil or gas lease to drill and operate wells. The lessee may also be the applicant for purposes of this article.

**Major oil and gas facilities means:**

- (1) Centralized facilities.
- (2) Water injection or centralized water transfer stations and associated facilities serving multiple well pads.
- (3) Storage yards and construction staging yards in place for longer than six months.
- (4) Any facility or structure related to the production of oil and/or gas which contains engines and/or motors with a cumulative horsepower, de-rated for elevation, of 200 BHP.
- (5) Pipelines for which the power of eminent domain is available.
- (6) Any oil and gas facility not meeting the definition of minor oil and gas facility.

**Minor oil and gas facilities means:**

- (1) An individual well pad built with one or more wells and operated to **extract hydrocarbons** produce liquid petroleum and/or natural gas, including associated equipment required for such production.
- (2) Gathering lines and ancillary equipment including but not limited to drip stations, vent stations, pigging facilities, chemical injection stations and valve boxes.

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- (3) Temporary storage and construction staging yards in place for less than six months.
- (4) An individual well site built and operated to produce petroleum and/or natural gas and associated equipment (as defined above) which does not meet the minimum setback and other requirements specified in this article for minor facilities.
- (5) Any of the facilities specified under subsection (1) of this definition which do not comply with all applicable standards and requirements, as set forth in this article, and which are not classified as major facilities.
- (6) Continuous drilling and completion operations of wells or well legs on a well pad that are planned to continue for longer than six weeks.

*NRCS* means the Natural Resource Conservation Service.

*Nuisance* means a facility which is not being constructed, operated or installed in substantial compliance with the regulations of this article and any applicable conditions of approval and as to which the applicant has failed or refused to abate, correct or discontinue the violation of this article after being ordered to do so by the board of county commissioners.

*Oil well* means a well capable of producing crude petroleum oil.

*Operating plan* means a general description of a facility identifying purpose, use, typical staffing pattern, equipment description and location, access routes, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure, and any other information related to regular functioning of that facility.

*Operator* means that individual or firm engaged in all or a portion of the extraction operations at a well or other facility; usually the lessee, although day-to-day operations may be contracted to another firm.

*Permanent equipment* means equipment located onsite for a duration of time greater than six months effective one year after the drilling and completion of a well.

*Pit* means subsurface earthen excavation (lined or unlined) or subsurface open top tank used for the purpose of retaining or storing substances associated with the drilling or operation of oil and gas wells.

*Platted building envelope* means an area of land within a buildable lot within which all site structures, buildings and other hardscape elements shall be contained, except driveways.

*Platted subdivision lot* means any lot created pursuant to state law, which has received subdivision approval by the board of county commissioners since September 1, 1972.

*Residential* means a property having an existing residence or platted subdivision lot within one-quarter mile of a site.

*Right-of-way* means:

- (1) A person's legal right to pass through grounds or property owned by another, or

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(2) Land, property or interest therein usually in a strip, acquired for or devoted to transportation purposes.

*Security fencing* means a six-foot chain link fence topped by three strands of barbed wire, or the equivalent, with a gate that can be secured.

*Setback* means the distance between the following, including but not limited to, a lot or property line, the closest projection of a building structure or permitted facility, wellhead, flow line, gathering line or a major facility boundary, Site means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of oil or gas is authorized under a lease.

*Standard Operating Practices* means criteria developed by the County and the Colorado Division of Wildlife for the protection of wildlife resources in the County during oil and gas development activities. Standard Operating Practices may be referred to herein as "SOPs".

*Surface owner* means the owner of the property on which the facility will be constructed.

*Temporary equipment* means equipment located onsite for a duration of time less than six months.

*Temporary use area* means disturbed lands immediately adjacent to the well pad or right of way used by an operator during the construction or maintenance of a well, pipeline or other facility that will be reclaimed for permanent operations.

*Transmission line* means a pipeline transporting oil, natural gas or any other products derived from oil and gas production, which is defined as a transmission line by the U.S. Department of Transportation regulations under the Natural Gas Pipeline Safety Act of 1968, as amended.

*Well head* means the equipment attached to the casing of an oil, gas or injection well above the surface of the ground.

*Well Pad* means the area in which permanent operations for the well takes place and shall always include, at a minimum, that portion of the pad area occupied within the drilling rig anchors. Well pads may contain one or more wells and associated equipment.

All other words used in this article shall be given their usual, customary and accepted meaning in the oil and gas industry.

6.05 GENERAL PROCEDURES

(a) Development of oil and gas facilities within the unincorporated areas of the county, as to which the county's legal jurisdiction has not been preempted by state or federal law, shall be subject to the provisions of this article and any other applicable regulations of the county, as well as any state or federal entities or agencies having jurisdiction over such development.

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- (b) Construction, installation and operation of oil and gas facilities which are subject to this article shall not commence until approval has been granted by the Board of County Commissioners. The Planning and Zoning department shall serve as the authorized representative of the board of county commissioners for the purposes of this article.
- (c) Planning Commission review and recommendation together with board of county commissioners' review and approval shall be required for all activities and facilities.

6.06 RESERVED

**“ADMINISTRATION IN GENERAL”**

6.07 SUBMITTAL REQUIREMENTS

Submittal requirements are as found in the following table:

	<b>Elements</b>	<b>Minor</b>	<b>Major</b>
1.	Application	X	X
	<b>Elements</b>	<b>Minor</b>	<b>Major</b>
2.	Letter of Intent to include:	X	X
	Operating plan	May be required*	X
	Estimated number of site visits by vehicles	X	X
	Other site specific information, identified and requested at a preapplication conference.	May be required*	X
	Provide engine manufacturer's verification of the site rated horsepower. Within 10 days of the installation of an engine, the operator will provide the serial	X	X



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	number to the county staff.		
3.	Emergency response Plan	X	X
4.	Site plan (map prepared for survey and location purposed by the applicant's surveyor may be used as per state and federal requirements) including:	X	X
	North arrow, appropriate scale, overlain on aerial photography	X	X
	Existing improvements within map area	X	X
	Utility easements, right-of-way	X	X
	Irrigation ditches crossing or within 100 ft	X	X

	Elements	Minor	Major
	<b>Drainage plan</b> (onsite, offsite including proposed storm water best management practices for facility and access roads)	X	X
	Proposed facilities including temporary use area, permanent well pad, flow lines, gathering lines, pits, equipment, etc.	X	X
	Other site specific information identified and requested at a preapplication conference.	May be required*	X

Application submitted to CDPHE for construction stormwater plan permit if disturbed ground >1 acre

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	Proof of current surface ownership of facility site	X	X
5.	Vicinity maps (county GIS maps may be used as base map) including;	X	X
	Township, range, and section	X	X
	Site boundary	X	X
	North arrow and scale	X	X
	Major geographic features, to include bodies of water, roads utility corridors	X	X
	Current surface ownership within one-quarter mile of site, to include names of platted subdivisions and approximate location of residences	X	X
	Current surface ownership of parcels adjacent to proposed site	X	X
	<b>Elements</b>	<b>Minor</b>	<b>Major</b>
	Existing and proposed access	X	X
	Existing pipeline routes (gathering lines, transmission lines)	X	X
	<b>Other site specific</b> information identified and requested at a preapplication conference	X	X
6.	Weed and disturbance plan	X	X

COGCC permit comment period should the county ask for

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7.	Visual mitigation plan refer to 8.2.38 (a) (b)	X	X
8.	Wildlife mitigation procedures	X	X
9.	Noise mitigation procedures	X	X
10.	Four color photos, each taken from the center of the site facing north, south, east and west, respectively, properly focused and exposed	X	X
11.	Grading Plan	X	X
12.	Information regarding right of access and use of access roads and copies of any access agreements or road maintenance agreements if applicable	X	X

\* Pursuant to discretion of Director of Planning.

6.08 RESERVED

6.09 FEE SCHEDULE

The application fees to be imposed pursuant to this article are set forth in Appendix A and adopted by resolution of the board of county commissioners. Fees to be charged in association with the provisions of this article may be amended periodically by the board of county commissioners.

