

EXHIBIT A

Chapter 90

NATURAL RESOURCES*

* **Editors Note:** Res. No. 2008-33, § 1(Exh. A), adopted November 17, 2008, amended chapter 90 in its entirety to read as herein set out. Formerly, chapter 90 pertained to similar subject matter, and derived from LPLUS, § 8.1.1--8.1.5.b, 8.1.6.a--f., 8.1.7--8.1.10, 8.1.12, 8.1.14.a--g., 8.2.1--8.2.6, 8.3; Res. No. 1998-34, § 1, adopted October 5, 1998; Res. No. 1999-9, § 2, adopted February 22, 1999; Res. No. 2001-33, adopted August 27, 2001; Res. No. 2004-20, § 1, 2, adopted June 28, 2004; Res. No. 2004-35, §§ 1--10, adopted December 20, 2004, and Res. No. 2008-30, §§ 1, 2, adopted November 12, 2008.

Cross References: Buildings and building regulations, ch. 18; public places, ch. 38; development standards and specifications, ch. 74; floods, ch. 78; land use and development permits, ch. 82; land use regulations for public property, ch. 94; subdivisions, ch. 102; zoning, ch. 106.

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ARTICLE I.

IN GENERAL

Secs. 90-1--90-15. Reserved.

ARTICLE II.

OIL AND GAS*

* **State Law References:** Oil, gas, mineral rights, C.R.S. § 30-11-301 et seq.; oil and natural gas, C.R.S. § 34-60-101 et seq.

DIVISION 1.

GENERALLY

Sec. 90-16. 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.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-17. 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. Should it be established by competent evidence that a proposed major or minor facility cannot be operated in compliance with this article, county land use approval for such a facility may be denied.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-18. Jurisdiction of article provisions.

This article shall apply to lands within the unincorporated area of the county with the exception of those lands where the county's jurisdiction is preempted by federal or state law, or by tribal jurisdiction.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-19. 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 chapter 62 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). Presumption of permanent abandonment of a major facility shall be based upon nonuse or nonoperation for one year without notification to the department 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 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. BMPs are dynamic and intended to promote excellence in the conduct of operations.

Burden of proof means by a preponderance of the evidence.

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

Chemical(s) shall mean any element, chemical compound or mixture of elements and/or compounds.

Chemical inventory shall mean a list of the chemical products (including material safety data sheets) brought to a wellsite for use downhole during drilling, completion and workover operations including fracture stimulations and the maximum capacity of fuel stored on the oil and gas location during those operations. The chemical inventory shall state the amount of the chemical product used, the manner in which it was used or applied and the dates on which it was used.

Chemical product shall mean any product consisting of one or more constituent chemicals that is marketed or sold as a commodity. Chemical products shall not include substances that are known to be entirely benign, innocuous or otherwise harmless, such as sand, walnut shells and similar natural substances.

Code means the La Plata County Land Use Code.

CDOW means the Colorado Division of Wildlife.

CDOT means the Colorado Department of Transportation.

COGCC means the Colorado Oil and Gas Conservation Commission.

Competent evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and may include evidence not typically admissible in a court of law so long as such evidence possesses probative value commonly accepted by reasonable and prudent person in the conduct of his or her affairs. Competent evidence does not include evidence that is unduly repetitive, irrelevant and without credibility.

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

County means La Plata County.

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.

Department means the La Plata County Planning Department or its successor.

Director means the Director of the Planning Department or any member of the Director's staff authorized to represent the Director.

Drainage plan means a written description and depiction on a site 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 property by another, for a specified purpose.

Equipment means machinery or structures located on well pads or rights-of-way 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 the equipment associated with a site used for the production, transportation, treatment, and/or storage of oil and gas and waste products.

Flowline means a pipeline connecting an individual well to production metering equipment.

Gas well means a well capable of producing natural gas.

Gathering line means a pipeline transporting produced gas, oil, or water from multiple intermediate lines.

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 five tons.

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

Intermediate line means a pipeline transporting produced gas, oil, or water from one well pad after it passes through production metering equipment to a gathering line.

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, centralized water transfer stations, centralized water pump stations and associated facilities serving multiple well pads.
- (3) Storage yards and construction staging yards in place for six months or longer.
- (4) Any permanent equipment facility or structure related to the production of oil and/or gas which contains internal combustion engines with a cumulative horsepower, de-rated for elevation, of 200 BHP or greater.
- (5) Transmission line or any pipeline for which the power of eminent domain is exercised.
- (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 produce liquid petroleum and/or natural gas, including associated equipment required for such production.
- (2) Intermediate lines which extend beyond one-quarter mile (1,320 feet) from the wellhead, gathering lines, and ancillary equipment including but not limited to drip stations, vent stations, pigging facilities, chemical injection stations and valve boxes.
- (3) Temporary storage and construction staging yards in place for less than six months.

Minor oil and gas facilities requiring special mitigation measures means:

- (1) An individual wellsite 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.

- (2) 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.
- (3) Continuous drilling and completion operations of wells or well legs on a well pad that are planned to continue for longer than six weeks.

Nonconforming use means a use that was legally established, but no longer complies with the regulations of this chapter. A non-conforming use is legal if it complies with section 90-44(e).

NRCS means the Natural Resource Conservation Service.

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

Oil and gas facility means equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas.

Oil and gas location means a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

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.

Owner or operator shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas produced therefrom either for such owner or operator or others.

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.

Planning commission means the La Plata County Planning Commission.

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 May 5, 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 persons legal right to pass through grounds or property owned by another, or
- (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 wellhead, intermediate line, gathering line or major facility structure boundary and the closest projection of a residential, commercial, or industrial building structure, a lot or property line, a permitted facility, or a platted building envelope in a platted subdivision.

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 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 surface property on which the facility will be constructed or the owner of property who receives notice pursuant to 90-77.

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.

Trade secret means any confidential formula, pattern, process, device, information or compilation of information that is used by an owner, operator or vendor, and that gives the owner, operator or vendor an opportunity to obtain an advantage over competitors who do not know or use it.

Trade secret chemical product shall mean a chemical product the composition of which is a trade secret.

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.

Water pump station means a facility that receives produced water via gathering lines for the purpose of lowering gathering line water pressure.

Water transfer station means a facility that receives produced water via surface transportation from one or more well pad locations.

Wellhead 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 take 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 wellheads and associated equipment.

All other words used in this article shall be given their usual, customary and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in the oil and gas industry.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-20. 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.

(b) Construction, installation and operation of oil and gas facilities shall not commence until administrative approval has been granted by the department, or approval following public review has been granted by the planning commission and/or the board of county commissioners, as applicable. The department shall serve as the authorized representative of the board of county commissioners for the purposes of this article.

