



# Land Use

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## BOULDER COUNTY PLANNING COMMISSION

### AGENDA ITEM #3

August 15, 2012

Afternoon Session – 1:30 PM

Commissioners' Hearing Room, Third Floor  
Boulder County Courthouse, 1325 Pearl Street

**FROM:** Peter L. Fogg – Manager, Long Range Policy Team  
**RE:** Docket BCCP-12-0001: Amendments to Oil and Gas Policies (continued from July 18, 2012)  
Request for Planning Commission to adopt oil and gas exploration and development policy amendments for incorporation into the Geology Element of the Boulder County Comprehensive Plan (BCCP)  
*Action Requested: Adoption*  
Public Hearing Closed: testimony will not be taken.

**SUMMARY** The Planning Commission conducted a public hearing on this docket July 18, 2012, taking public comment and providing direction to the Land Use staff for revisions to the second draft of policy changes for inclusion into the Boulder County Comprehensive Plan. The public hearing was closed and continued to August 15<sup>th</sup>. Staff is requesting adoption of this draft by the Planning Commission.

**DRAFT #3 BCCP Oil and Gas Policy Amendments** The following summarizes those changes proposed by both the public and Planning Commission on July 18<sup>th</sup>. In the draft, **bold** text indicates new language and strikeouts deleted language.

- **Page 1, OBJECTIVE** – rewritten to reflect public input emphasizing the county's primary objective and Planning Commission's concurrence.
- **Page 2, Policy GE 4.01** – clean up language to more accurately reflect previous input and deletion of the word "legally" in c).
- **Page 2, Policy GE 4.02** – addition of "Development impacts on..." to b); addition of a bullet point "Aquifers" and the county's interest for its inclusion under c); and the addition of "...restoration and..." under i).
- **Page 3, Policy GE 4.03** – deletion of ("green completion") in 1<sup>st</sup> bullet; inclusion of "...and other green completion or reduced emissions systems..." in 2<sup>nd</sup> bullet;

addition of "...baseline testing and..." in 5<sup>th</sup> bullet (air quality); new 6<sup>th</sup> bullet addressing baseline testing for soils; expansion of 7<sup>th</sup> bullet (groundwater) to include baseline testing for surface, groundwater, and well water; rewrite of 10<sup>th</sup> bullet dealing with well integrity surveys; addition of "...transmission..." in 15<sup>th</sup> bullet; addition of a 17<sup>th</sup> bullet on **page 4** addressing "fair share compensation" for impacts.

- **Page 4, Policy GE 4.04** – clean up language to emphasize objective of eliminating methane and other greenhouse gas emissions.
- **Page 4, Policy GE 4.05** - deletion of qualifier wording "Where legally possible,..." to reflect Planning Commission and the public's interest in making the policies more reflective of the BCCP's function as a statement of the county's vision and preferences.
- **Page 4, Policy GE 4.06** – two new sub-policies, 4.06.02 and 4.06.03, articulating the county's position on the availability of Material Safety Data Sheets (MSDS) and reporting of spill incidents.
- **Page 5, Policy GE 4.09** – again, deletion of the qualifier "Where legally feasible..." for consistency with the BCCP's function.
- **Pages 5 and 6, ADDITIONAL AMENDMENT RECOMMENDATIONS** – no changes.

**NEXT STEPS** Adoption of the policy amendments by Planning Commission will be followed by staff presenting them to the Board of County Commissioners for their acknowledgement and acceptance at a public hearing. Adoption will also enable staff to focus work on drafting revisions to the Land Use Code that reflect the direction provided by the BCCP policies. An updated schedule of steps, hearings, and opportunities for public participation (in addition to less formal correspondence via E-Mail, letters, telephone conversations, etc.) will be prepared and made available.

**RECOMMENDATION** Staff recommends that the Planning Commission ADOPT DRAFT #3 BCCP-12-001 Oil and Gas Policy Amendments.