6.10 GENERAL STANDARDS FOR REVIEW

- (a) Oil and gas facilities shall meet the standards and policies set forth in the following documents:
- (1) These county oil and gas regulations;
  - (2) The county land use regulations;
  - (3) The county master plan;

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- (4) County road and drainage design specifications and standards;
  - (5) The International Building Code as amended and adopted by Huerfano County;
  - (6) Plans and regulations of municipalities in the county, if applicable;
  - (7) Other applicable local, county, state and federal plans, policies and regulations.
- (b) **All applications may be subject to joint public hearing** Where applications are scheduled for joint public hearing, the Board of County Commissioners and the Planning Commission shall conduct a joint public hearing, with notice of such hearing published in a newspaper of general circulation in Huerfano County at least (10) days prior to the scheduled hearing date. ~~The applicant shall mail no~~Notification of the hearing date, and subject of the hearing shall be sent to all listed owners of record of all adjacent properties, and properties owners within ~~4320 feet~~one-mile of the facility at least ten (10) days prior to the scheduled hearing date ~~and provide at the public hearing proof of publication, proof of payment of publication and proof of notification of adjacent property owners. In addition, the applicant shall cause to have posted on the property in question, in a conspicuous location, a sign supplied by Huerfano County, stating the time, date, location and subject of the hearing. Such sign(s) shall be posted at least ten (10) days before the scheduled date of the hearing. The record of comments for this type of application consists of the record of project file plus the joint public hearing. In accordance with public noticing requirements in Section 8.00 of these regulations.~~
- (c) For ~~minor facility~~ **All** applications, the record of comments shall consist of the contents of the project file plus the record of the Planning Commission meeting.

### 6.11 DURATION, MODIFICATIONS AND PREEXISTING USES

- (a) Duration. Approval granted for minor and major facilities shall expire and be considered revoked if construction of the facility is not commenced within one year of the date of approval. Approval granted for minor facilities that are individual well sites shall expire or be considered revoked if drilling operations are not commenced within one year of the date of approval.
- (b) Modifications. Where a minor or major facility has been approved and the applicant desires to modify the subject facility by changes to previously permanent approved equipment, addition of new permanent equipment, site layout, new grading activities, operating plan, etc., an amendment to the original application shall be required. Changes to permanent equipment include but are not limited to changes of existing equipment or operations that result in greater land use impacts. Applicant shall submit a narrative, site plan, visual mitigation plan, and appropriate fees per the specifications outlined in this chapter. In cases where the amendment would consist of the addition of a major facility, a joint public hearing shall be required as described in Section 6.28 of this section, Major Facilities. Modifications which the applicant determines in good faith must be done on an emergency basis may be commenced without prior notice or approval by the Board of County Commissioners. The applicant shall provide the

**Commented [1]:** Let's discuss if we want to do a joint public hearing, or a public hearing.

After recent code updates, we could follow the Common Procedures for a public hearing in Section 8.00. This would require adding Oil and Gas-specific requirements to Section 8.01 and 8.08

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Board of County Commissioners with notification of such emergency modifications by filing a written amendment to the application, along with the appropriate fees, specifying the modifications made, within two working days of their commencement.

- (c) Permit Extensions. Approved facilities may be granted one permit extension for up to one year duration provided that a request for extension is submitted to the Board of County Commissioners before the original permit expires. Requests for extensions shall not be submitted for board review earlier than 45 days prior to the original permit's expiration date. Permit extension requests will be processed without fee.
- (d) Effective date. This article shall become effective on the date specified in the adopting resolution of the board of county commissioners in accordance with state law.

#### 6.12 CONSTRUCTION OR INSTALLATION OF UNAPPROVED OIL AND GAS FACILITIES

It is unlawful to construct, install, or cause to be constructed or installed, any oil and gas facility within the unincorporated areas of the county unless approval has been obtained pursuant to these regulations.

#### 6.13 PENALTY

Subject to the provisions of C.R.S. § 30-28-124, any person, firm, corporation or legal entity which owns, leases or operates a minor or major oil and gas facility, and which constructs, installs or uses, or which causes to be constructed, installed or used, any minor or major oil and gas facility without first receiving approval from the board of county commissioners, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$100.00 per day of violation, per violation, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. In addition, the County may also seek civil penalties and relief pursuant to the provisions of [C.R.S. Section 30-28-124.5](#)

#### 6.14 CIVIL ACTION

In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of any provision of this article, the county attorney, or where the board of county commissioners deems it appropriate, the district attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

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### 6.15 FALSE OR INACCURATE INFORMATION

The board of county commissioners may revoke approval of a facility if it is determined at a public meeting, held on at least ten days' notice to the applicant, that the applicant provided information and/or documentation upon which approval was based, which the applicant, its agents, servants and employees knew, or reasonably should have known, was false, misleading, deceptive or inaccurate. The applicant and the planning commission and staff shall be provided with an opportunity to be heard at the public meeting prior to the board of county commissioners rendering its decision.

### 6.16 PERFORMANCE SECURITY

The applicant shall provide one form of the following security to ensure compliance with mitigation requirements set forth in this article and specific conditions of approval for minor and major facilities no later than 90 days from the Commission's approval of the performance security plan: \$7,500-A performance bond (irrevocable letter of credit; or equivalent financial security acceptable to the county) in the amount of at least \$90,000 for each minor facility up to 15 facilities subject to uncompleted conditions of approval (maximum \$4051,260,000); or \$780,000 performance bond for operators with more than 15 minor facilities subject to uncompleted conditions of approval (maximum \$1752,000,000);. The amount required for performance bonds may be adjusted by the Director or County Administrator based on the most recent estimates of average plugging and site remediation costs published by the Colorado Energy and Carbon Management Commission (formerly COGCC), and rounded to the nearest thousand. Performance bond requirements for major facilities will be determined on a case by case basis. Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and/or adjacent landowners by the applicable performance standards contained in this section with regard to the county permit. Examples of impact could include but are not limited to roads noxious weeds water wells storm water insult. Specific minor and major facilities will be released from the bonding requirement after the applicant demonstrates to the Board of County Commissioners that all conditions of approval have been met. Reclamation activities which fall under COGCC jurisdiction are exempted from this performance security coverage. This provision is not meant to replace the COGCC's financial assurance requirement.

For sites requiring a visual mitigation plan, see Section 6.38(4)(b).

### 6.17 RIGHT TO ENTER

For the purpose of implementing and enforcing this article, the applicant shall provide notice to the surface owner that county personnel may need to enter onto subject property at any time during the review of a minor or major facility application and thereafter upon reasonable notification to the operator. If entry is denied, the County shall have the right to discontinue the processing of any pending permit application, to halt the effectiveness of an issued permit, or to obtain an order from a court of competent jurisdiction to obtain entry.

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### 6.18 EMERGENCY RESPONSE PLAN REQUIRED

Each operator with facilities in the county is required to provide an emergency response plan to the county office of emergency management. No applications for a minor or major facility shall be considered complete until the operator has provided such plan to the county. The plan shall be filed with the county and updated on an annual basis or within 10 working days as conditions change (responsible field personnel change, ownership changes, etc.). The emergency response plan shall, at a minimum, consist of the following information:

- (1) **Table of content with page numbers**
- (2) Name, address and phone number, including a 24-hour emergency number of at least two persons responsible for emergency field operations.
- (3) An as-built facilities map showing the name, location and description of all minor and major facilities, including the size, type and content of all pipelines, pits and tanks. The map shall be prepared digitally on the county geographic information system parcel maps. To the extent allowed by law, the as-built facilities map shall be held confidentially by the county's office of emergency management, and shall only be disclosed in the event of an emergency. To the extent allowed by law, the county's office of emergency management shall deny the right of inspection of the as-built facilities map to the public pursuant to C.R.S. § 24-72-204(3)(a)(IV).
- (4) Provide two copies of a written response plan for any potential emergencies that may be associated with the construction, drilling, completion or operation of the facilities. This plan should include any or all of the following: explosions, fires, gas, chemical, or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills.
- (5) Project specific emergency response plans are required for any project (minor or major) that involves drilling or penetrating through known zones of hydrogen sulfide gas. This plan shall be coordinated with and approved by the county's office of emergency management prior to beginning field operations.
- (6) Hazard specific placards on building exteriors containing such substances.
- (7) **Provide a list of contractors and necessary resources to staff prior to the commencement of construction**
- (8) **Submit prior to construction to staff a site plan which includes the location of the drill site, all onsite structures and their uses, chemical storage location, designated mustering point, first aid stations, command center.**
- (9) **Identify evacuation route**
- (10) **Include [contact information](#) ~~on where~~ the operations team leader is located**
- (11) **Identify method of communication in the case of power outage**

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- (12) Requirement of having two 500 gal water barrel on site designated for the sole purpose of firefighting.
- (13) Provide Huerfano County and county office of emergency management with radio frequencies. Asses the ability of Huerfano county to access these frequencies.
- (14) Identify team responsible to respond the search and rescue operations
- (15) Provide to Huerfano County with hours of operation including nights, weekends, and holidays. Include total number of staff members during the hours of operation
- (16) Huerfano county must be notified of any death on a permitted site within 48 hours.
- (17) ~~Emergency Response Plan, with any amendments requested at permit application review, must be submitted to staff prior to the commencement of construction.~~

Commented [2]: ?