(c) Major and minor oil and gas facilities which comply with the applicable standards and requirements of this article shall be granted recommendation for approval or approval by the department upon the applicant's submittal of satisfactory documentation, in the manner prescribed, that the facility is in compliance with the standards set forth in this article. Special mitigation measures are required for minor facilities which do not comply with the standards set forth in this article. The department

shall grant approval for minor facilities requiring special mitigation measures, provided that the applicant submits satisfactory documentation to the department that an appropriate mitigation plan for the facility will be implemented in accordance with this article.

(d) Planning commission review and recommendation together with board of county commissioners review and approval shall be required for activities and facilities classified as major facilities.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Secs. 90-21--90-40. Reserved.

DIVISION 2.

ADMINISTRATION*

* **Cross References:** Administration, ch. 2.

Subcategory I.

In General

Sec. 90-41. Submittal requirements.

Submittal requirements for all major and minor facilities are as found in the following table:

90-41 Submittal Elements		Minor	Major	Pipeline
1	Application	X	X	X
2	Narrative, including:			
	- Operating plan		X	
	- Estimated number of site visits by vehicles		X	
	- Estimated number of cubic yards of fill material needed to be brought to or removed from the site during the construction and drilling process. Note that use of any removed excess material may require a land use permit if transported offsite by either the surface owner or other party obtaining rights to the excess material.	X	X	
	- Other site specific information, identified and requested at a pre-application conference		X	
	- Engine manufacturer's verification of the site rated horsepower. Within 10 days of the installation of an engine, the operator will provide the serial number to the Department.	X	X	
3	Emergency Contact (telephone, person)	X	X	X
4	Site Plan including: (Map prepared for survey and location purposes per state and federal requirements by the applicant's surveyor may be used)			
	- North arrow, appropriate scale, overlain on aerial photography	X	X	X

		- Existing improvements within map area	X	X	X
		- Utility easements, right-of-way	X	X	X
		- Irrigation ditches crossing or within 100 feet of site	X	X	X
		- Proposed facilities including temporary use area, permanent well pad, flow lines, gathering lines, pits, equipment, etc.	X	X	X
		- Other site specific information identified and requested at a pre-application conference		X	
		- Current surface ownership of facility site	X	X	X
5	Vicinity Map including: (County GIS maps may be used as base map)				
		- Section, township, range	X	X	X
		- Site boundary	X	X	
		- North arrow and scale	X	X	X
		- Major geographic features, to include bodies of water, roads, utility corridors	X	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	X
		- Existing and proposed access	X	X	
		- Existing pipeline routes (gathering lines, transmission lines)	X	X	X
		- Other site specific information identified and requested at a preapplication conference		X	
6	Grading Plan				
7	Site Best Management Practices (BMP) Plan Narrative				
		- Drainage Plan - Any proposed structural management features per 90-123(c)(8)	X	X	
		- Visual Mitigation plan to include: - Visual mitigation techniques outlined in 90-123(b) and (c) - Revegetation - General information about the revegetation of the site including the location, seed mix type, planting method, seeding/planting time of year per 90-123(b)(3), 90-124(e), and, if applicable, 90-124(f)	X	X	X
8	Site Best Management Practices (BMP) Plan Map - corresponds to the Site BMP Plan Narrative				
		- Direction of onsite and offsite drainage flows (indicated by arrows)	X	X	
		- Location of any structural drainage management features (differentiate Construction and Permanent BMP's)	X	X	X
		- Area of revegetation	X	X	X
		- Visual mitigation techniques and plan standards outlined in 90-123(b)	X	X	
9	Wildlife Mitigation Procedures				
10	Noise Mitigation Procedures. Refer to Section 90-122(d)				
11	Four Color Photos Each taken from the center of the site facing north, south, east and west, respectively, properly focused and exposed				
12	Emergency Response Plan				
13	Certified Mail Receipt(s). Refer to Section 90-77				
14	Information regarding Right of Access and use of access roads and copies of any access agreements or road maintenance agreements if applicable				

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-42. 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.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Cross References: Fee schedule, app. A.

Sec. 90-43. General standards for review.

Oil and gas facilities shall meet the standards and policies set forth in the following documents:

- (1) The county oil and gas regulations;
- (2) The county land use regulations (subpart B of this Code);
- (3) The county master plan;
- (4) County road and drainage design specifications and standards;
- (5) The International Building Code as amended and adopted by the county;
- (6) Plans and regulations of municipalities in the county, if applicable;
- (7) Other applicable local, county, state and federal plans, policies and regulations.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-44. Duration, modifications, preexisting uses, and nonconforming uses.

(a) *Duration.* Approval granted for minor facilities shall expire and be considered revoked if construction of the facility is not commenced within two years of the date of administrative approval. For purposes solely of the preceding sentence, commencement of construction shall mean the operation of heavy equipment on-site. Approval granted for minor facilities that are individual wellsites shall expire or be considered revoked if drilling operations are not commenced within two years of the date of administrative approval, or if appealed or a special exception location is approved, the date of approval by the board of county commissioners.

(b) *Modifications.* Where a minor or major facility has been approved and the applicant desires to modify the subject facility by changes to previously approved permanent 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. The planning department shall have 10 business days to review the submittal. The activity described in the submittal will be granted administrative approval if it complies with the performance standards. As a condition of administrative approval, the applicant shall provide written notice to the Department at least 2 business days prior to the commencement of any on-site work associated with the modification. In cases where the amendment would consist of the addition of a major facility, public review shall be required as described in subcategory IV of this division, major facilities. Modifications which the applicant determines in good faith must be done on an emergency basis may be performed without prior notice or approval by the department. The applicant shall provide the department 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 after their emergency modification.

(c) *Permit extensions.* Approved facilities may be granted one permit extension for up to a one-year duration provided that a written request for extension is submitted to the department before the original permit expires. Requests for extensions shall be processed administratively as modifications per subsection (b) and shall not be submitted for county review more than 45 days prior to the original permit's expiration date. Any administrative decision regarding the request for an extension shall not be subject to the right of appeal as provided in 90-76. Permit extension requests will be processed without fee.

