



SUBJECT: CASE NO. LDC23-003 – OIL AND GAS LAND DEVELOPMENT CODE AMENDMENT – CONTINUED HEARING

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PURPOSE AND REQUEST

The purpose of this hearing is a continuation of the July 18, 2023, Planning Commission hearing on the Land Development Code (LDC) amendment to the oil and gas rules, Case LDC23-003. This continuance is to seek additional information from staff on the proposed amendment and for further deliberation and final decision on its recommendations to the Board of County Commissioners.

BACKGROUND

On July 18, 2023, staff presented proposed revisions to the Oil and Gas regulations adopted in November of 2021, in part 5.3-6 of the LDC. During the public hearing, the Planning Commission heard comments from the community, industry and water providers over a period of over three hours. Below is a brief summary of the key points made by each stakeholder group and the Planning Commissioners.

STAKEHOLDER COMMENTS

Many commentators expressed either opposition to portions of the draft regulations or suggested alternative wording. Additionally, many comments were received on the existing regulations that do not relate to the currently proposed revisions. Generally, comments received from nearby residents indicate that they are not satisfied with the reservoir setbacks rule and the proposed rule revisions, the existing setback rules, or the ability for operators to apply for a lesser reservoir setback if conditions are warranted. Generally, comments received from the industry indicate that they are not supportive of the new reservoir setbacks because they do not believe there is adequate scientific evidence to support the setback. Additionally, industry comments included an objection to the proposed rule that states non-compliance with State or Federal rules could be enforced by the County.

Community comments include:

- In no case should reservoir setbacks be under 2,000 feet; many said the setback should be one mile in all cases.
- Prohibit cryptocurrency mining as an accessory use. Results in air pollution and waste.
- Alternative access roads are needed.
- Notifications of neighborhood meetings should require a notification radius of six miles, to match the extent of the well horizontals.
- Fire concerns for pads near the Wildland Urban Interface.
- Health concerns for air and water quality.
- Strengthen the proposed rules.
- Adopt a minimum of one-mile setback from homes and schools.

- Hire an inspector, funded by operators.
- Hire an air quality specialist. Don't approve any new permits until an air quality specialist is hired.
- Deny approval of these proposed regulations. Protect citizens.

Comments from industry include:

- A one-mile reservoir setback is not supported by science or justified. Spills are highly unlikely to migrate one mile.
- COGCC (now ECMC) Rule 411 covers the protection of surface water.
- County's rules must be necessary and reasonable, per SB19-181, and science-based.
- Addition of Relationship to State Rules should be removed.
- Many of the points covered in the County's regulations are already covered in State regulations and are duplicative and unnecessary.
- Remove the proposed handwashing facilities requirement.
- CDPHE's air monitoring station at the Aurora Reservoir has never shown an exceedance of regulatory thresholds.
- The County's proposed rules could open up litigation.

Comments from Water Providers include:

- Regarding the basis for the one-mile setback from reservoirs adopted by Aurora: Aurora Water consulted with hydrology experts. Provides reasonable protections.
- We are charged with protecting water quality.
- The one-mile setback doesn't completely eliminate risk. Spills and air emissions from firefighting could still reach reservoirs downstream from an Oil and Gas Facility.
- Pollutants can migrate along the surface or the subsurface.

Comments and Questions from the Planning Commissioners included:

- Consider removing the handwashing rule.
- Consider removing cryptocurrency mining from the allowed uses table and definitions; gather more information on environmental and other impacts.
- Consider increasing notification of the neighborhood meetings perhaps to match the length of laterals.
- Supportive of one-mile setback for reservoirs, but consider whether to have a variance procedure, compliance with State rules, post-incident meetings with operators, access roads standards and alternative access roads.
- Consider adding an additional requirement for noticing of neighborhood meetings, such as posting on social media such as NextDoor.
- Evaluate requiring annual inspections and monitoring by the County, funded by fees on well sites.
- Consider more stringent setbacks.