# Draft 3: BCCP Oil and Gas Policy Amendments - Proposed Adoption Text

Revisions: Post-Planning Commission July 18, 2012

## Oil and Gas Exploration and Development

The Boulder County Comprehensive Plan's Geology Element is amended to incorporate the following policies. These policies are consistent with the goals of the BCCP, the various Elements and maps that make up the body of the Plan – in particular the Transportation, Environmental Resources, Agriculture, Open Space and Sustainability Elements - the Boulder County Commissioners' Resolution 2005 – 137 Adopting a Sustainable Energy Path for Boulder County, and the authority granted counties under the County Planning Act (CRS 30-28-101 *et seq*) and Local Government Land Use Enabling Act (CRS 29-20-101 *et seq*). They are to be applied to the fullest extent allowable under current Colorado law.

The term “**oil and gas exploration and development**” as used in the following policies is synonymous with and encompasses all on and off-site activities related to oil and gas exploration, extraction, development, infrastructure, site closure, completion, reclamation and transportation.

The term “**most effective performance technologies and practices**” as used in the following policies refers to the application of proven and emerging techniques, technologies or other Best Management Practices used in conducting oil and gas exploration and development which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on and off- site impacts to public health and the environment, landowners, and natural resources, and which may reduce conflicts between the goals and policies of the BCCP, potentially impacted landowners, and the oil and gas industry. These technologies and practices should be required ~~or strongly recommended~~ at every level and stage of oil and gas exploration and development.

**OBJECTIVE:** Boulder County's primary ~~foremost~~ responsibility is ~~to protect public health, safety, welfare and the environment from potential adverse impacts that may be caused by or result from oil and gas exploration and development, and to minimize potential land use conflicts between oil and gas activities and current or planned land uses. In addition, as established by Colorado law, the county~~ **also** recognizes the existence of mineral estate property rights within its unincorporated area and its **charge** to allow those owners to explore and develop these resources **in a responsible manner. It is therefore the county's objective to address and manage oil and gas exploration and development in the unincorporated areas in ways that acknowledge this context, utilize the following policies, and employ other goals and policies of the Boulder County Comprehensive Plan as appropriate.**

**Boulder County recognizes the existence of oil and gas mineral rights within its unincorporated areas. It is the county's objective to exercise its fundamental duty to protect public health, safety and welfare and the environment from adverse effects of oil and gas exploration and development , and to minimize potential land use conflicts between those activities and current or planned land uses.**

**Policy GE 4.01:** Boulder County is dedicated to promoting, requiring and implementing **programs, policies and** practices that adhere to principles of sustainability for the purpose of protecting the public's health, safety and welfare **that provide benefit to the** well-being of current and future residents as well as **protecting the integrity of** the air, water and ecosystems on which all life depends. ~~To those ends~~ **Consequently,** it is county policy to pursue the following ~~steps~~ **actions** regarding the exploration and development of oil and gas resources:

- a) Where oil and gas exploration and development is regulated by the federal and/or state government alone, both currently and in the future, advocate for requiring use of the most effective performance technologies and practices;
- b) For oil and gas exploration and development activities in areas of shared regulatory authority, provide direction, leadership and support for incorporating the most effective performance technologies and practices into the applicable jurisdiction's rules and regulations ; and
- c) For those oil and gas exploration and development activities subject primarily or solely to county jurisdiction, establish and maintain a comprehensive planning basis for amending, revising and updating the Land Use Code as well as the full array of regulatory tools and procedures **legally** available to the county, ~~including the use of most effective performance technologies and practices and cooperative agreements~~ as they are identified and found to be consistent with the Objective of these policies.

**Policy GE 4.02:** Areas where the county has an interest in assuring that the most effective performance technologies and practices are applied include, but may not be limited to:

- a) Transportation impacts on roads and their users
- b) **Development impacts on** county open space lands and conservation easements
- c) Impacts on and consumption of environmental resources, including
  - Wildlife and wildlife/plant habitat
  - Wetlands
  - Riparian areas
  - Surface and subsurface water – sources, volumes, and consumptive vs. non-consumptive use
  - **Aquifers – casing that isolates and protects aquifers, due diligence in finding abandoned wells, and protective setbacks from areas of outcropping aquifers.**
  - Air quality – greenhouse gas emissions, ozone precursors, and toxic air pollutants affecting local residents, visitors and users of nearby public facilities in particular as well as climate change in general
  - Water quality
  - Soil quality and productive integrity
- d) Geologic hazards
- e) Wildfire mitigation
- f) Storm water, drainage and erosion controls
- g) Solid and liquid wastes management
- h) Noise, lighting and odor controls
- i) Land **restoration and** reclamation
- j) Agricultural land preservation
- k) Irrigation ditches, drain tiles, laterals, ponds and other water resource systems associated with agricultural operations