(d) *Effective date, preexisting uses.* This article shall become effective on the date specified in the adopting resolution of the board of county commissioners in accordance with state law. The provisions of this article shall apply to all major and minor facilities for which construction has not commenced or a building permit has not been issued as of the effective date. This article shall apply to all minor facilities including those subject to COGCC jurisdiction for which COGCC approval has not been obtained as of the effective date. For minor facilities which have received COGCC approval but for which construction or drilling operation has not commenced as of the effective date, all applicable provisions of this article shall apply.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

(e) *Nonconforming uses.* A nonconforming use shall be allowed to continue so long as the use is not abandoned as determined by the Director for an uninterrupted period of five years or more. For wells, abandonment shall mean plugging and abandonment of a well, temporary abandonment of a well, or shut-in of a well, as defined by the COGCC. Normal or routine maintenance of a facility containing a nonconforming use shall be allowed. Expansion of a nonconforming facility shall not be allowed except pursuant to Section 90-123(a)(3). Normal or routine maintenance of a facility shall be distinguished from a facility expansion based upon any permanent increase of a facility's land use impact. A facility increases the land use impact when there is an increase in the noise associated with the facility, the visual impact of the facility, or in the surface area disturbance that last longer than 6 months and is beyond the surface area originally impacted by the facility, and such increase results in a violation of a performance

standard. Nonconforming uses that are either abandoned or expanded shall be treated as new uses and shall be required to follow all general procedures and meet all applicable standards for such uses as provided in this chapter. Nothing herein shall be construed as a regulatory requirement to close or abandon an existing minor facility.

Sec. 90-45. Construction or installation of unapproved oil and gas facilities.

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

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-46. Penalty.

Subject to the provisions of C.R.S. § 30-28-124 and chapter 82 of LPLUC, as amended, 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 administrative approval from the department for minor facilities and minor facilities requiring special mitigation, or approval from the board of county commissioners for major facilities, upon conviction, 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. § 30-28-124.5.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-47. 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.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-48. 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 department

shall be provided with an opportunity to be heard at the public meeting prior to the board of county commissioners rendering its decision.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-49. Performance security.

(a) *Minor Facilities.* 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 facilities: the actual estimated cost to implement conditions of approval with a minimum of \$7,500.00 performance security (bond, irrevocable letter of credit or equivalent financial security acceptable to the county) for each minor facility up to 15 facilities subject to uncompleted conditions of approval (maximum \$105,000.00); or \$7,000.00 performance security for operators with more than 15 minor facilities subject to uncompleted conditions of approval (maximum \$175,000). Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and/or surface owners required by the applicable performance standards contained in this chapter with regard to the county permit. Specific minor facilities will be released from the performance security requirement after the applicant demonstrates to the department's satisfaction that all conditions of approval have been met. If the installation of plant and landscape materials is required as mitigation measures under this chapter, the performance security shall remain in place for two years after installation.

(b) *Major Facilities.* The applicant shall adhere to all performance guarantee requirements and procedures as specified in Chapter 82.

(c) *Performance Security Exemptions.* All activities which fall under COGCC jurisdiction are exempted from this performance security coverage in this section. This section is not meant to replace the COGCC's financial assurance requirement.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-50. Right to enter.

For the purpose of implementing and enforcing this article, the applicant shall provide notice to the surface owner that county personnel and its consultants, 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.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-51. 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 ten 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) Name, address and phone number, including 24-hour emergency numbers for at least two persons responsible for emergency field operations.
- (2) 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 either manually on U.S.G.S. 7.5 Minute Series maps (one inch = 2,000 feet), or 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).
- (3) A written response plan for any potential emergencies that may be associated with the construction, drilling, completion or operation of the facilities. This plan shall include but not be limited to 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.
- (4) 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.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-52. Emergency response information required.

Each operator with facilities in the county is required to provide a production well emergency response information form to the county office of emergency management prior to using drilling, completion, re-drill or workover rigs. The production well emergency response information form is available at the office of emergency management.

Secs. 90-52--90-70. Reserved.

Subcategory II.

Minor Facilities

Sec. 90-71. Generally.

Applications for county land use approval for proposed minor facilities shall be processed administratively by the department, 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 set forth in this subcategory for minor facilities requiring special mitigation. Applications for such minor oil and gas facilities shall receive approval without commission or board of county commissioners' hearing or review, in accordance with the procedures set forth in this subcategory. An application which the department finds to be in compliance with the relevant standards shall be granted administrative approval. (Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-72. Application submittal procedure.

The application shall be in the form prescribed by section 90-41 and shall include information and/or documentation establishing that the proposed minor facility is either in compliance with all applicable requirements of this article or establishing that the proposed facility's noncompliance with this article will be mitigated in accordance with the applicable standards and requirements set forth in this subcategory for minor facilities requiring special mitigation. If the applicant asserts that the proposed use complies with requirements, the application shall contain a certification from the applicant or its agent (accompanied by a written designation of agent in the form prescribed by the county, if applicable) 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 this subcategory. (Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-73. Determination of completeness.

Should the department determine that the application, as submitted, is not complete, it shall provide the applicant with written notice of the specific deficiencies within 15 business days of the initial submittal. No further action, including approval, shall be taken on an application determined to be incomplete, until the specified deficiencies have been corrected to the satisfaction of the department. If the applicant fails to address the specific deficiencies set forth in the written notice within thirty (30) days from the date of the written notice, the application shall be deemed withdrawn,

unless the applicant requests additional time in writing and that request is approved by the department. If the application is found to be complete, containing all information and/or documentation required by this article, the department shall then review the application for compliance with applicable standards and requirements. This review may include a field inspection of the proposed site.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-74. Administrative action; site visit.

(a) *Administrative Action.* Review of a complete application and approval or denial will typically occur within 21 business days. More or less time may be required for review depending on the department's work load or requests for additional information made to the applicant. If a permit is not approved within 21 business days, the department will contact the applicant with a specific 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 the department shall issue an approval for the proposed minor facility. The department shall provide notice of an approval by posting the notice on the La Plata County website. Should the department 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 written denial of the application, stating with specificity the grounds for its decision.

(b) *Public Site Visit.* At the request of either the applicant, surface owner, or other landowner receiving notice pursuant to section 90-77, the department may, at the discretion of the director and upon notice to the surface owner, conduct a public site visit with these parties to evaluate well locations, compliance with the County Code, and mitigation that may be required under subsections 90-122(d)(4), 122(e)(6) and 90-123(c)(9). When possible this site visit will be coordinated with site visits required by other governmental agencies. Where a site visit is not deemed necessary, the department may hold an informal dispute resolution meeting pursuant to section 90-127 at a convenient community building, such as a local grange.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-75. Administrative determination of satisfactory mitigation for minor facilities requiring special mitigation measures.

Should the information in the application and any accompanying documentation establish that the proposed facility cannot comply with the applicable standards for a minor facility and how it 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 department shall issue written approval for the proposed minor facility. Should the department determine that proposed facility can comply with the applicable standards for a minor facility or 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 it cannot comply or such a mitigation plan is not possible under the facility's specific circumstances, it shall issue a written denial of the application, stating with specificity the grounds for its decision.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-76. Appeal of administrative denial or approval.