Commented [3]: This would be interesting to know, but I don't think it is necessary. This could vary greatly over the course of a project.

6.19 RESERVED

**“MINOR FACILITIES”**

6.20 GENERALLY

Applications for county land use approval for proposed minor facilities shall be processed by county staff, provided the information in the application establishes that (a) the proposed use complies with the minimum requirements for such facilities as set forth in this article or (b) that the proposed facility's noncompliance with this article will be mitigated in accordance with the applicable standards and requirements for minor facilities.

6.21 APPLICATION SUBMITTAL PROCEDURE

The application shall be in the form prescribed by Section 6.07 of this code and shall include information and/or documentation establishing that the proposed minor facility is in compliance with all applicable requirements of this article. If the applicant asserts that the proposed use complies with requirements, the application shall contain a certification from the applicant or its designated agent (accompanied by a written designation of agent in the form prescribed by the county) that the proposed facility complies with all applicable provisions of these regulations, and that the information in the application, as well as in any documentation submitted, is true and accurate. If the applicant asserts that the proposed facility's noncompliance with this article will be mitigated, the application shall set forth the specific measures which will be employed at the facility to mitigate the land use impacts associated with the facility. Such identified mitigation measures shall comply with the standards and requirements for such facilities as set forth in these regulations.



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6.22 DETERMINATION OF COMPLETENESS

Should the county staff determine that the application, as submitted, is not complete, it shall provide the applicant with written notice of the specific deficiencies within fifteen (15) business days of the initial submittal. No further action shall be taken on an application determined to be incomplete, until the specified deficiencies have been corrected to the satisfaction of the county staff. If the application is found to be complete, containing all information and/or documentation required by this article, the county staff shall then review the application for compliance with applicable standards and requirements. This review may include a field inspection of the proposed site.

6.23 PLANNING COMMISSION ACTION

Review of a complete application and approval or denial will typically occur within **twenty-one business days**. More or less time may be required for review depending on the county staff's work load or requests for additional information made to the applicant. If a permit is not approved within twenty-one (21) business days, the county staff will contact the applicant with an estimate of when the application will be acted upon. Should the information in the application and any accompanying documentation establish that the proposed minor facility will be constructed and operated in compliance with all applicable standards and requirements of this article, then Planning Commission shall issue a recommendation of approval for the proposed minor facility. Should the Planning Commission determine that the proposed minor facility will not or cannot be constructed and operated in compliance with all applicable standards and requirements of this article, then it shall issue a recommendation of denial of the application, stating with specificity the grounds for its decision. At the request of either the applicant, surface owner, or other landowner receiving notice pursuant to Section 6.26 of this Code, Planning Commission may, at its discretion conduct a public site visit with these parties to evaluate locations, compliance with county code, and mitigation that may be required under Section 6.38 of this code. When possible this site visit will be coordinated with site visits required by rules of other governmental agencies. Where a site visit **is not deemed necessary**, the Planning Commission may hold an informal **dispute resolution** meeting pursuant to the Land Development Guide at a convenient community building. **The Planning Commission, at their discretion, may hold a public hearing in accordance with the guidelines of 6.10 b and 6.31**

6.24 PLANNING COMMISSION DETERMINATION OF SATISFACTORY MITIGATION FOR MINOR FACILITIES Measures.

Should the information in the application and any accompanying documentation establish that the proposed facility will be constructed and operated in such a manner that the land use impacts associated with the facility's noncompliance with this article are mitigated in accordance with the applicable standards and requirements, the Planning Commission shall issue recommendation of approval for the proposed minor facility. Should the Planning Commission determine that the mitigation plan for the facility does not meet the applicable standards and requirements, and the applicant fails or refuses to provide satisfactory evidence that such a mitigation plan is

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not possible under the facility's specific circumstances, it shall issue a recommendation of denial of the application, stating the specific grounds for its decision.

### 6.25 APPEAL OF DENIAL OR APPROVAL

Should the applicant request county land use approval by the filing of a written appeal with the board of county commissioners, he must follow the requirements of Section 1.17.

### 6.26 NOTICE TO ADJACENT PROPERTY OWNERS

(1) Written notice shall be provided to surface owners for all minor facility applications. ~~The applicant shall present proof of such notice by submitting a copy of the letter, a list of the land owners notified, and certified mail receipts. This notice shall to be mailed no less than 10 days prior to the application being submitted to the Planning Commissions Administrative Staff date of a public hearing.~~ Notice of the application shall be made in accordance with common procedures established in Section 8.00. In addition to general requirements, the following conditions shall apply to oil and gas permit applications as follows:

**Commented [4]:** Previously required notice prior to submitting application to staff.

- a. To the current surface owners of the parcels of land within which the minor facility is proposed to be located, as well as the current surface owners of those parcels of land within ~~1/4 one-mile (1320 feet)~~ of the well head, as such ownership is indicated for tax purposes in the current records of the county assessor's office. For the purposes of notice, the parcel owner shall receive notice if their property boundary is within ~~a 1/4 one-mile (1320 feet)~~ from the point indicated as the wellhead (the wellhead is indicated by feet from section lines).
- b. In addition to requirements outlined in Section 8.00 of these regulations, ~~The~~ notice of the application for approval of a minor facility shall contain the following:
  1. A description of the proposed facility's site location, including a legal description, as well as a street address for the site, if available from the county's rural addressing system. The identification of the applicant and its designated agent for the application, if any; the current business address and telephone number for the applicant and its agent, if one has been designated, and a vicinity map per the specification of this chapter and brief description of the facilities and equipment proposed to be located at the site when operational.
  2. The submittal date of the application to staff. A statement that comments on the application should be submitted to staff within ten working days of its submittal.
  3. A statement informing the landowner that if they desire notice of the commencement of construction and drilling operations (if the application is approved) they should contact the applicant and county staff in writing. The applicant will provide written notice to the

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county staff and those landowners desiring notice no less than 10 days prior to the commencement of construction and drilling operations.

4. The current mailing address, website address, telephone number for the county staff and COGCC, as well as a statement that additional information on the application will be available from the county staff within ten working days.

5. A statement concerning the county's need to enter property which is the subject of a minor or major facility permit as follows: for the purpose of implementing and enforcing the county's oil and gas regulations, county personnel may, from time to time, need to enter onto the property which is the subject of a minor or major facility application.

5-6. A statement that the applicant will, at their own expense, test the quality and quantity of water in any wells within one-mile of proposed drilling sites prior to the commencement of drilling. The county must be notified of consent to have well tested at or prior to the public hearing.

6.27 RESERVED

**"MAJOR FACILITIES"**

6.28 REVIEW OF APPLICATIONS; ACTION BY BOARD OF COUNTY COMMISSIONERS

Will the planning commission review application as with a minor facility? What about site visits?

**Commented [5]:** This is the Major Facilitie section.

All applications for major\_ facilities (as defined under Section 6.04 of this Article) shall be scheduled for **joint** public hearing before the commission and the board of county commissioners **and planning commission** in accordance with the provisions of this subcategory. The **planning commission** shall review such applications at a scheduled public meeting, and forward a recommendation for approval, conditional approval, or denial with appropriate findings to the board of county commissioners for final action. **The board of county commissioners action on an application for a major facility shall be scheduled for the next regularly scheduled board of county commissioners hearing for planning agendas for which proper public notice has been given.** Final actions of the board of county commissioners shall contain appropriate findings based upon competent evidence in the record before the board of county commissioners.

