



Board Summary Report

File #: 23-594

Agenda Date: 10/10/2023

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To: Board of County Commissioners

Through: Bryan Weimer, Director, Public Works & Development

Prepared By:

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Presenter: Diane Kocis, Energy Specialist, Public Works & Development

Subject:

Amendments to the Oil and Gas Facility Regulations Contained in Section 5-3.6 of the Land Development Code and Related Definitions, Case #LDC23-003

Purpose and Request:

The purpose of this hearing is to seek Board of County Commissioners (Board) approval of amendments to the oil and gas facility regulations in the Land Development Code, as discussed in further detail below.

Background and Discussion: SB19-181 (codified at Section 29-20-104(1(h), (C.R.S.)), clarified and expanded the authority of local governments to regulate, in a reasonable manner, the surface impacts of oil and gas facilities. Following the adoption of SB19-181, in November of 2021, the Board of County Commissioners revised and amended the oil and gas facility regulations contained in section 5-3.6 of the County's Land Development Code. Since then, staff has identified additional areas of opportunity that could better align regulations with neighboring jurisdictions and industry best practices that are further protective of health, safety, welfare and the environment. Additionally, the proposed Lowry Ranch Comprehensive Area Plan (CAP), which proposes a number of oil pad sites near the Aurora Reservoir, highlighted deficiencies in public water supply protections. The Board directed staff at their March 21, 2023, study session to proceed with draft amendments to Land Development Code Section 5-3.6. The Board directed staff to complete various updates to the regulations, including:

- Create setbacks from existing and planned reservoirs;
- Add additional language regarding compliance with federal and state rules;
- Add additional language regarding neighborhood meeting noticing;
- Add clarification on required application materials;
- Add post-incident meeting requirements;

- Add two health and safety-related rules regarding fire access roads and hand washing.

In addition, the Board had previously directed staff at their October 2022 study session to proceed with a code amendment to allow cryptocurrency data mining on well pads.

Review and Outreach Process to Date

Over the summer, staff drafted an initial set of proposed amendments and conducted extensive public outreach, including social media posts advertising the website where the draft amendments to the regulations could be reviewed and commented on; and completed an open house and held several stakeholder meetings before preparing a final set of draft regulation amendments for consideration. The final set of draft amendments were then submitted to the Planning Commission for its review, and it held a public hearing on July 18th and received public comments for approximately three hours. Attached to this report is a copy of the Planning Commission staff report and minutes from the July 18th meeting (Attachments 3 and 4). Also attached are the draft amendments as submitted to the Planning Commission (Attachment 9).

The Commission continued its hearing to August 15th in order to continue deliberating on the matter. After considering all of the public comments, the Planning Commission voted 6-1 to recommend approval of the proposed amendments, with the exception of the allowance of cryptocurrency data mining on oil and gas pads, and recommended this portion be stricken from the amendments to allow staff more time to research and develop potential standards. Attached to this report is a copy of the staff report and minutes from the August 15th Planning Commission hearing (Attachments 5 and 6).

After the Planning Commission completed its review and recommendations, the Board of County Commissioners held a study session on September 12, 2023, and it was updated on the results of the Planning Commission review and public comment received. The Board then directed staff to draft some alternative language for consideration at the Board's upcoming October 10, 2023 hearing on the amendments that would accomplish the following:

- Revise the downgradient reservoir setback from 2,000 feet to 3,000 feet;
- Remove the variance language allowing applicants to request an even shorter downgradient reservoir setback (less than 3,000 feet) with Board approval;
- Add a provision that gives the Public Works and Development Director discretion to elevate downgradient well pad applications to the Board. However, there is an existing provision in the regulations (Section 5-3.6.G.4) that allows the Director to elevate any application to the Board for public hearing. This includes any application which may be 3000 feet from a reservoir and downgradient;
- Revise the alternate access road standards to state that alternate access roads are required unless the Office of Emergency Management and the relevant fire district determine that an alternate access road is not needed;
- Change the definition of planned and permitted reservoir to include: an unconstructed, but planned public water reservoir of qualifying capacity for which the location of such planned reservoir is established in the

public record at a specific and mapped location within unincorporated Arapahoe County and that: i) has received or applied for approval through a water court adjudication; or ii) has received or applied for federal, state, or local permit approval required under applicable law for construction of a reservoir; and

· Delete the cryptocurrency mining definition and allowance as an accessory use in the table of permitted uses.