(a) Should the department deny administrative approval under this subcategory, the applicant may request county land use approval by the filing of a written appeal with the board of county commissioners within ten business days of receipt of written notification of such denial. Such an appeal shall be in writing and state with specificity the grounds of the appeal. The board of county commissioners shall proceed to consider the applicant's appeal at the next regularly scheduled board of county commissioners hearing for planning agendas for which proper public notice can be given.

(1) Upon request of the applicant, the board of county commissioners shall provide it with an opportunity to be heard on such an appeal. Should the applicant request a hearing on its appeal, such hearing shall proceed as follows:

- a. The department shall be notified and given an opportunity to present evidence at the hearing.
- b. At all times during the hearing, the applicant bears the burden of proof to demonstrate by competent evidence that either the proposed minor facility complies with all applicable requirements of this article or that the proposed facility's noncompliance with this article is adequately mitigated, in accordance with the applicable standards and requirements set forth in this subcategory.
- c. At the conclusion of the hearing, the board of county commissioners may render a decision to approve the application as submitted by the applicant, approve the application with conditions or deny the application based upon the competent evidence presented at the hearing.
- d. Alternatively, the board of county commissioners, in its sole discretion, may take the application under advisement and render a written decision based upon the competent evidence presented at the hearing to grant, grant with conditions or deny the application no later than thirty (30) days from the date of the hearing. If no written decision is issued within thirty (30) days, the application is deemed approved.

(2) If the applicant does not request a hearing, the board of county commissioners shall proceed as follows:

- a. During the planning agenda, the board of county commissioners shall take notice of the record, which shall include but not be limited to the applicant's written appeal, the minor facility permit application, the department's recommendation and any other relevant information.

- b. After taking notice of the record, the board of county commissioners may render a decision to approve the application as submitted by the applicant, approve the application with conditions or deny the application based upon the record.
 - c. Alternatively, the board of county commissioners, in its sole discretion, may take the application under advisement and render a written decision based upon the record to grant, grant with conditions or deny the application no later than thirty (30) days from the date of the planning agenda. If no written decision is issued within thirty (30) days, the application is deemed approved.
- (3) The decision of the board of county commissioners is a final decision subject to appeal to the district court of the county, pursuant to C.R.C.P. 106

(b) Surface owners who can demonstrate a reasonable likelihood of actual injury in fact based upon operator's failure to meet specific standard(s) or who are seeking a waiver of compliance with a higher ranked standard in 90-123(a)(5) shall have standing to file an appeal of the administrative decision regarding the siting of a minor facility, except the siting of intermediate lines, gathering lines and ancillary equipment including but not limited to drip stations, vent stations, pigging facilities, chemical injection stations and valve boxes. The appeal shall be in writing, shall state with specificity the grounds for the appeal, and shall be filed within ten working days of the posting of notice of approval on the County website. The board of county commissioners shall proceed to consider an appeal at the next regularly scheduled board of county commissioners hearing for planning agendas for which proper public notice can be given.

- (1) Upon request of the surface owner, the board of county commissioners shall provide it with an opportunity to be heard on such an appeal. Should the surface owner with standing request such a hearing, it shall proceed as follows:
- a. The department and operator shall be notified and given an opportunity to present evidence at the hearing.
 - b. At all times during the hearing, the surface owner with standing bears the burden of proof to demonstrate by competent evidence that the proposed minor facility does not comply with all applicable requirements of this article and that the proposed facility's noncompliance with this article is not adequately mitigated, in accordance with the applicable standards and requirements set forth in this subcategory.
 - c. At the conclusion of the hearing, the board of county commissioners may render a decision to deny the application if it determines, based upon competent evidence presented at the hearing, that the proposed minor facility does not comply with all applicable requirements of this article and that the proposed facility's noncompliance with this article is not adequately mitigated; or may affirm the decision of the department with any additional conditions if it determines, based upon competent evidence, that the minor facility does not comply with all applicable requirements of this article, but

that the proposed minor facility's noncompliance with this article can be adequately mitigated, in accordance with the applicable standards and requirements set forth in this subcategory.

- d. Alternatively, the board of county commissioners, in its sole discretion, may take the appeal under advisement and render a written decision based upon the competent evidence presented at the hearing to deny or grant with conditions the application no later than thirty (30) days from the date of the hearing. If no written decision is issued within thirty (30) days, the decision of the department is deemed affirmed.

(2) If the surface owner does not request a hearing, the board of county commissioners shall proceed as follows:

- a. During the planning agenda, the board of county commissioners shall take notice of the record, which shall include but not be limited to the surface owner's written appeal, the minor facility permit application, the department's recommendation and any other relevant information.
- b. After taking notice of the record, the board of county commissioners may render a decision to deny the application as submitted by the applicant if it determines, based upon the record, that the proposed minor facility does not comply with all applicable requirements of this article and that the proposed facility's noncompliance with this article is not adequately mitigated; or, affirm the decision of the department with any additional conditions if it determines, based upon the record, that the minor facility does not comply with all applicable requirements of this article, but that the proposed minor facility's noncompliance with this article can be adequately mitigated, in accordance with the applicable standards and requirements set forth in this subcategory.
- c. Alternatively, the board of county commissioners, in its sole discretion, may take the appeal under advisement and render a written decision based upon the record to deny or grant with conditions the application no later than thirty (30) days from the date of the planning agenda. If no written decision is issued within thirty (30) days, the decision of the department is deemed affirmed.

(3) The decision of the board of county commissioners is a final decision subject to appeal to the District Court of La Plata County, pursuant to C.R.C.P. 106.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-77. Notice.

(a) Written notice shall be provided to the current surface owner(s) of the parcel(s) of land on which the minor facility is proposed to be located as well as the current surface owners of those parcels of land within two-hundred fifty (250) feet of the proposed gathering line or one-quarter mile (1,320 feet) of the wellhead, or other

proposed minor facility easement boundary. 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 be mailed no less than ten days prior to the application being submitted to the department. Notice of the application shall be made as follows:

- (1) To the current surface owners of the parcel(s) of land on which the minor facility is proposed to be located, as well as the current surface owners of those parcels of land within two-hundred fifty (250) feet of the proposed gathering line or one-quarter mile (1,320 feet) of the wellhead, or other proposed minor facility easement boundary, 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 one-quarter mile (1,320 feet) from the point indicated as the wellhead (the wellhead is indicated by feet from section lines), or other proposed minor facility easement boundary or two-hundred fifty (250) feet from the point indicated as the center of the proposed gathering line.
- (2) The notice of the application for approval of a minor facility shall be in the form prescribed by this subcategory and shall contain the following:
 - a. A description of the proposed facility 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 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.
 - b. The submittal date of the application to the department. A statement that comments from the parties receiving notice shall be submitted to the department within ten business days of the application submittal date.
 - c. A statement concerning the county's need to enter property which is the subject of minor or major facility permit as follows: For the purpose of implementing and enforcing the county's oil and gas regulations, county personnel and its consultant, may, from time to time, need to enter onto the property which is the subject of a minor or major facility application.
 - d. A statement that if there is a private entity or entities that maintain any private road that accesses the proposed facility, that a designated representative contact the applicant or agent.

