

Boulder County Land Use Department



March 1, 2012
Oil and Gas Hearing

Purpose

In Resolution 2012-16, the BOCC directed that a public hearing be set for March 1, 2012, at 4:00 p.m., to allow the Board to “take testimony on the merits of the temporary moratorium imposed by the Resolution and to determine whether the moratorium should be terminated, extended, or otherwise amended.



Proposed Agenda

1. WELCOME – Board of County Commissioners' Chair
2. COUNTY STAFF PRESENTATIONS (15 min. each)
 - a. Land Use Department – Dale Case
 - b. Parks and Open Space Department – Ron Stewart
 - c. Transportation Department – George Gerstle
 - d. Public Health- Mark Williams
3. PUBLIC COMMENT (3-min. individual speaker limit)
4. BOCC DISCUSSION/ACTION/DIRECTION TO STAFF



BOCC adopted Moratorium

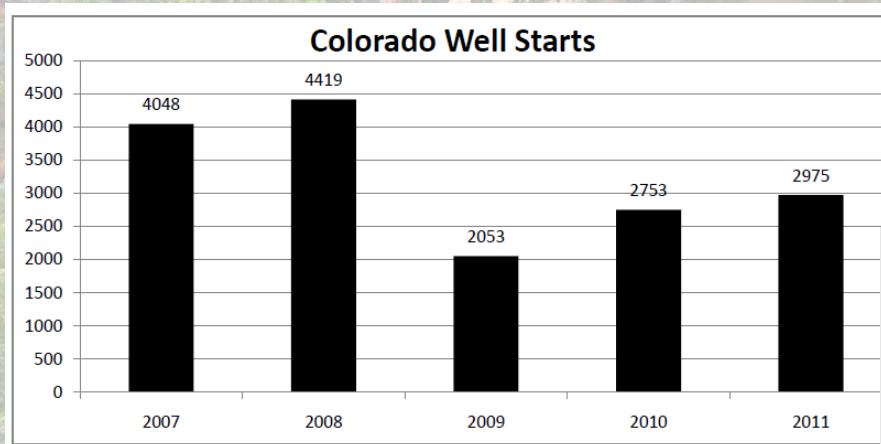
Temporary moratorium was set for a period of six months, to end on August 2, 2012.

Predominant concerns/issues prompting moratorium

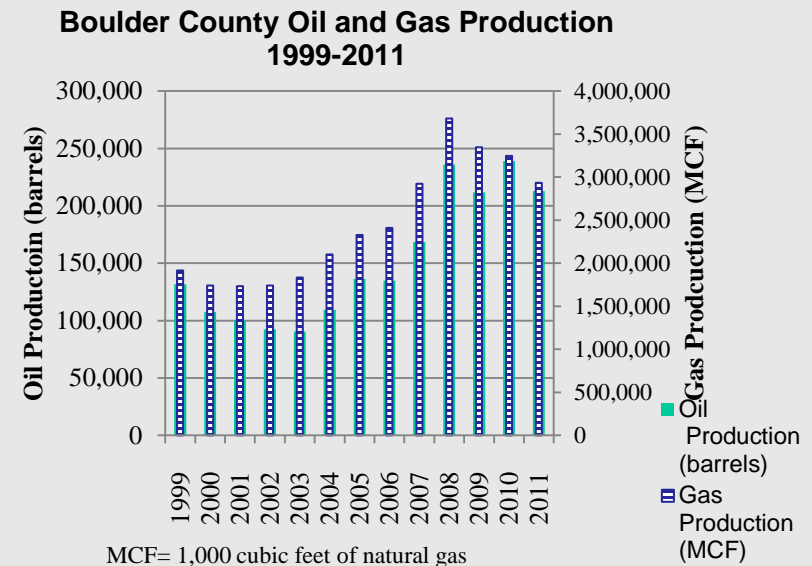
- Pace of development in the industry
- Changes in technology/process for recovering the resource
- Public concerns raised
- Potential impacts to water quality, air quality, soils
- Waste disposal
- Increased truck traffic and impacts to roads
- Surface disturbance on the land
- Structures associated with the development
- Changes in State regulations