6.29 APPLICATION SUBMITTAL PROCEDURE

The major facility application shall consist of all items identified in Section 6.07 of this article. Prior to formal submittal of the application, Planning and Zoning shall meet with the applicant to discuss and identify any additional information required to adequately review the proposed facility.

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### 6.30 DETERMINATION OF COMPLETENESS

The staff will review the application for completeness. If the application is deemed complete, the staff will commence the planning commission review notification in accordance with Section 6.31. If the application is incomplete, the applicant will be notified of the deficiency and the application shall be withdrawn from the review process until the required information is submitted.

### 6.31 NOTICE OF A JOINT PUBLIC HEARING

~~Noticing procedures and requirements outlined in Section 8.00 of these regulations shall apply to applications for major facilities. Planning Commission may elect to conduct public hearing as a joint public hearing with the Board of County Commissioners. Not less than 10 days, nor more than 30 days prior to the joint public hearing established to consider the major facility application, a legal notice of the joint public hearing before the board of county commissioners and the planning commission shall be published in a newspaper of general circulation within the county at the applicant's expense.~~

- (1) Written notice shall be given individually to the owners, as listed by the county assessors, of any land adjacent to or located within one-quarter of a mile (~~1,320 feet~~) of any portion of the subject site: such ~~notice will be sent by the applicant at least ten (10) days prior to the scheduled hearing date. At the public hearing the applicant must provide proof of publication, proof of payment of publication and proof of notification of adjacent property owners.~~
- (2) ~~In addition to requirements outlined in Section 8.00, he public~~ notice of the public hearing shall ~~take a form prescribed by Planning and Zoning and shall~~ include the following:
  - a. A description of the location (including a legal and practical description) and a description of proposed activity under review.
  - ~~b. Time and place of the public hearing.~~
  - ~~e.b.~~ The name, address and telephone number of the applicant and/or its designated agent.
  - c. A statement that additional information may be obtained from the county staff noting office location, phone number, and time when information is available from examination.
  - d. A statement that the applicant will, at their own expense, test the quality and quantity of water in any wells within one-mile of proposed drilling sites prior to the commencement of drilling. The county must be notified of consent to have well tested at or prior to the public hearing.

### 6.32 NOTICE UPON REQUEST

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Notice shall be sent to any person, agency or organization requesting their names and addresses be placed on a mailing list to receive notice of major facilities undergoing public review, and pay an annual fee, the amount of which shall be determined from time to time by the Board of County Commissioners. In order to have a name and address retained on said mailing list, the concerned shall resubmit their names and addresses and pay such fee before January 31st of each calendar year.

**6.33 PLANNING COMMISSION REVIEW**

The commission shall conduct a noticed public meeting for review of the proposed major facility. On the basis of competent evidence received at this meeting and the joint public hearing, the commission shall make its recommendation to the board of county commissioners regarding approval, conditional approval or denial of the application. Such commission actions shall contain appropriate findings or reasons in support of the recommendation concerning the facility's compliance with applicable standards and requirements, as well as the appropriateness of the facility in the location proposed in accordance with the review criteria set forth in Section 6.34.

The commission may table an application to a date certain in order to receive additional testimony or information. The applicant may request a continuation of the public meeting for good cause shown satisfactory to the commission. The commission shall render its verbal decision regarding a recommendation on the proposed facility forthwith after the evidentiary phase of the public meeting on the application has been closed.

**6.34 BOARD OF COUNTY COMMISSIONERS' REVIEW CRITERIA**

The board of county commissioners' decision to approve or deny an application for a major facility shall be made and determined based upon its compliance with all applicable performance standards and other requirements of this article and by applying the following evaluative criteria to the evidence in the record of proceedings before the board of county commissioners:

- (1) Need. The demonstrated need for the facility, in the location proposed, to serve the applicant's existing and projected oil and gas development, production and operational requirements.
- (2) Suitability. Suitability of the location of the proposed facility given its size, design and operational characteristics. Factors to be considered include noise levels, impacts upon air and water quality, vibration and odor levels, fire protection and access requirements, visual impacts, wildlife impacts and public safety. These factors will be evaluated in accordance with applicable state, county and federal standards and criteria.
- (3) Adequacy of existing roads and access to the site. Factors for consideration are existing and proposed road alignment, intersections, condition, structure and site distances; traffic volumes and types of equipment; dust control; and existing road uses.

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- (4) Site characteristics. Factors to be considered are topography, natural hazards (landslides, flooding, wildfire), cultural and historical uses on the proposed site and in the notice area and current resource values (open space corridor, prime farmland as designated by Natural Resource Conservation Service (NRCS) and wildlife habitat).
- (5) Compatibility. Compatibility with existing uses and those which can be projected, based upon present subdivision and land use approvals and planning district plans for properties located within the surrounding affected area, as determined by the board of county commissioners, based upon competent evidence in the record. A facility's compatibility with land uses in the surrounding area, which the board of county commissioners finds will be affected by its operation, shall be determined by the facility's estimated or projected ability to mitigate the impacts which it generates, as set forth in the facility operational plan, and in accordance with applicable county, state and federal rules, regulations and standards.

6.35 RESERVED

### “PERFORMANCE STANDARDS”

6.36 COMPLIANCE

All oil and gas facilities granted approval by the board of county commissioners must comply with the standards contained in this division. For major facilities, staff shall determine the level of detail required in a submittal based on the potential adverse impacts of the proposed facility on the unique characteristics of the proposed site and activity

6.37 LAND USE COORDINATION STANDARDS

- (a) Purpose. The purpose of this section's standards for land use coordination is to minimize conflicts between differing land uses.
- (b) Setbacks.
  - (1) A setback of at least ~~450~~2,000 feet shall be required between the well head and the closest existing residential structure or platted building envelope less than 15-acres, unless verified written consent is obtained from the affected surface property owner to a waiver of this standard.
  - (2) A setback of at least ~~150~~200 feet shall be required between the well head of a **minor facility** and the closest property line, unless verified written consent is obtained from the affected property owner.

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- (3) Where site conditions or State or Federal regulations make it impractical for the applicant to meet the setbacks of this section, and a waiver is not obtained from the affected property owner, the applicant shall not be required to fully meet the above-described setbacks. The applicant shall, however, meet setbacks to the maximum extent possible and may be required to implement special mitigation measures as described in this article.
- (4) Setbacks between a major facility and the closest existing residence or property lot line shall be determined on a site specific basis, based on the major facility review criteria identified in Sections 6.10, 6.34 and 6.36 as applicable, but not less than those required for a minor facility.
- (5) Setback requirements for flow lines, gathering lines, and transmission lines from general residential, commercial, and industrial buildings shall be a minimum of 50 feet. The setback distance shall be measured from the nearest edge of the affected pipeline. County staff may require an applicant for a pipeline to provide a risk-based engineering study for all or part of its proposed pipeline right of way that may require the implementation of more stringent construction or operation standards or greater setbacks.

(6) At least 100 feet from public or private rights-of-ways as measured from the pad boundary;

~~(6)~~(7) Outside of a 100-year floodplain or at least 500 feet from the edge of any perennial surface water-body, the ordinary high water mark of any perennial or intermittent stream or the edge of any riparian area, whichever is the greater distance, as measured from the pad boundary, unless Colorado Parks and Wildlife has waived or modified the setback from the stream, surface water, or the riparian area in compliance with Colorado Energy and Carbon Management Commission rules 309 and 1202

(c) Platted subdivisions.

- (1) In those instances where applicant accesses facilities through a private road or roads, applicant will use best efforts to negotiate a fair and reasonable road maintenance or road improvement

agreement with the private entity or entities that access off the road for the purpose of paying or making in-kind contributions for its pro rata share of the cost of maintaining or improving the affected road(s). An applicant that fails to reach an agreement shall document its actions to the county and the existence, or lack thereof, of such executed agreements shall be noted in the application.

(d) Sound emissions.

