

## RESOLUTION 2012-16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

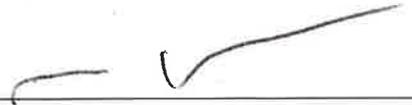
A motion to approve the foregoing Resolution imposing a temporary moratorium was made at the duly noticed public business meeting held on February 2, 2012 by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

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

BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:



Cindy Domenico, Chair



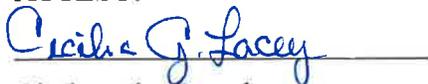
Will Toor, Vice Chair



Deb Gardner, Commissioner



ATTEST:



Clerk to the Board