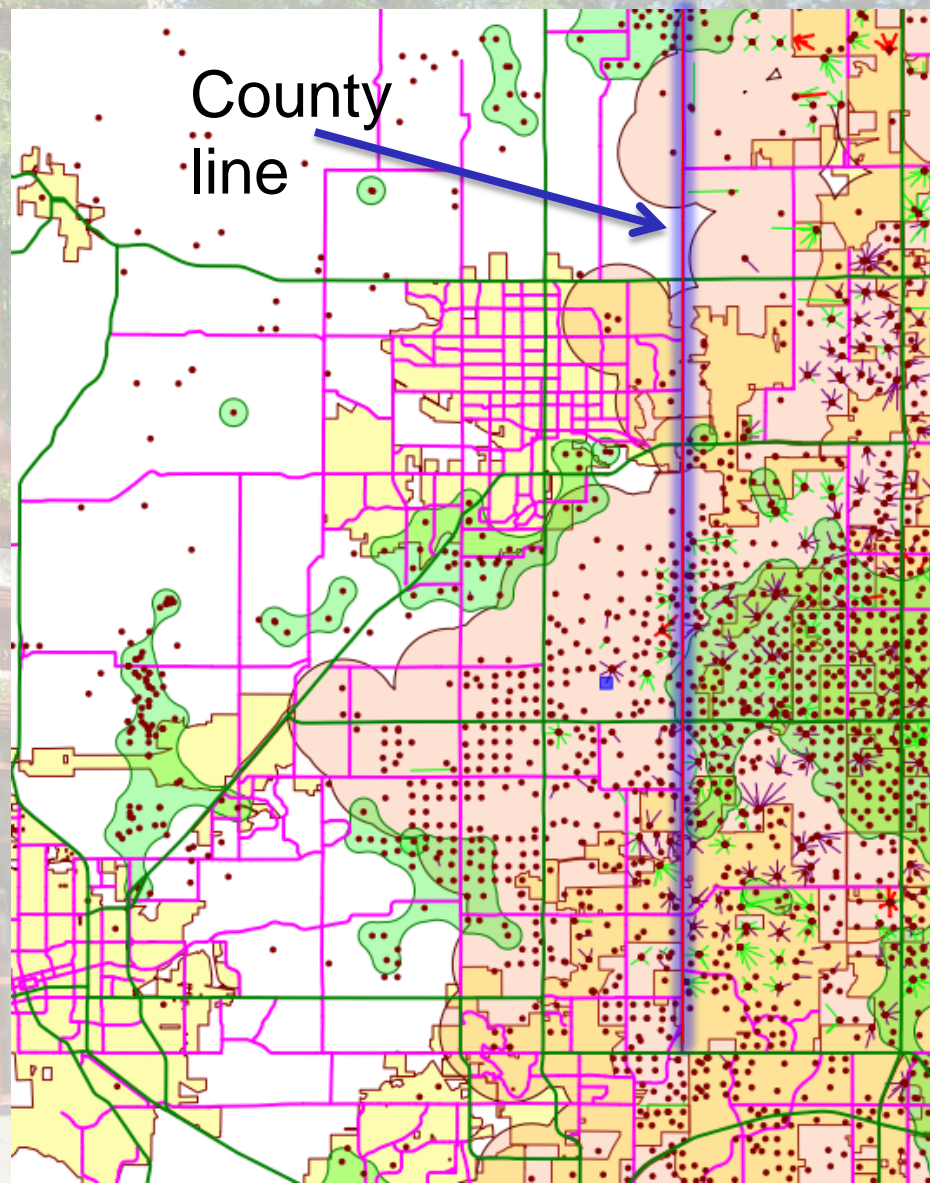
Oil and Gas Development Data



County Development Plan
Review Applications
2010 – 11
2011 3 applications for a total of
8 wells



Oil and Gas Development Where?