- (1) The exhaust from all engines, motors, coolers and other mechanized equipment shall be vented up or in a direction away from the closest existing residences or platted subdivision lots.
- (2) All minor facilities with engines or motors (excepting well head compressor engines) shall be electrified if located within 1320 feet of distribution voltage. Applicant may provide

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information demonstrating that such electrification is infeasible. Staff shall review this information and may provide a waiver of this requirement. If distribution voltage is not currently within 1320 feet of the proposed minor facility, applicant will contact and provide the surface owner an opportunity at the surface owner's cost to extend distribution voltage to within 1320 feet of the proposed facility. Gas powered artificial lift equipment may be used prior to the time that a site facility is electrified. All minor and major facilities which are not electrically operated shall be equipped with quiet design mufflers (also referred to as hospital grade or dual dissipative) or equivalent. Such equipment mufflers shall be properly installed and maintained in proper working order.

- (3) All mechanized equipment associated with minor and major facilities shall be anchored so as to minimize transmission of vibration through the ground.
- (4) Special mitigation measures:
  - a. Where a minor or major facility does not comply with the required setback or other portions of the performance standards, additional noise mitigation may be required. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
    1. Nature and proximity of adjacent development (design, location, type).
    2. Prevailing weather patterns, including wind directions.
    3. Vegetative cover on or adjacent to the site.
    4. Topography.
  - b. Based upon the specific site characteristics set forth in this section, the nature of the proposed activity and its proximity to surrounding development, and the type and intensity of the noise emitted, additional noise abatement measures may be required. The level of required mitigation may increase with the proximity of the facility to existing residences and platted subdivision lots, and/or the level of noise emitted by the facility. One or more of the following additional noise abatement measures, including but not limited to the following, may be required:
    1. Acoustically insulated housing or cover enclosing the motor or engine.
    2. Vegetative screen consisting of trees and shrubs which may be placed within a fenced enclosure.
    3. Solid wall or fence of acoustically insulating material surrounding all or part of the facility.
    4. Acoustically insulated building enclosing the installation.

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5. Noise management plan identifying hours of maximum noise emissions, type, frequency and level of noise to be emitted; and proposed mitigation measures.
- (5) Sound emissions shall at minimum be in accordance with the standards as adopted, and amended from time to time by COGCC. In all instances a major or minor facility must comply with sound emission standards designated for residential land uses unless a specific exemption is granted by the staff, the planning commission or the BOCC.
  - (6) Other special mitigation measures. Construction of buildings or other enclosures may be required where facilities create noise and visual impacts nonmitigable because of proximity, density and/or intensity of adjacent land use.
- (e) Security and Safety.
- (1) Security fencing and a locked gate for minor and major facilities shall be required in the following locations:
    - a. Where there are four or more existing residences within 660 feet of the facility site perimeter;
    - b. Where there is a public or private school within 660 feet of the facility site perimeter;
    - c. Where there is any other existing structure with commercial occupancy as defined by the Building Code within 660 feet of the facility site perimeter; and
    - d. Where there is an existing recreational facility designated by an appropriate federal, state or local authority within 660 feet of the facility site perimeter.
  - (2) Safety practices in accordance with state and federal law, including the Occupational Safety and Health Act of 1970, Public Law 91-596 84 Stat. 1590 91st Congress, S.2193, December 29, 1970, as amended through January 1, 2004, shall be used at all times during drilling and production to minimize the danger to the general public.
  - (3) Open-ended discharge valves on all storage tanks, pipelines and other containers shall be secured and have blind flanges installed.
  - (4) All land within 25 feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.
  - (5) Where the applicant's visual mitigation plan specifies alternative security fencing, the alternative fencing shall apply pursuant to staff review.

#### 6.38 ENVIRONMENTAL QUALITY STANDARDS

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(a) Location on private property. Recognizing the need to avoid operational conflicts, yet recognizing the rights of surface owners, the right of the county to determine land uses and the right of the mineral estate to extract minerals, the following criteria shall be used in siting oil and gas facilities on private property:

- (1) The siting of a minor and major facility shall adhere to the standards outlined in this section to the maximum extent practical.
- (2) The standards in this code shall not cause the operator to site the facility in: a geologic hazard area or an area with slopes exceeding 30 percent; an area of wetlands under the jurisdiction of the U.S. Army Corps of Engineers; in an area within a floodway of a stream or river as shown on the Flood Insurance Rate Maps (FIRM) or as determined by a state licensed professional engineer, or in an area designated as Restricted Surface Occupancy for wildlife resources by the Colorado Division of Wildlife (CDOW), unless specifically excepted through written consultation with CDOW.
- (3) The County recognizes that in some instances, existing minor oil and gas facilities which initially met the requirements if this section would not meet the requirements of a current application where filed due to (i) the encroachment of other development into the setback area, (ii) because the regulation was not in effect when the original installation occurred, or (iii) because a waiver previously was obtained. In those instances, where the setback requirements of this section cannot be met currently, the use of the existing well pad site will be considered a legal nonconforming use not subject to the requirements of this section, provided that all land use performance standards are not in any way superseded by the placement of the new well on the existing or expanded well pad. The number of well pads shall not exceed four (4) within any single six hundred forty (640) acre governmental section of real property. To the extent reasonably practicable, operators shall share existing well pads and shall expand the well pads only as necessary to accommodate additional minor facilities. Notwithstanding the foregoing, nothing obtained in this section shall be construed so as to require the closure or abandonment of any existing oil or gas well. Special exceptions to this section may be granted when one or more

of the following factors apply in a manner such that use of only four well pads per governmental section in rendered impractical:

- a) Topographic characteristics of the site;
- b) Natural resource constraints (e.g. wetlands);
- c) The location of utilities or similar services;
- d) Demonstratively insurmountable technical issues related to the development or management of the mineral resource;
- e) Other site conditions beyond the control of the applicant; or

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f) Demonstrable safety concerns.

(4) The following criteria shall be used to site an oil and gas facility. Facilities that cannot comply with the following criteria may be denied according to Sections 6.23 or 6.24 or may be required to mitigate the site as outlined in 6.37 (d) (4) and 6.38 (c) (9). The mitigation requirements may be waived by the community development director if existing topography and vegetation mitigate the land use impacts of the site. The county shall determine the compliance of the proposal using the following standards. Standards are ranked according to importance. Where conflicts between standards occur the higher ranked standard will be used.

- a. Minor facilities shall be constructed using existing infrastructure. This includes, but is not limited to, the use of existing roads, pipeline routes, and well pads within the existing drilling windows.
- b. Minor facilities shall adhere to the setback and location requirements found in Section 6.37 (b)(1-3), (c)(1), and (d)(1&2).
- c. Minor and major facilities shall be sited to minimize the impact to existing residences, commercial structures, public buildings, and county approved platted building envelopes.
- d. Minor and major facilities shall be sited to minimize the impact to agricultural operations.
- e. Minor and major facilities shall be sited in order to minimize the amount of cut and fill needed to construct the facility.
- f. Minor and major facilities shall be sited in areas that maximize the amount of natural screening available for the facility. Natural screening includes, but is not limited to, the use of existing vegetation to screen or background and the construction of the facility in canyons or behind ridges and natural rock formations.
- g. Minor and major facilities shall be sited at the base of slopes to provide a background of topography and/or natural cover.
- h. Minor and major facilities shall be sited to avoid crossing hills and ridges or silhouetting.
- i. Minor and major facilities shall be sited away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings and other landmarks.
- j. The provisions of any existing surface use agreement should be taken into consideration regarding the siting of a minor or major facility.

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(b) Visual mitigation plan.

- (1) A visual mitigation plan shall be required for all new minor and major facilities. The plan shall incorporate the appropriate design elements of subsections (c)(1) through (c)(10) of this section and include the design information in subsection (b)(2) of this section.
- (2) The visual mitigation plan minimum requirements are as follows:
  - a. Compliance with the design elements of subsections (c)(1-10)
  - b. Scaled drawing.
  - c. Site boundary dimensions and descriptions.
  - d. Existing and proposed contours and pad elevations.
  - e. Existing conditions and site features that incorporate and surround such site to be developed.
  - f. Existing and proposed access.
  - g. Visual mitigation techniques to be employed at the facility.
  - h. Orientation and dimensions of facilities and equipment that will be used once the facility is operational.
  - i. Description of existing and proposed vegetation.
  - j. Location, height and extent of perimeter berms, if applicable.
  - k. Type, location and amount of mulch materials, if applicable.
  - l. Type, location and height of fencing, if applicable.
  - m. Delineate drainage and runoff patterns and mitigation.
  - n. Direction and type of lighting, if applicable.
  - o. Written maintenance and irrigation plan for at least one year after revegetation.
  - p. Title block:
    1. Name of development;
    2. Name of applicant or developers;
    3. Project number;

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4. Date of preparation; and
5. Section, township and range.

q. Performance security. For sites requiring a visual mitigation plan, performance security shall remain in place for at least two years after installation of the plant and landscape materials. The performance security shall be of an amount sufficient to cover the costs of the proposed improvements or the amount required by Section 6.16, whichever is greater.