- l) Fencing, both temporary and replacement
- m) Noxious weed control
- n) Floodplain and floodways
- o) Visual impacts and preservation of scenic views
- p) Access roads/facilities removal upon well closures/abandonment
- q) Historic/archeological/cultural protection
- r) Emergency response planning and capabilities
- s) Adjacent landowner concerns
- t) Other areas of public health, safety and welfare as they may be identified

**Policy GE 4.03:** Measures the county will look for in assessing whether an application for oil and gas exploration and development is adhering to most effective performance technologies and practices will include, but not be limited to, the following:

- use of closed loop (“~~green completion~~”) systems for the containment and/or recycling of drilling and completion fluids;
- use of emissions controls, prevention capture/co-benefits producing systems, **and other green completion or reduced emissions systems** to minimize or eliminate the release of volatile organic compounds, hazardous air pollutants, and greenhouse gases;
- use of electric motors or muffled internal combustion engines in pumping and production operations;
- extensions of setbacks from adjacent land uses, water bodies, water courses, riparian areas and other important environmental resources as determined on a case-by-case and site-by-site basis;
- air quality **baseline testing and** monitoring at wellheads, condensate tanks, pipelines, compressor stations and other potential gaseous emissions sources;
- **soil structure and condition baseline testing and documentation within and adjacent to the drill pad area prior to commencing pad preparation and construction;**
- **surface, groundwater, and well water** quality and level **baseline testing** and monitoring **within and adjacent to the drill pad area prior to commencing pad preparation and construction;**
- extensions of setbacks to achieve public health, safety and welfare objectives as determined on a case-by-case and site-by-site basis;
- submittal of comprehensive drilling and phasing plans for oil and gas holdings within and adjacent to Boulder County;
- preparation of plugged and abandoned **hydrocarbon** well integrity surveys **within an adequate distance along the full length of the bore hole and production casing for proposed new wells and sites existing wells to be reopened for production,** to identify potential integrity problems and remedies ~~where those~~ **for** improperly plugged wells ~~that were~~ or where plugs **and well casings** have failed over time;
- use of temporary, removable, low-impact “laydown” roads or similar methods for access to sites from local, county, state and/or federal roads;
- dark sky lighting measures;
- odor, dust and noise reduction/suppression measures;
- complete reclamation and restoration of all disturbed areas, including roads, to their pre-exploration and development conditions;
- sharing of transportation, drilling, production, **transmission** and access facilities among operators to minimize duplication of activities and potential impacts;

- use of existing easements and infrastructure where appropriate and allowed by easement holders for the surface and subsurface infrastructure necessary for drilling, extraction, production and transmission operations;
- **“fair share” compensation for impacts on county roads, county open space lands and other county infrastructure or properties**

**Policy GE 4.04:** In addition to the county’s expressed interest in ~~minimizing/~~ eliminating methane and other greenhouse gas emissions from oil and gas development into the atmosphere as noted in Policy 4.03, the county strongly supports all efforts at all levels to further study and ultimately ~~reduce or~~ eliminate **such** emissions **resulting from** oil and gas operations whether through legislative, regulatory, voluntary or other means.

**Policy GE 4.05:** ~~Where legally feasible,~~ The county shall consider requiring operators to use and share existing infrastructure, to minimize installation of new facilities, and to avoid additional disturbance to lands to the greatest extent possible in order to forgo introducing significant new land use impacts to the environment, landowners and natural resources.

**Policy GE 4.06:** Applicants for oil and gas exploration and development shall provide the Boulder Office of Emergency Management and all potentially affected emergency response agencies with as-built facilities maps in a format suitable for input into the county’s GIS system depicting the locations, sizes, and depths below grade of all oil and gas gathering and transmissions lines and associated equipment, surface facilities and their functions, as well as transportation routes to and from exploration and development sites, for emergency response and management purposes in case of an incident or accident involving transmission or transportation presenting an immediate or potential hazard to the public and environment.