Summary of Stakeholder and Public Comments

Staff initiated several social media posts, newspaper notices, and provided an opportunity for the public and industry to comment on the proposed regulation amendments via the County website or by email or letter. Many commentators expressed either opposition to portions of the draft amendments or suggested alternative wording. Attachment 7 provides a summary table of the stakeholder and public comments. Generally, comments received from nearby residents indicate that they were not satisfied with the ability for operators to apply for a lesser setback from reservoirs if conditions are warranted and generally, comments received from the industry indicate that they are not supportive of the reservoir setback because they do not believe there is adequate scientific evidence to support the setback.

In addition to the comments made at the Planning Commission hearing, County staff consulted with the two most affected water providers for these regulations, Aurora Water and Rangeview Metropolitan District. Both water providers have submitted written comments expressing support of the proposed reservoir setback and mechanism for requesting lesser setbacks. Staff also consulted with the Office of Emergency Management and area fire districts and have not received any objections to the proposed code amendments. Please see Attachment 8 for copies of all stakeholder comments received.

Further, at the Planning Commission hearing, representatives from Rangeview Metropolitan District and Aurora Water spoke in support of one-mile setbacks from reservoirs and planned reservoirs and subsequently submitted written comments. Both water providers endorsed such setbacks as reasonably protective of the drinking water resources especially in the event of fire or explosion incident at a well pad that may be fought with foam containing firefighting chemicals. In such event, the concern is that the fire-fighting chemical could end up contaminating the reservoir. Additional concerns have been expressed in comments about particulate matter from a fire incident or other airborne pollutants from a pad could end up in the reservoir absent a protective distance.

Proposed Amendments

The current proposed amendments to the Oil and Gas regulations, shown as redlines to the existing Oil and Gas regulations in Attachment 1, and more succinctly summarized in a table format in Attachment 2, reflect direction received from the Board, staff-recommended changes and Planning Commission recommendations for changes to the Oil and Gas regulations.

Included among the changes to the existing regulations, the proposed amendments provide additional reservoir protections for the Aurora Reservoir and two reservoirs planned on State Land Board property, within the Lowry Ranch CAP area and also corrects omissions discovered after the initial adoption of the regulations.

Currently the state regulations (ECMC Rule 411) require oil and gas facilities to be at least 1,000 feet from a surface water supply area, and impose additional requirements for facilities that are in specified buffer zones beyond 1,000 feet. Staff has been unable to find scientific reports or other evidence establishing a 1,000-foot buffer zone as the clear benchmark for protection of sources of drinking water. As such, staff has proposed establishing a more protective buffer consistent with that previously adopted by the City of Aurora (one mile), and consistent with the necessity of protecting the County's limited drinking water resources, subject to a reduction to a lesser distance if a wellpad meets the definition of "downgradient." The risks which the setback requirements are meant to mitigate include the risks of a spill of produced fluids containing oil and chemicals, or of oil itself, making its way either through surface flows, or through sub-surface alluvial flows or groundwater plumes, into a reservoir. According to an American Geosciences Report (Attachment 10), spills of produced fluids and oil can and do occur at wellsites and related pipelines, and do create a risk for nearby water and other resources. Staff proposes this amendment to the regulations as a reasonable balance of the strong local and state interest in the protection of water resources from wellsite spills and fires, and the ability of operators to access oil and gas resources.

In accordance with Planning Commission's recommendation and prior direction from the Board, Planning staff is requesting adoption of an amendment to Section 5-3.6 of the LDC for revision of specific oil and gas regulations presented with this Report as Attachment 1 and summarized in the table in Attachment 2.

Fiscal Impact: Fiscal impact is expected to be minor and will entail increased staff time in Planning and the Office of Emergency Management for review of more application materials and additional recordkeeping.

Alternatives: Alternatives for the draft Oil & Gas rules are as follows:

1. Approve LDC23-003 as currently written and recommended;
2. Approve LDC23-003 with specific changes; The Board may specify the nature of the change and allow staff to finalize language or may direct staff to bring updated language back to the Board for further consideration;
3. Continue the hearing to a date certain for additional information; or
4. Deny LDC23-003. This would leave the currently adopted rules in place in the Land Development Code.

Alignment with Strategic Plan:

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

Staff Recommendation: Staff recommends that all of the proposed rules in their current form proceed to adoption, as recommended by the Planning Commission on August 15, 2023, and amended by staff to reflect direction received on September 12, 2023, to increase the downgradient reservoir setback.

Concurrence: The Public Works & Development Department director and Planning Division managers concur with the Planning Commission's recommendation and direction from the Board received on September 12th for approval of the proposed Oil & Gas rules.

Suggestion Motion(s): Attached.

Resolution: Attached is a copy of the draft resolution.