- e. A statement informing the surface owner that they may request written notification by the operator of the commencement of construction and commencement of drilling operations (if the application is approved). Those parties requesting notification shall advise the department in writing of such request within 15 days from receipt of the written notice required by this section. The applicant shall provide written notice(s) to the department and those landowners desiring notice no less than ten days prior to the commencement of construction and no less than 10 days prior to commencement of drilling operations. One letter may be used by applicant to provide notice of the estimated date of commencement of construction and drilling operations. Notice may be provided by mail or electronic mail. For the purposes of this paragraph, commencement of construction shall mean any activity which disturbs the surface, including vegetation, but not survey work.
- f. The current mailing address, website address, telephone number for the department and COGCC, as well as a statement that additional information on the application will be available from the department.

(b) Written notice shall be provided to the current surface owner as well as surface owners of the parcels of land within one-quarter mile (1,320 feet) of the wellhead prior to re-drilling any oil or gas well that does not trigger the requirement to submit a Form 2A to the COGCC. This notice is for informational purposes only and does not confer any right of appeal under this Article. The notice shall be mailed no less than ten days prior to commencement of re-drilling activities at the wellhead and shall include the following information:

- (1) A general description of the work to be performed during the re-drill.
- (2) A good faith estimate as to the length of time in days it will take to complete the re-drill.
- (3) The anticipated daily hours of operation for the equipment at the wellhead during the re-drill.

(Res. No. 2008-33, § I (Exh. A), 11-17-2008, Res. No. 2014-8, §(Exh. A), 1-21-14)

Subcategory III.

Minor Facilities Requiring Special Mitigation Measures

Sec. 90-78. Generally.

Applications for county land use approval of proposed minor facilities which do not comply with the applicable standards specified in this subcategory shall be processed administratively as a minor facility requiring special mitigation by the department, subject to compliance with the applicable provisions of this article.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-79. Application submittal procedures.

The application shall include information and/or documentation establishing that the proposed facility cannot comply with the applicable standards for a minor facility and how non-compliance with this article will be mitigated in accordance with the applicable standards and requirements set forth in this section for minor facilities requiring special mitigation. The application shall contain the information prescribed by section 90-41. It 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 this section. The application for a minor facility requiring special mitigation measures shall be processed in accordance with section 90-71 et seq.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Secs. 90-80--90-100. Reserved.

Subcategory IV.

Major Facilities

Sec. 90-101. Review of applications; action by board of county commissioners.

All applications for major facilities shall be scheduled for public review before the planning commission and the board of county commissioners 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 may be 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.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-102. Application; submittal procedure; notice.

(a) The major facility application shall consist of all items identified in section 90-41 and any other requirements identified at the pre-application meeting.

(b) Prior to formal submittal of a major facility application, the department shall meet with the applicant to discuss and identify any additional information required to adequately review the proposed facility.

(c) Prior to submittal of a major facility application, notification of the intent to develop must be sent to the surface owner as well as the owners of any land adjacent to or located within one-quarter of a mile (1,320 feet) of the exterior boundary of the parcel(s) upon which the facility will be located as such ownership is indicated for tax purposes in the current records of the county assessor's office. This notice shall be mailed no less than ten days prior to the application being submitted to the department. 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. The notice of intent to develop shall be in the form prescribed in this subcategory and shall contain the following:

- (1) A description of the proposed facility 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 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 the department. A statement that comments from the parties receiving notice may be submitted to the department.
- (3) A statement concerning the county's need to enter property which is the subject of a major facility permit as follows: For the purpose of implementing and enforcing the county's oil and gas regulations, county personnel and its consultant, may, from time to time, need to enter onto the property which is the subject of a major facility application.
- (4) A statement that if there is a private entity or entities that maintain any private road that accesses the proposed facility, that a designated representative contact the applicant or agent.
- (5) A statement informing the surface owner that they may request written notification by the operator of the commencement of construction and commencement of drilling operations (if the application is approved). Those parties requesting notification shall advise the department in writing of such request within 15 days from receipt of the written notice required by this section. The applicant shall provide written notice(s) to the department and those landowners desiring notice no less than ten days prior to the commencement of construction and no less than ten days prior to

commencement of drilling operations. One letter may be used by applicant to provide notice of the estimated date of commencement of construction and drilling operations. Notice may be provided by mail or electronic mail. For the purposes of this paragraph, commencement of construction shall mean any activity which disturbs the surface, including vegetation, but not survey work.

- (6) The current mailing address, website address, telephone number for the department and COGCC, as well as a statement that additional information on the application will be available from the department.

(d) The applicant shall publish an accurate notice of intent to develop in a newspaper of local circulation once within 30 days prior to submitting a major facility application. The applicant shall present proof of such notice by submitting a copy of the published notice and a receipt from the newspaper of local circulation showing payment for publication of the notice. The notice shall include:

- (1) Name of the applicant.
- (2) Location in terms of the section, quarter section, township and range of the land on which the major facility will be located as well as in terms of the location for the proposed major facility that will be understandable by the general public.
- (3) A description of the proposed major facility, including any proposed equipment, building(s) and square footage thereof.

(e) Post notice of the proposed project on the property as set forth in Section 82-74(b).

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-103. Determination of completeness.

The department will review the application for completeness. If the application is deemed complete, the department will commence project review pursuant to the applicable standards and requirements of chapters 74, 82 and 90. If any standards conflict, the more strict standard shall apply. If the application is incomplete, the applicant will be notified in writing of the specific deficiencies and the application shall be withdrawn from the review process until the required information is submitted. If the applicant fails to address the specific deficiencies set forth in the written notice within thirty (30) days from the date of the written notice, the application shall be deemed dormant. Once an application becomes dormant, staff shall notify the applicant in writing what steps are necessary to pursue the application to its conclusion and the timeframe for doing so. Applications not completed within the specified timeframe shall be considered automatically withdrawn. Staff may extend the specified timeframe should staff determine that circumstances beyond the control of the applicant prevent timely completion of the application. Any re-submittal of an automatically withdrawn application will be treated as a new application for purposes including but not limited to submitting application materials, application review, scheduling meetings or hearings,

payment of application fees, and applicability of county, state, or federal regulations, ordinances, statutes and/or any other relevant laws.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-104. Notice of planning commission review.