DISCUSSION

At the July 18, 2023 hearing, staff presented the proposed oil and gas regulations that include:

- Creating setbacks from existing and planned public water reservoirs with a potential variance process;
- Codifying the relationship to State rules, whereby the County could take enforcement action for non-compliance with State rules;
- Notifications of neighborhood meetings to tenant residents as well as property owners of record and HOAs in a one-mile radius of a new well pad;
- Incorporation of new fire district and health and safety rules to include requirements for post-incident meetings, access roads construction standards to comply with fire code and an alternative access road if a well pad incident could prevent emergency access;
- Incorporation of a requirement for any application that proposes lesser setbacks to be approved by the Board of County Commissioners (BOCC);
- Adding a requirement for handwashing facilities during drilling and fracking operations;
- Improving the application process by clarifying and adding application submittal requirements.
- Adding cryptocurrency mining as an accessory use at well pads.

NOTICES AND REFERRALS

Staff updated the County's Oil and Gas website on July 21, 2023, to announce the continued hearing and the closing of the public comment period. It was noted that the Planning Commission could elect to re-open the comment period.

Notices of the continued hearing were published in the August 1, 2023 edition of the I-70 Scout newspaper and the August 3, 2023 edition of the Colorado Community Media newspapers.

Any additional public comments received after the July 18, 2023 Planning Commission hearing will be attached to this staff report. If further comments are received after the staff report is sent to the Planning Commissioners, those comments will be printed and provided to the commissioners immediately before the continued hearing.

FISCAL IMPACT

The fiscal impact to the County of adoption of this amendment to the Oil and Gas Regulations is expected to be minor and will only entail increased staff time in Planning for review of more application materials, waiver requests and additional recordkeeping.

RECOMMENDATION

Staff recommends approval of the Land Development Code amendment with the following revisions and stipulation:

1. Staff, with the approval of the County Attorney, may correct typographical errors and make such revisions to the Code amendment as are necessary to incorporate the approved amendment into the Land Development Code for publication.

ALTERNATIVES

The Planning Commission could take the following actions:

1. Recommend approval of the Land Development Code amendment as proposed or with modifications.
2. Continue the amendment to a time and date certain for more information.
3. Recommend denial of the Land Development Code amendment.

CONCURRENCE

The Public Works and Development Planning, Engineering, Zoning and the Office of Emergency Management, as well as the County Attorney's office, have reviewed the draft regulations, and the Arapahoe County Public Works and Development Department is recommending approval of this case.

DRAFT MOTIONS

Recommend Approval

In the case of LDC23-003, Oil and Gas Regulations, Land Development Code Amendment, I have reviewed the staff report, including all exhibits and attachments, and have listened to the presentation and such public comment as was presented at the hearing, and hereby move to recommend approval of the proposed amendment to the Land Development Code as presented, except for the proposed amendment to allow cryptocurrency mining as an accessory use to an oil and gas facility which I recommend be denied, and instead that staff develop more comprehensive regulations for such accessory uses of an oil and gas facility that better define the allowable accessory uses, which may include cryptocurrency mining or possibly other uses, and to develop appropriate operational standards, such as maximum size of the allowed accessory uses, duration of uses, nuisance abatement standards related to noise and light, and to mitigate any potential environmental impacts to air quality, or other surface impacts from the uses; subject to the following stipulation.

1. Staff, with the approval of the County Attorney, may correct typographical errors and make such revisions to the Code amendment as are necessary to incorporate the approved amendment into the Land Development Code for publication.

Recommend Denial

In the case of LDC23-003, Oil and Gas Regulations, Land Development Code Amendment, I have reviewed the staff report, including all exhibits and attachments, and have listened to the

presentation and any public comment as presented at the hearing and hereby move to recommend denial of the proposed amendment to the Land Development Code.

1. State any reason for denial.

Continue to Date Certain:

In the case of LDC23-003, Oil and Gas Regulations, Land Development Code Amendment, I move to continue the hearing to [date certain], 6:30 p.m., to obtain additional information and to further consider the information presented.

ATTACHMENTS

1. Approved Minutes from the August 18, 2023 Planning Commission Meeting
2. Draft Oil and Gas Regulations Amendment, Redlined Draft
3. Stakeholder Comments Received after the July 18th Hearing
4. Copy of Staff Report from August 18, 2023 Planning Commission Meeting
5. Copy of Stakeholder Comments Attached to August 18, 2023 Agenda