(c) Visual impacts.

- (1) To the maximum extent possible, the applicant shall use structures and surface equipment of minimal size to satisfy present and future functional requirements.
- (2) When clearing trees and vegetation for construction of minor and major facilities, the applicant shall feather and thin edges of vegetation.
- (3) The applicant shall replace earth adjacent to water crossings at slopes less than the natural angle of repose for the soil type of the site.
- (4) To the maximum extent possible, the applicant shall align access roads to follow existing grades and minimize cuts and fills.
- (5) Minor and major facilities shall be colored as follows:
  - a. Uniform or camouflaging, noncontrasting, nonreflective color tones, similar to BLM Standard Environmental and Supplemental Colors coding system.
  - b. Color matched to land, not sky, slightly darker than adjacent landscape.
- (6) The applicant shall minimize damage to existing trees and vegetation.
- (7) Pad dimensions for a minor facility shall be the minimum size necessary to provide a safe work area and minimize surface disturbance. This section may be waived by staff if well pad dimensions are related to a visual mitigation plan proposal to blend with the natural topographical conditions.
- (8) Within six months after well completion, the pad area (except the main access road and the immediate areas within 25 feet of the aboveground facilities) shall be reseeded with native grasses or existing vegetation acceptable to the surface owner and the Natural Resource Conservation Service (NRCS). At all times Best Management Practices will be used to prevent storm water discharges from impacting surface water quality.
- (9) One or more of the following landscape practices shall be applied, on a site specific basis as required:
  - a. Establishment of berms, ground covers, shrubs and trees..

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- b. Shaping slopes (cuts and fills) to appear as natural forms.
  - c. Cutting rock areas to create irregular forms.
  - d. Designing the facility to utilize natural screens.
  - e. Construction of fences such as woven wood or rock for use with or instead of landscaping.
- (10) Exterior lighting, when required, shall comply with BOCC Resolution no: 06-20 and subsequent regulations.

(d) Wildlife.

- (1) [The installation and operation of any oil and gas facility, pipeline, workover site, or oil and gas access road shall avoid causing degradation to the environment and wildlife including to wetlands; floodplain; ponds; creeks, streams and drainageways; migratory birds and raptors; prairie dogs; burrowing owls; state and federal threatened and endangered species for both flora and fauna; any other applicable wildlife concerns including den sites for mammals, like coyotes and foxes; fish and other aquatic life; wildlife corridors; significant habitat.](#) Referral to Division of Wildlife. Standard Operating Practices adopted by CDOW for protection of wildlife resources during oil and gas development activities are herein incorporated into the Huerfano County Land Use Code by reference, and shall become part of the performance standards for any minor or major facility approval. Applicant shall notify CDOW in the form described in Section 6.26 and shall identify in the notification the Standard Operating Practices adopted by CDOW that apply to applicant's proposed facility. If applicant is unable to comply with CDOW's Standard Operating Practices for wildlife protection due to conflicts with other provisions of the Huerfano County Land Use Code, applicant shall identify the conflict and propose alternate site-specific mitigation or best management practices for the protection of wildlife resources
- (2) Site specific. Standard Operating Practices adopted by CDOW shall be included as appropriate in the site specific wildlife mitigation procedures required under subsection (d) (1) of this section. If applicant proposes alternate site-specific mitigation or best management practices to protect wildlife resources, the alternate site-specific mitigation or best management practices shall be approved by CDOW in writing prior to permit approval.
- (3) Multiple site. In lieu of a site specific mitigation review for each facility, the applicant may submit to the staff a multi-site plan addressing cumulative impacts to wildlife from the estimated total number of facilities. The multi-site plan shall include, but not be limited to, all items under subsection (c) (2) of this section.
- (4) Nonmitigable impacts. Impacts from oil and gas facilities which threaten endangered species (as defined by the state division of wildlife), shall be considered non-mitigable and shall result in denial.

Commented [6]: Update to CPW

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(e) Water.

- (1) If fresh or potable water is required for minor and/or major facility operation, the applicant shall identify the proposed source **and amount** of such water.
- (2) Onsite containment and disposal of water associated with minor and major facilities shall be in accordance with any applicable federal, state or county requirements.
- (3) Applicant shall offer to test water quality of all wells within one-mile of drilling site and quantity prior to drilling at the expense of the applicant. Property owners will be notified of this offer as part of notice of public hearing. Property owners wishing their well to be tested must express interest to the Department at or prior to the public hearing. Non-response to the offer shall be considered opting out.
- (4) **Acceptable water samples shall be obtained and tested –no less than three weeks prior to commencement of drilling in cooperation with the property owners. Records of test results shared with the County will be kept on record with the well permit.**
- (5) Applications for proposed oil and gas facilities shall demonstrate that the available water supply is the least detrimental to the environment among the available sources and adequate to meet the needs of the facility. Additionally, for a permit to be issued, the Colorado Division of Water Resources ~~has determined~~ must determine that there has ~~not~~ been adequate addressing of the complex geology of the northern Raton Basin in Huerfano County- to grant the applicant (SWEPI) a determination of nontributary ground water. The U.S. Geological Survey published mapping that delineates Niobrara outcrops on the western margin of the basin. This has been the conclusion of the Colorado division of water resources when denying an application for non-tributary determination of water in the northern raton basin in Huerfano county. Based on this unique geology horizontal drilling should be approached with great caution and further study
- (6) All applicants and operators shall make and keep a chemical inventory, by well or oil and gas facility. In addition to the inventory, the records shall include material safety data sheets, product information sheets, and other records necessary to describe the chemical constituents of each product listed in the inventory. Entities maintaining inventories under this section shall update these inventories bi-monthly throughout the life of the well or oil and gas facility. These records must be maintained in a readily retrievable and reviewable format. The Huerfano County Health Department may obtain information provided to county staff in a chemical inventory upon written request to the Planning department. Copies of said reports required by the Planning department shall be kept on file and available for inspection for the life of the applicable oil and gas facility. Upon the county administrator or planner's written request for information required to be maintained under this section, the record-keeping entity shall supply the requested information within three (3) business days in a format readily-reviewable by the county. Information provided to the planning department under this

**Commented [7]:** COGCC noticing requirements are: All Surface Owners, Building Unit and High Occupancy Building Unit owners and tenants, and residents, including tenants of both residential and commercial properties, within 1/2 mile of any Working Pad Surface included in the Oil and Gas Development Plan, or within 1 mile of any Working Pad Surface included in the Oil and Gas Development Plan if the Building Unit is within a Disproportionately Impacted Community. Notice to tenants may be accomplished by sending the notice to the residences addressed to "Current Resident."

Regardless of whether a location is considered a "disproportionately affected community" using the 1-mile radius seems reasonable.

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section that is entitled to protection under state or federal law, including C.R.S. § 24-72-204, as a trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data shall be kept confidential and protected against public disclosure unless required, permitted, or authorized by other state or federal law. The county code enforcement officer and the authorized deputies shall have access to all well records wherever located. All owners, drilling contractors, drillers, service companies, or other persons engaged in drilling or servicing wells, shall permit the county officer or authorized deputy, at the county's risk, in the absence of negligence on the part of the owner, to come upon any lease, property or well operated or controlled by them, and to inspect the record and operation of such wells and to have access at all times to any and all records of wells; provided, that information so obtained shall be kept confidential and shall be reported only to the BOCC or their authorized agents

- (7) All pits shall be fenced in order to prevent access by persons, stock or wildlife.
  - a. All pits shall be constructed in accordance with applicable state laws or regulation. If however, a state law or regulation does not exist, the Owner or Operator shall comply with the following:

All pits shall be fenced in order to prevent access by persons, stock or wildlife unless the applicant provides alternate mitigation measures satisfactory to the county which achieve the goal of protecting against entry into pits by unauthorized persons, stock or wildlife.