Not less than 15 days, nor more than 30 days prior to the public meeting established to consider the major facility application, a legal notice of the public meeting before the planning commission shall be published in a newspaper of general circulation within the county, and written notice shall be provided to the following:

- (1) The owners of any land adjacent to or located within one-quarter of a mile (1,320 feet) of the exterior boundary of the parcel(s) on which the major facility will be located as such ownership is indicated for tax purposes in the current records of the county assessor's office. Such notice shall be sent by the department at the applicant's expense and will conform to applicable sections of section 90-77.
- (2) The public notice of the planning commission's review shall be in a form prescribed by the department and shall include the following:
 - a. A description of the location (including a legal and practical locational description) and a description of proposed activity under review.
 - b. Time and place of the commission's public meeting.
 - c. The name, address and telephone number of the applicant and/or its agent, and a statement that additional information may be obtained from the department.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-105. Notice upon request.

Notice shall be sent to any other person, agency or organization that has filed a request with the department to receive notice of major facilities undergoing public review; such notice to be sent by the department at the applicant's expense.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-106. Planning commission review.

The planning commission shall conduct a noticed public meeting for review of the proposed major facility. On the basis of competent evidence received at such a public meeting, the commission shall make its recommendation to the board of county commissioners regarding approval, conditional approval or denial of the application. Such planning 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 90-108.

The planning commission may continue a public meeting on 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 planning commission to a date certain or uncertain. The planning 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. (Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-107. Board of county commissioners' review.

The board of county commissioners shall conduct a public hearing for review of the major facility at the next board of county commissioners hearing for planning agendas for which proper public notice may be given after the date of issuance of the planning commission's recommendation. Notice shall be given in the same manner as required in sections 90-104 and 90-105. (Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-108. 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 chapters 82 and 74 and the requirements of this article and by applying the following evaluative criteria to the competent 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 sight distances; traffic volumes and types of equipment; dust control; and existing road uses.

- (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.

The decision of the board of county commissioners is a final decision subject to appeal to the District Court of La Plata County, pursuant to C.R.C.P. 106.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-109. Centralized water pump station reclassification.

The director, solely in his or her discretion, may reclassify a centralized water pump station from a major facility to a minor facility if upon submission of a site plan and narrative the director determines that any potential visual impacts may be mitigated. If the director determines that reclassification is appropriate, the applicant shall follow the minor facility process and all relevant performance standards shall be required.

Secs. 90-110--90-120. Reserved.

DIVISION 3.

PERFORMANCE STANDARDS

Sec. 90-121. Compliance.

All oil and gas facilities granted administrative approval by the department, recommended for approval by the planning commission, and/or approved by the board of county commissioners must comply with the standards contained in this division. For major facilities, the department 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.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-122. 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 500 feet shall be required between the wellhead and the closest existing residential structure or platted building envelope, 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 feet shall be required between the wellhead of a minor facility and the closest property line, unless verified written consent is obtained from the affected property owner, and at least 200 feet from buildings, public roads, major aboveground utility lines and railroads.

(3) Where site conditions or state or federal regulations make it technically impractical for the applicant to meet the setbacks of this section, and a waiver is not obtained from the affected property owner, the applicant may 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 structure boundary and the closest existing residential, commercial, or industrial building or property lot line shall be determined on a site specific basis, based on the major facility review criteria identified in section 90-43, as applicable, but shall be no less than those required for a minor facility, unless waived by the affected landowner, where applicable.

(5) Setback requirements for flow lines, intermediate lines, gathering lines, and transmission lines from general residential, commercial, and industrial buildings that are not permitted under this chapter shall be a minimum of 50 feet. The setback distance shall be measured from the nearest edge of the affected pipeline(s). The department 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.

(c) *Private access.* 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 maintain 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 wellhead compressor engines) shall be electrified if located within 1,320 feet of distribution voltage. The electrification requirements contained herein refer to the use of 3 phase power and “distribution voltage” means 12.47 kV 3 phase power. Applicant may provide information demonstrating that such electrification is infeasible. The department shall review this information and may provide a waiver of this requirement. If distribution voltage is not currently within 1,320 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 1,320 feet of the proposed facility. Internal combustion engine 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 mitigation 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.
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 department, the 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 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. 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
 - c. 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 site development, 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 where the facility site is unattended and/or accessible to the general public.
 - (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 the department review.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-123. Environmental quality standards.

(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 of special flood hazard governed by chapter 78 of subpart B, or in an area designated as Restricted Surface Occupancy for wildlife resources by CDOW, unless after consultation with CDOW, a written waiver is provided by CDOW.

- (3) The county recognizes that in some instances, existing minor oil and gas facilities which initially met the setback requirements of this section do not currently meet the requirements due to (i) the encroachment of other development into the setback area, (ii) the facility is a nonconforming uses, as defined in this chapter, due to a failure to meet current setback requirements; 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 may be considered for siting of a new well, provided that the placement of the new well's wellhead is not closer to the nearest lot or property line or building structure for human occupancy than the existing well's wellhead.

- (4) For minor oil and gas facilities not covered by a memorandum of understanding the number of well pads shall not exceed four within any single 640 acre governmental section of real property. Notwithstanding the foregoing, nothing contained 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 is 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
 - f. Demonstrable safety concerns.

- (5) The following standards presented in this subsection shall be used to site an oil and gas facility. The standards are ranked in descending order of importance. Facilities that cannot comply with the siting standards shall be denied according to section 90-74 or 90-75, unless: the impacts created by noncompliance with such standards are mitigated as outlined in subsections (c)(9) and 90-122(d)(4) and (6); the director waives the mitigation requirements based on existing topography and vegetation; or the mitigation required to comply with the siting standard would cause a conflict with a higher ranked standard. During an appeal pursuant to section 90-76, the board of county commissioners may waive compliance with the higher ranked standard in order to meet compliance with one of the lower ranked standards if there is a finding that such waiver would be

in the public benefit. The following are the ranked siting standards:

- a. Minor facilities shall be constructed using existing infrastructure, including the use of existing roads, pipeline routes and well pads. This standard shall not apply if the use of existing infrastructure would impact an area 50 percent or greater of the property which is the subject of the minor facility, unless the surface owner provides written consent.
- b. Minor facilities shall adhere to the setback and location requirements found in subsections 90-122(a), (b)(1)--(3), and (c)(1) and (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 avoid siting on or across hilltops 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.

(b) *Visual mitigation plan.*

(1) A visual mitigation plan shall be required for all minor and major

facilities. The visual mitigation plan shall be approved or denied based on its adequate mitigation of public visual resource concerns identified during the application review process. The plan shall incorporate the appropriate design elements of subsections (c)(1)-(10) and include the design information in subsection (b)(2). The visual mitigation guidelines for oil and gas facilities in the county (or equivalent guidance document cited by applicant and approved by the department) shall be used for guidance in the creation of the visual mitigation plan.