Source: OGCC GIS Map –

Boulder County
Land Use Department



Oil and Gas Development

Hydraulic Fracturing is not new.

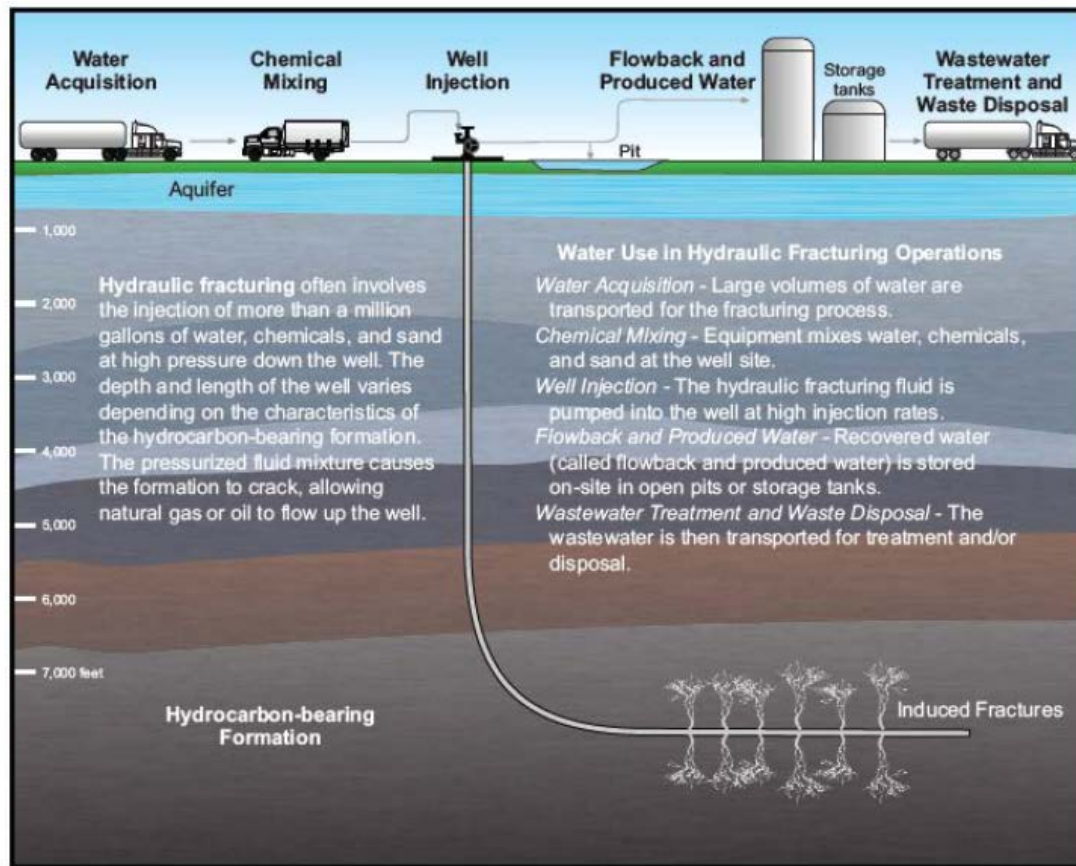
- Industry moving to horizontal drilling. In COGCC Report on water
 - Assumed that the number of horizontal drilled wells will increase at 20% a year (total wells will remain flat).
- According to Andarko Petroleum website they use between three and five million gallons on a horizontally drilled well. (<http://www.anadarko.com/SiteCollectionDocuments/Hydraulic%20Fracturing/FracQA.pdf>)



Diagram – Horizontal drill process



Water Cycle



Oil and Gas Development



Source: http://cogcc.state.co.us/Announcements/Hot_Topics/Hydraulic_Fracturing/COGCC_FRACING_briefing_052011.pdf