- b. All pit liners and any materials not meeting the standards set forth in 2 CCR 404-1 Section 910 (inclusive of Table 910-1) shall be removed from the property upon completion of construction and disposed of at an approved facility.

~~(58)~~ All pit liners shall be removed from the property upon completion of construction.

[\(9\) Wetlands Protection: Oil and gas facilities shall prevent adverse impacts to the environment and avoid causing degradation to wetlands within the county. Among other methods to achieve compliance with this standard, the proposed oil and gas facility shall not alter historic drainage patterns and/or flow rates or shall include mitigation measures approved by the county to compensate for anticipated drainage impacts.](#)

- (f) Geologic hazard areas; floodplains.
  - (1) Major facilities shall not be located in geologic hazard areas
  - (2) Major facilities shall comply with the adopted county floodplain resolution no: 88-13 when they are located in a 100-year floodplain area, and/or the adopted HB1041 regulation when within 250 feet of a area of state and local concern.

6.39 SURFACE DISTURBANCE STANDARDS



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- (a) Purpose of section. The purpose of this section is to encourage minimal damage to surface activities and surface conditions.
- (b) **Agricultural resources. Minor and major facilities shall be located so as to use only as much of the surface as is reasonably necessary for the operation of the facility and to avoid the unreasonable loss of agricultural land. This standard may be waived if verified written consent is obtained from the surface owner.**
- (c) Roads and access. Installation of ~~major~~ facilities which are accessible by non-maintained roads included in the county road system, which the county road & bridge department determines are inadequate to safely accommodate the additional traffic associated with the operation of the facility, shall be permitted only if such roads are improved and maintained by the applicant to a level which the road and bridge supervisor determines is necessary to allow such traffic to use such roads in accordance with applicable state and county standards.
- (1) Applicant will remove or require the removal of chains from its heavy equipment before entering a county road. All new roads shall have gravel access and well pads with a minimum of four inches (4") of Class 6 Aggregate Base Course as defined by the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction over a stabilized base, both of which shall be maintained throughout permanent operations of the well pad; and if mud and/or debris is tracked onto the county road by applicant's equipment, applicant shall remove same and restore the condition of the road as promptly as is reasonable under the circumstances. **If the well proves to be a producing well, additional road maintenance plan to include road improvements may be required.**
  - (2) Applicant shall provide written documentation demonstrating that it has the right to use access roads located between the parcel on which a facility is to be located and the applicable county road or state highway.
  - (3) **Where new access roads are created, a county road access permit will be required.**
- (d) Waste disposal.
- (1) When a minor or major facility becomes operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation.
  - (2) No burning of trash shall occur on the site without prior notice to dispatch and surface owner. All burning of trash shall be done within a container such as a wire cage or excavated pit covered with wire. All residual material from burning shall be removed from the site for proper disposal.
- (e) Weed control.

**Commented [8]:** I think this is implied in statement above in (c) that roads are to be "improved and maintained..."

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- (1) The applicant shall be responsible for ongoing minor and major facility sites and access road weed control during construction and operation of the facility, until abandonment and final reclamation is completed per county or other applicable agency regulations.
  - (2) The appropriate weed control methods and species to be controlled shall be determined through review and recommendation by the **Huerfano County Extension Office**.
  - (3) **Drilling site must be inspected by the County Noxious Weed Office or local office of the NRCS prior to any construction activity for noxious weeds.**
  - (4) **Local office of the NRCS shall approve the re-vegetation and noxious weed plan prior to the commencement of drilling operations**
  - (5) **All rigs shall be cleaned and washed prior to entering the County. County Staff must inspect all rigs prior to entering any county roads**
- (f) Minimization of disturbance.
- (1) Where minor and major facilities reduce or destroy existing vegetation, the applicant in consultation with the NRCS shall develop a revegetation plan for the remainder of the facility site, for approval by staff. The plan shall specify species, planting schedule, planting method, quantity of seed or plant material to be used, and other related activities.
  - ~~(2)~~ Upon abandonment of a facility, reclamation shall be conducted in accordance with county or other applicable agency regulations.

(g) - Abandonment

If any legal nonconforming oil or gas facility is abandoned for a period of one year or more, the facility shall not be renewed until the [director] has determined that the renewed use will comply with the standards and requirements in this Section 2-605.E, Oil and Gas Operations.

(h) Damage or Destruction

A legal nonconforming oil or gas facility 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:

- (1) The owner has acquired the permits required for construction and for operation of the restored oil and gas facility.
- (2) The facility shall not be restored in a manner that expands the nonconforming use.
- (3) The facility shall be restored within one year of the date of damage or destruction. A one-time extension of up to one year may be granted by the [director] upon findings that:
  - i. There would be a substantial hardship to the owner without the extension; and

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ii. Within the first eight months after the destruction, the owner has substantially cleaned up and removed all unusable portions of the damaged facility.

### 6.40 SPECIAL EXCEPTION REQUESTS

(a) Special exceptions to these performance standards may be requested by the applicant. All applications where a special exception is requested will be processed as a major facility. Requests for special exceptions for proposed facilities may include, but not be limited to, one or more of the following factors:

- (1) Topographic characteristics of the site;
- (2) Duration of use of the facility;
- (3) Proximity of occupied structures to the facility;
- (4) Ownership status of adjacent and/or affected land;
- (5) Construction of adequate infrastructure to serve the project; and
- (6) Planned replacement and/or upgrading of facility equipment.

(b) If the board of county commissioners finds, based upon competent evidence in the record, that compliance with these performance standards is impractical, a special exception may be granted by the board of county commissioners permanently or for a period of defined duration. Upon completion of the defined duration, the application shall receive additional review by the county in accordance with Sections 6.36 through 6.42 of this Code. The board of county commissioners, upon showing of good cause by the applicant, may:

- (1) Further extend the special exception;
- (2) Require that the facility be brought into compliance with the performance standards; or
- (3) Revoke the special exception approval.

### 6.41 OPERATIONAL CONFLICTS SPECIAL EXCEPTION

(a) Special exceptions to these performance standards may be granted where the requirements 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 processed as a major facility and heard in a noticed public hearing by the board of county commissioners acting in a quasijudicial capacity, pursuant to C.R.S. §§ 30-28-117 and 30-28-118. 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

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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.

- (b) If the applicant or any interested party wishes to seek judicial review of a final board of county commissioners' decision on the exception request, appeal to the district court shall be pursuant to Colorado Rules of Civil Procedure Rule 106(a) 4.

#### 6.42 INFORMAL DISPUTE RESOLUTION

At the discretion of the code enforcement officer any complaint related to an alleged non-compliance with the provisions of this chapter by an applicant, operator, surface owner, or an adjacent landowner as identified in Section 6.26 may be referred to an informal dispute resolution process. The process shall be administered by Huerfano County Administrator in an attempt to reach a resolution of the complaint that is satisfactory to all interested parties. Where a resolution is reached, the resolution shall be reduced to writing and shall be binding on all participating parties.

6.43 Notify the Planning Director or County Administrator of the following forms at time of filing with the COGCC

- a. Form 4 sundry notice
- b. Amended form 2 or 2A
- c. Form 10 change in operator
- d. Form 15 pit permit
- e. Form 18 complaint
- f. Form 31 or 35 pertaining to injection wells
- g. Form 19 spill notice
- h. Form 27 site investigation and remediation workplan.