- (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. Project name;
 2. Name of applicant or developers;
 3. Project number;
 4. Date of preparation; and
 5. Section, township and range.
- (3) Where minor and major facilities reduce or destroy existing vegetation, the applicant, after consultation with NRCS guidance documents as maintained by and available from the county, shall develop a revegetation plan for the remainder of the facility site for approval by the department. The plan shall specify species, planting schedule, planting method, quantity of seed or plant material to be used, and other related activities.
- (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, non-contrasting, non-reflective 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 the department if well pad dimensions are related to a

visual mitigation plan proposal to blend with the natural topographical conditions.

- (8) At all times best management practices will be used to prevent stormwater discharges from impacting surface water quality.
- (9) The visual mitigation guidelines for oil and gas facilities in the county (or equivalent guidance document acceptable to the Department) shall be used as guidance in the creation of the visual mitigation plan. One or more of the following landscape practices shall be applied, on a site specific basis as required by the Code or a specific permit:
 - a. Establishment of berms, ground covers, shrubs and trees.
 - 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.
 - f. Visual mitigation techniques described in the visual mitigation guidelines for oil and gas facilities in the county (or equivalent guidance document).
- (10) Exterior lighting, when required, shall comply with the design standards in this subsection. Facilities do not have to comply with any exterior lighting standard that contradicts required industry safety standards, including drilling and emergency operations.
 - a. All outdoor lighting fixtures with an initial output of more than 2000 lumens (equivalent to a 26 watt compact fluorescent or 100 watt standard incandescent lamp type) shall have a full cutoff fixture (also known as a fully shielded fixture). The fixture shall be designed to shield the source of illumination from view from above or from adjacent property, and to not cast significant light other than straight down from the source.
- (d) *Wildlife.*
- (1) *Site Specific Mitigation Conditions.* If a state or federal law or regulation does not exist or is not applicable, the owner or operator shall comply with the following. This subsection contains a list of standard operating practices ("SOPs") for the protection of wildlife resources in the county

during oil and gas development activities. The SOPs shall provide for a written consent of the surface owner in order to address the agricultural production needs of the surface owner and the timing of oil and gas development activities on the surface owner's agriculturally producing property. Applicant shall mail notice to CDOW in the form described in section 90-77 no less than 10 days prior to the application being submitted to the department. CDOW shall have 15 days from receipt of the written notice to provide written comment to the department regarding the potential conflicts with wildlife resources during oil and gas development, and potential site-specific wildlife mitigation measures. The director may consider the comments of CDOW and shall rely on any of the SOPs in the creation of conditions of approval to address site specific wildlife mitigation measures for a minor or major facility. If applicant is unable to comply with the SOPs due to conflicts with other provisions of the county land use code, or the inability to obtain the surface owner's consent, applicant shall identify any conflict(s) and propose alternate site-specific mitigation or best management practices for the protection of wildlife resources. The alternate site-specific mitigation or best management practices, at the discretion of the director, may be included as conditions of approval for a minor or major facility permit. The following is a list of SOPs:

- a. Inform and educate employees and contractors on wildlife conservation practices, including, but not limited to:
 - i. Driving the speed limit in rural areas to avoid animal-vehicle collisions, especially during the early morning and evening hours.
 - ii. Prohibiting intentionally harassing or frightening wildlife.
 - iii. Removing all food and trash items to avoid attracting wildlife to facility sites.
- b. Use wildlife appropriate fencing. The Colorado Division of Wildlife's fencing guidelines found in *Fencing with Wildlife in Mind* (or equivalent guidance document cited by applicant and approved by the department) shall be used for developing wildlife appropriate fencing.
- c. Provide to the Planning Department a list of species identified by the Natural Diversity Information Service as occurring at the facility.
- d. For minor or major facilities that are not regulated by state or

federal law or regulation:

- i. To the greatest extent practicable, align pipelines with established roads in order to minimize the construction of new roads and reduce habitat fragmentation and disturbance.
 - ii. In areas where vegetation is removed, revegetate disturbed areas with native grasses, forbs, and shrubs. To the greatest extent practicable, keep the removal of trees to a minimum.
 - iii. During pipeline construction for trenches that are left open for more than five (5) days and are greater than five (5) feet in width, install wildlife crossovers and escape ramps where the trench crosses well-defined game trails and at a minimum of one-quarter (1/4) mile intervals where the trench parallels well-defined game trails.
 - iv. To the greatest extent practicable, share and consolidate new corridors for the pipeline rights-of-way and roads to minimize surface disturbance.
 - v. Do not place equipment staging, storage, and/or refueling areas within riparian and/or wetland areas.
 - vi. Mow or brush-hog vegetation where appropriate, leaving root structure intact, instead of scraping the surface, where allowed by the surface owner.
 - vii. When crossing streams, rivers or irrigation ditches with a pipeline use boring technology or alternative director-approved best management practice so that little of the channel, bank, and riparian vegetation are negatively affected.
- (2) *Multiple sites.* In lieu of a site-specific mitigation review for each facility, the applicant may submit to the department 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 (d)(1). Upon submission and approval by the county, additional facilities may be added to an approved multi-site plan.
- (3) *Non-mitigable 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.

- (e) *Water.*
 - (1) If fresh or potable water is required for minor and/or major facility operation, the applicant shall identify the proposed source 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.
- (f) *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 or federal law or regulation does not exist or is not applicable, the owner or operator shall comply with the following.
 - (2) All entities holding a permit issued under this chapter 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 the county.
 - (3) 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.
 - (4) 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 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 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 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.

- (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.

(g) *Pits and pit liners.* All pits shall be constructed in accordance with applicable state or federal laws or regulation. If however, a state or federal law or regulation does not exist or apply, the owner or operator shall comply with the following:

- (1) 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.
- (2) 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.

(h) *Geologic hazard areas; floodplains.*

- (1) Major facilities shall not be located in geologic hazard areas (as defined on the adopted county geologic hazard maps).
- (2) Major facilities shall not be located in an area of special flood hazard governed by chapter 78 of subpart b.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-124. Surface disturbance standards.

(a) *Purpose of section.* The purpose of this section is to minimize damage to surface activities and surface conditions.

(b) *Minimization of disturbances.* 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 or any other vegetated land surface. This standard may be waived if verified written consent is obtained from the surface owner.