Land Use and Regulatory Issues

County's role in regulating in this area:

- Counties are subordinate governmental units of the state.
 - As such only have authority as determined by the state constitution and state statutes
- Under this established legal framework, the Colorado courts (including the Supreme Court's seminal 1992 Bowen/Edwards decision and several Court of Appeals opinions issued between 1988 and 2006), have consistently ruled that counties' land use authority coexists with the Colorado Oil and Gas Conservation Commission's ("COGCC") authority to regulate oil and gas operations
- under the Colorado Oil and Gas Conservation Act ("the State Act"). Local regulations are considered valid as long as they do not create an **"operational conflict"** with the state's regulations.



Land Use and Regulatory Issues

What constitutes a material impediment caused by a local regulation?

- need to be determined on a case-specific basis, taking into account the facts of the local regulation, the local regulation's impact on the particular oil and gas operation at issue, and the nature of the COGCC's pertinent or overlapping regulations



Land Use and Regulatory

The courts and governing state statutes identify certain areas where local governments have or may have little if any regulatory power, including:

- (1)banning oil and gas operations entirely from the local jurisdiction (Colorado Supreme Court's companion case to Bowen/Edwards Voss v. Lundvall Bros., 830 P.2d 1061 (Colo. 1992), invalidating the City of Greeley's ban on oil and gas operations within its borders);
- (2)imposing "technical conditions" (not a defined term) on the drilling and pumping of wells (commonly thought of as the regulation of well construction and operation below the ground, and the regulation of waste disposal from operations);
- (3)imposing financial security requirements or fines/penalties on operators inconsistent with or in addition to the state's rules (at least as related to the satisfaction of state requirements);
- (4)imposing taxes or fees to conduct local government inspections of matters under state rules;
- (5)requiring operators to keep records and make them available for local government inspection (at least as related to state requirements); and
- (6) regulating noise from oil and gas operations.



Current County Comprehensive Plan

Number of policies in the Geology Element and the Agriculture Element dealing specifically with Oil and Gas Development

- review policies and maybe broaden some to more specifically include protection of more than Agricultural lands – wildlife habitat, etc.

Also review for consistency and potentially update Sustainability Element and other.

Land Use Code

Development Plan Review (DPR) Regulations

Development Plan Review effective October 1, 1993

- (1) setbacks from buildings (350 feet) and public rights-of-way (150 feet), to “be complied with to the maximum extent possible”;
- (2) compliance with specified noise requirements (these are expressly preempted by statute);
- (3) location of operations to minimize visual impact and surface land disturbance (including siting away from hills/ridges and significant environmental features; painting with colors that blend with the natural environment; location of facilities in existing disturbed areas, with specified exceptions; the requirement for buried pipelines/electrical lines; and landscaping/screening requirements);
- (4) construction of access roads per County Transportation Department requirements, preference for use of existing roads, and the requirements to obtain oversize/overweight vehicle permits and utilize transportation routes to minimize traffic hazards and public roadway impacts;
- (5) signs consistent with COGCC requirements;



Land Use Code

Development Plan Review (DPR) Regulations

- (6) consultation with state and County wildlife authorities where significant wildlife habitat is affected, including a prohibition against threatening an endangered species;
- (7) air emissions compliant with state and County public health requirements;
- (8) operations compliant with state water quality control and drinking water standards;
- (9) Waste disposal/treatment consistent with COGCC requirements and any applicable County Public Health and emergency response authorities;
- (10) location of production tanks within containment berms;
- (11) land reclamation plan approval;
- (12) compliance with all COGCC requirements (including the ability to appeal permit conditions to BOCC which the operator asserts conflict with COGCC rules);
- and
- (13) consistency with the BCCP, applicable intergovernmental land use agreements, and the Land Use Code.



Land Use Code

Other jurisdictions and programs

City of Longmont – considering new regulations this month (prohibits certain facilities in the City – waste disposal wells, temporary worker housing), currently under moratorium.