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**EXHIBIT A**

**CHEMICAL PRODUCTS**

- (1) Onsite containment, disposal, and disclosure and retention of information related to Chemical Products associated with minor and major facilities shall be conducted in accordance with applicable state laws or regulation. If however, a state law or regulation does not exist, the Owner or Operator shall comply with the following:
- (2) All entities holding a permit issued under this section 90, shall make and keep appropriate records pertaining to chemical products covering their operations in the county, from which they may be able to make and substantiate the reports required by the COGCC, its director or, in the absence of state laws or regulations on this topic, as may be required by Huerfano County.
- (3) Beginning January 1, 2009 Owners or Operators shall maintain material safety data sheets for any Chemical Products brought to a wellsite for use downhole during drilling, completion, and workover operations including fracture stimulation. **MSDS shall be on site and available to staff as well as emergency personnel upon request.**

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- (4) Beginning June 1, 2009 Owners or Operators shall maintain a Chemical Inventory by wellsite for each Chemical Product used downhole or stored in an amount exceeding 500 pounds during any quarterly reporting period and the maximum capacity of fuel stored on the oil and gas location during drilling, completion, and workover operations including fracture stimulation. Entities maintaining Chemical Inventories under this section shall update these inventories quarterly throughout the life of the wellsite. These records must be maintained in a readily retrievable format. A County health department may obtain information provided to the Department or Director in a Chemical Inventory upon written request to the Director.
- (5) Where the composition of a Chemical Product is considered Trade Secret by the vendor or service provider, Owners or Operators shall only be required to maintain the identity of the Trade Secret Chemical Product and shall not be required to maintain information concerning the identity of chemical constituents in a Trade Secret Chemical Product or the amounts of such constituents. The vendor or service provider shall provide to the Department a list of the chemical constituents contained in a Trade Secret Chemical Product upon receipt of a letter from the Director stating that such information is necessary to respond to a spill or release of a Trade Secret Chemical Product or a complaint from a potentially adversely impacted landowner regarding impacts to public health, safety, welfare or the environment. Upon receipt of a written statement of necessity, information regarding the chemical constituents contained in a Trade Secret Chemical Product shall be disclosed by the vendor or service provider directly to the County planning engineer or his or her designee. The County planning engineer or designee may disclose information regarding those chemical constituents to additional County staff members to the extent that such disclosure is necessary to allow the staff member receiving the information to assist in responding to the spill, release or complaint, provided that such individuals shall not disseminate the information further. In addition, the County planning engineer may disclose information regarding those chemical constituents to a County public health department's director of environmental programs upon request by that individual. Any information so disclosed to the County planning engineer, a County staff member, or to a County public health department's director of environmental programs shall at all times be considered confidential and shall not become part of the Chemical Inventory nor shall it be construed as publicly available. The County public health department's director of environmental programs, or his or her designee, may disclose information regarding the chemical constituents contained in a Trade Secret Chemical Product to health department staff members under the same terms and conditions as apply to the county planning engineer.
- (6) The vendor or service provider shall also provide the chemical constituents of a Chemical Product to any health professional as may be provided under state law or regulation. In the event that no state law or regulation so provides, the vendor or service provider shall provide the chemical constituents of a Chemical Product to any health professional who requests such information in writing if the health professional provides a written statement of need for the information and a written confidentiality agreement. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an

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individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the chemical constituents of such proprietary Chemical Product will assist in such diagnosis or treatment. The confidentiality agreement shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the chemical constituents of a Trade Secret Chemical Product are necessary for emergency treatment, the vendor or service provider shall immediately disclose the chemical constituents of a Trade Secret Chemical Product to that health professional upon a verbal acknowledgement by the health professional that such information shall not be used for purposes other than the health needs asserted and that the health professional shall otherwise maintain the information as confidential. The vendor or service provider may request a written statement of need, and a confidentiality agreement from all health professionals to whom information regarding the chemical constituents was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall not become part of the Chemical Inventory and shall in no way be construed as publicly available.

- (7) Such books, records, inventories, and copies of said reports required by **the Department or the Director shall be kept on file and available for inspection by the Department** for a period of at least five years except for the Chemical Inventory, which shall be kept on file and available for inspection by the **Department** for the life of the applicable oil and gas well or oil and gas location and for five (5) years after plugging and abandonment. Upon the Director's written request for information required to be maintained or provided under this section, the record-keeping entity or third-party vendor shall supply the **Director** with the requested information within three (3) business days in a format readily-reviewable by **the Director**, except in the instance where such information is necessary to administer emergency medical treatment in which case such information shall be provided as soon as possible. Information provided to the **Director** under this section that is entitled to protection under state or federal law, including C.R.S. § 24-72-204, as a trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data shall be kept confidential and protected against public disclosure unless otherwise required, permitted, or authorized by other state or federal law. Any disclosure of information entitled to protection under any state or federal law made pursuant to this section shall be made only to the persons required, permitted, or authorized to receive such information under state or federal law in order to assist in the response to a spill, release, or complaint and shall be subject to a requirement that the person receiving such information maintain the confidentiality of said information. The Director shall notify the owner, holder, or beneficiary of any such protected information at least one business day prior to any required, permitted, or authorized disclosure. This notification shall include the name and contact information of the intended recipient of such protected information, the reason for the disclosure, and the state or federal law authorizing the disclosure. Information so disclosed shall not become part of the Chemical Inventory and shall in no way be construed as publicly available.



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- (8) In the event that the vendor or service provider does not provide the information required under subsections (6) and (7) directly to the **Department**, the owner or operator is responsible for providing the required information.
- (9) **All chemical products must be stored in an approved chemical containment facility covered, secured and locked.**

8.01 USE OF THE COMMON PROCEDURES

This Section describes the common procedures that shall be employed for reviewing and acting upon land use applications that require public hearings or review by boards and commissions. Land use applications may have additional requirements specific to that application type not articulated in this section. Land Use application types covered by this section are listed below along with a reference for the section of the County's Land Use Regulations dedicated to each process:

Land Use Process	Reference
1. Rezoning of land.	§1.18
2. PUD and Non-PUD subdivisions of land.	§2.09, §3.00
3. Non-subdivision PUDs.	§3.00
4. Plat Amendments	§2.14
5. Vacation of Easements or rights-of-way	§2.15
6. Conditional Use Permits	§1.05, §1.06
7. Marijuana Conditional Use Permits	§18.00
8. Temporary Assembly Permits	§1.13
9. Variances	§1.04, §9.02.03 – 9.02.04
<a href="#">10. Oil and Gas permits</a>	<a href="#">§6.10, §6.26, §6.31, §6.33, §6.34, §6.38</a>
<del>11</del> . Any other public hearing procedure.	

Table 8.08 Public Noticing summary by Permit Type

Permit Type	Notice Radius	Additional Considerations
Conditional Use Permit	1320 ft in the Agricultural Zone District, Adjacent properties in other Zone Districts. The Planning Commission may expand notification requirements to include identified properties that have the potential to be impacted by the proposal, by majority vote.	Sign posted on property 10 days prior to hearing
Rezoning	Adjacent property owners. The Planning Commission may expand notification requirements to include identified properties that have the potential to be impacted by the proposal, by majority vote.	Sign posted on property 10 days prior to public hearing. Notifications shall include a vicinity map and a short narrative describing the current zoning, proposed rezoning and the nature of the proposed land use change.
Subdivisions	One public hearing for each phase: Sketch Plan, Preliminary Plat, and Final Plat. 1320 ft in agricultural zone; 500 ft. in all other zones. This distance provision may be expanded up to 2,500 ft, or to include identified properties that have the potential to be impacted by the proposal by a majority vote of the Planning Commission.	
Plat Amendment	No public noticing/public hearing required	
Vacation	1,320 in the Agricultural Zone; adjacent properties in other zones.	Include vicinity map in notices to neighbors.
PUD	Same as Subdivisions.	
Marijuana CUP	Same as Conditional Use Permit.	Additional fees apply. 1000 ft Setback.
Temporary Assembly Permits	If over 500 attendees, notice sent to property owners within 1, 200 feet.	Sign posted on property; noise ordinance 21-01; See requirements in Section 1.13.
Variance	Adjacent property owners. Adjacent mineral rights owners and lessees and easement holders.	Heard by the Board of Adjustment only. Hearing to take place within 30 days of submission of required materials

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Sign Permits	N/A – Processed administratively.	
Camping Permits	N/A -- Processed administratively.	Demonstrate source of water and wastewater disposal plan.
<a href="#">Oil and Gas Permits</a>	<a href="#">One-mile</a>	<p><a href="#">Applicant must offer to test any wells within one mile prior to drilling. See §6.38(e)(3).</a></p> <p><a href="#">Joint public hearing may be required.</a></p> <p><a href="#">Reference: §6.10, §6.26, §6.31, §6.33, §6.34, §6.38</a></p>