(c) *Roads and access.* (c) *Roads and access.* Roads and access driveways for all new facilities shall be constructed in compliance with the minimum safety, construction, and maintenance standards provided in section 74-97(g)(4-17) and 74-91(c)(7) of subpart b. In addition, minor and major facilities must meet the following standards:

- (1) Applicant shall remove or require the removal of chains from its heavy

equipment before entering a county road.

- (2) If mud and/or debris is tracked onto the county road by applicant or its subcontractor's equipment, applicant shall remove same and restore the condition of the road as promptly as is reasonable under the circumstances.
- (3) All new roads, unless waived by the director, shall have gravel access and well pads with a minimum of six inches of either Class 6 or Class 2 Aggregate Base Course over a stabilized base as defined by the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction. The road or access driveway shall be maintained to this standard throughout permanent operations of the facility.
- (4) For all new access roads, a vehicle tracking pad with a length of 60 feet, or alternative director-approved best management practice, and minimum rock diameter of three inches shall be required for the construction period.
- (5) Applicant shall provide information 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.
- (6) Applicant shall obtain a county driveway permit if applicable, and comply with all CDOT access standards as outlined in the CDOT State Highway Access Code. Temporary widening of driveways for the transportation of heavy machinery shall be permissible with a valid county driveway permit for a period of no longer than one year at which time the driveway shall be returned to County standards. The maximum permissible widening along a County Road shall be 90 feet.
- (7) Applicant shall provide a Traffic Control Plan to the County Public Works Department prior to facility pad construction, drill rig movement commencement of construction, mobilization, demobilization, or any other disruption of two-way traffic, unless the requirement is waived by the County Public Works Department Director.
- (8) Dust shall be suppressed throughout construction, drilling and operational activities.
- (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, including temporary fencing material. 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 authorization of the surface owner, fire district, or appropriate entity having jurisdiction over air quality. 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.*
 - (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 county weed office in coordination with the requests of the surface owner.
- (f) *Restoration and re-vegetation standards.* When a well is completed for production, all disturbed areas no longer reasonably needed for production operations or for subsequent drilling operations will be reseeded and revegetated as soon as practicable in accordance with applicable state laws and regulations. If, however, there is no applicable federal or state law or regulation, the owner or operator shall complete restoration and re-vegetation in accordance with the following:
 - (1) Reseeding of disturbed areas shall occur immediately after disturbed areas have been graded to return contours as nearly as practical to their original relative positions, unless extenuating circumstances are present. In any event, seeding shall be completed within 30 days after completion of grading.
 - (2) Revegetation of crop lands. All segregated soil horizons removed from crop lands shall be replaced to their original relative positions and contour, and shall be tilled adequately to re-establish a proper seedbed. The area shall be treated if necessary and practicable to prevent invasion of undesirable species and noxious weeds, and to control erosion. Any perennial forage crops that were present before disturbance shall be re-established to the same plant density as undisturbed adjacent cropland, unless otherwise agreed by the surface owner.
 - (3) Revegetation of non-crop lands. All segregated soil horizons removed from non-crop lands shall be replaced to their original relative positions and contour as near as practicable to achieve erosion control and long-term stability, and shall be tilled adequately in order to establish a proper seedbed. The disturbed area then shall be reseeded in the first favorable season. reseeding with species consistent with the adjacent plant community is encouraged. In the absence of an agreement between the

operator and the affected surface owner as to what seed mix should be used, the operator shall consult with NRCS guidance documents, as maintained by and available from the county, to determine the proper seed mix to use in revegetating the disturbed area. In an area where an operator has drilled or plans to drill multiple wells, in the absence of an agreement between the operator and the affected surface owner, the operator shall rely upon NRCS guidance documents in determining the proper seed mixes to be used in revegetating each type of terrain upon which operations are to be conducted.

Interim reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and all disturbed areas have been either built on, compacted, covered, paved, or otherwise stabilized in such a way as to permanently prevent erosion, or when all of the following criteria have been met:

- i. A uniform vegetative cover has been established with total non-noxious percent plant cover of at least 80 percent of average surrounding area levels. Non-noxious plant cover is defined as the vertical projection of non-noxious plant canopies (including herbaceous and shrub species) when viewed from above. Non-noxious plant cover shall be measured or estimated using a valid and reliable method, such as point-intercept. Sufficient data shall be collected to allow the operator to estimate the mean total non-noxious plant cover to within ten percent of the true mean with 80 percent confidence.
- ii. Vegetative cover is such that disturbed area for shrub and grass cover is expected to develop through plant successional processes. Expectation of plant succession shall be deemed adequate when the number of species having between three and 50 percent of relative plant cover is at least half that of the average surrounding area.
- iii. The total cover of noxious weeds (including species designated as "undesirable" by the county) is no greater than that which exist in the average surrounding area.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-125. Special exception requests.

(a) Special exceptions to this division may be requested by the applicant or the director. All applications where a special exception is requested shall be processed in accordance with the standards and procedures outlined in this chapter. A request for a

special exception shall be reviewed in a duly noticed public hearing by the board of county commissioners acting in a quasi-judicial capacity.

- (1) For an applicant, requests for special exceptions for proposed facilities may include, but not be limited to, one or more of the following factors:
 - a. Topographic characteristics of the site;
 - b. Duration of use of the facility;
 - c. Proximity of occupied structures to the facility;
 - d. Ownership status of adjacent and/or affected land;
 - e. Construction of adequate infrastructure to serve the project; and
 - f. Planned replacement and/or upgrading of facility equipment.
- (2) For the director, requests for special exceptions for proposed facilities shall include the following factor:
 - a. Proximity of occupied structures to the facility.

(b) If the board of county commissioners finds, based upon competent evidence in the record, that compliance with the regulations of this division 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 board of county commissioners in a duly noticed public hearing. 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.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-126. Operational conflicts special exception.

(a) Special exceptions to this division may be granted where the actual application of requirements of this division conflicts 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 quasi-judicial capacity. 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 purposes of this section, an operational conflict exists where actual application of a county condition of approval or regulation conflicts in operation with the state statutory or regulatory scheme, and such conflict would materially impede or destroy the COGCC's goals of fostering the responsible, balanced development and 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. Additional county requirements in areas regulated by the COGCC, which 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 and which do not materially impede the state's goals, 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 the extent necessary to remedy the operational conflict. 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. Any such condition shall be designed and enforced so that the condition itself does not conflict with the requirements of the COGCC.

(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 C.R.C.P. Rule 106(a)4.
(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)

Sec. 90-127. Informal dispute resolution.

At the discretion of the director, any complaint related to an alleged non-compliance with the provisions of this chapter by an applicant, operator, surface owner or local, state or federal government agency may be referred to an informal dispute resolution process. The process shall be administered by the department's staff 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.

(Res. No. 2008-33, § 1(Exh. A), 11-17-2008)