4.06.01 Operators shall cooperate with local emergency response agencies in planning and conducting on-site emergency preparedness exercises that simulate industrial incidents and accidents that may, in the opinion of the emergency response agencies, take place on site.

**4.06.02 Operators shall keep Material Safety Data Sheets (MSDS) readily available for production to the Boulder Office of Emergency Management and potentially affected emergency response agencies.**

**4.06.03 Spill incidents shall be reported to the Boulder Office of Emergency Management and potentially affected emergency response providers as immediately as possible.**

**Policy GE 4.07:** The county will encourage and provide appropriate assistance to landowners in seeking expert advice for negotiating surface use agreements or leasing arrangements for oil and gas exploration and development.

**Policy GE 4.08:** Achieving the county’s Objective regarding oil and gas activities requires not only a thorough review of local regulations but also communication and cooperation between the county, other levels of government and organizations involved in the oil and gas industry and in the study of oil and gas development and exploration. To this end the county has appointed a Local Governmental Designee pursuant to Rule 214 of the Colorado Oil and Gas Conservation Commission. In addition, the county is committed to working with stakeholders, regulators and interested parties to:

- a) Identify and address deficiencies in regulating detrimental land use and surface impacts as well as environmental and health impacts;

- b) Continue review of studies, data and other information to ensure regulations and implementation measures are presently addressing or need revising to incorporate the most contemporary research on impacts and technological advances;
- c) Monitor state and federal legislation and policies, to be followed when deemed necessary by lobbying, letters of support and advocacy, and dissemination of information to enhance local protection for land use, surface impacts, public health and the environment;
- d) Investigate the feasibility and utility of entering into memoranda of understanding (MOUs), intergovernmental agreements (IGAs) or other accords with industry, the state, and other public or private sector interests where the outcome will help facilitate the implementation of these policies; and
- e) Consider addressing impacts of oil and gas development by acquiring and retiring mineral estates interests on a willing seller-willing buyer basis where appropriate.

**Policy GE 4.09:** ~~Where legally feasible~~ The county will require that applicants for oil and gas exploration and development directly engage with local communities, residents and other stakeholders at each phase of a development plan, starting prior to exploration, in order to provide sufficient opportunity for comment on plans, operations and performance, listen to concerns, and respond appropriately and promptly.

**Policy GE 4.10:** Boulder County shall not lease or sell any of its current or future water rights for oil and gas exploration and development.

**Policy GE 4.11:** Agricultural land preservation and conservation is a core goal and value of the BCCP. Oil and gas operations will be required to restore and reclaim all on and off-site agricultural lands impacted by any activity related to exploration, development, infrastructure installation, closure, and transportation to the soil tilth, productivity, and/or drainage patterns that were in place prior to the initiation of oil and gas operations.

Staff recommends that the alternative language in parentheses in bullet point 9 of Policy GE 4.03 (~~“within the perimeter of the mineral estate(s) to be developed, whether it be through development of a new well or the reopening of a plugged or abandoned well”~~) replace the current draft language (~~“within 0.25 miles of proposed new well sites”~~).

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## **ADDITIONAL AMENDMENT RECOMMENDATIONS**

**\* Retain Policy GE 2.06, Geology Element, with the following revision:**

GE 2.06 The county shall regulate the exploration for, development of, and production of ~~petroleum, natural gas, and~~ geothermal resources as well as all accessory activities related thereto, to the extent permitted by state statutes.

**\* Retain, Policy AG 2.01 et seq, Agricultural Element, with the following revision:**

**Infrastructure Development ~~& Oil and Gas Operations~~ on Agricultural Land**

**AG 2.01** The county shall discourage the placement of new utility infrastructure upon agricultural lands. The county supports using existing easements or other public rights-of-way to minimize the impacts to agriculturally productive land.

- **AG 2.01.01** If a thorough analysis of alternatives concludes that routing/siting of facilities is necessary on or across agricultural lands, all construction activities will be located and performed so as to minimize disturbance to agricultural resources.
- **AG 2.01.02** If the infrastructure location is determined necessary, infrastructure construction activities across agricultural lands should not occur during the growing season.
- **AG 2.01.03** Any agricultural lands and water resource systems disturbed by infrastructure construction shall be restored to their former productivity.