Town of Erie – moving toward moratorium while regulations are considered.

For full list of communities and issues please see the staff report posted at <http://www.bouldercounty.org/live/property/pages/oilgas.aspx>



A few of the Efforts and studies underway or recently completed

- EPA's Study of Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources – (<http://www.epa.gov/hfstudy/>) ongoing 2014
- Governor Hickenlooper's Executive Order – Creating Task Force on Cooperative Strategies Regarding State & Local Regulations of Oil & Gas Development
- “NOAA-led study: Colorado oil and gas wells emit more pollutants than expected” – (<http://researchmatters.noaa.gov/news/Pages/COoilgas.aspx>)
- Monitoring Water Quality in Areas of Natural Gas Development: Guide for Private Water Well Owners - The Colorado Water and Energy Research Center (CWERC) at CU. (Expected in the next couple of months)
- COGCC stakeholder process to review the actual setbacks between wells and buildings, variations in setbacks in different areas or under other dissimilar circumstances, and reasons why more or less restrictive well-building setbacks should be adopted.



What are the issues the County is reviewing?

While some of the issues listed below may not be within the County's ability to regulate or control we will be doing a general preemption review of current County regulations and identifying where the County can and should have the ability to regulate. Where the County identifies areas where there is preemption but also potential local impacts the County will pursue working with the COGCC, other state and federal agencies and the legislature to find potential alternative solutions.

- Transportation Impacts to roads
- Impacts on environmental resources
 - Wildlife and plant habitat
 - Wetlands
 - Riparian areas
- Geologic hazards
- Storm water and drainage
- Noise and lighting
- Water quality impacts
- Air Quality – Methane emissions, Volatile Organic Compounds
- Land reclamation
- Agricultural land preservation
- Floodplain and Floodways
- Visual impacts and preservation of scenic views
- Operators responsibility to remove roads/facilities upon termination of the use.
- Historic/archeological/ cultural protection
- Spacing and setbacks



Considerations for moving forward

Staff believes that the following, guiding considerations - which are both legal and policy-oriented in nature - are appropriate to keep in mind as the department prepares updated amendments to the DPR Regulations (which are part of the Land Use Code and primarily incident to the County's planning and zoning authority):

1. Do the amendments address an area where the County has planning and zoning authority, as well as monitoring and enforcement expertise?
2. If the amendments provide local requirements addressing same subject areas as the COGCC's, are they expressly preempted by statute, and, if not, are they in an area that will be likely to invite "operational conflict" challenges? On the other hand, are they in an area that the County has traditionally regulated and is central to the County's implementation of its Comprehensive Plan, Land Use Code, and related regulations?
3. If the local requirements are in an area traditionally administered and enforced by state and/or federal agencies, what is the purpose of the County entering such area, where it has not before, and what can the County realistically accomplish by regulating in this extended fashion? Legal questions aside, does the County have the qualified staff to do so, or the funds to bring on qualified staff?
4. To what extent should the County incorporate into its regulations mandated compliance with the COGCC's and related agencies' requirements, particularly as it appears the COGCC has comprehensive enforcement authority over its own regulations?
5. In areas of overlapping jurisdictional concern, does it make more sense for the County to enact its own regulations, or to pursue some type of MOU or intergovernmental agreement with the COGCC?

*(Note: Slide inadvertently left out of March 1st presentation.
Information contained on page 2 of staff report.)*



Suggested steps for moving forward

ACTION/DIRECTION REQUESTED FROM BOARD OF COUNTY COMMISSIONERS ("BOCC") FOLLOWING PUBLIC HEARING:

1. To determine, based on County staff presentations and public testimony, whether staff should
 - (a) continue to acquire information on current and anticipated oil and gas activities and impacts, and
 - (b) review the County Comprehensive Plan and Land Use Code's oil and gas (Development Plan Review) regulations for their adequacy in addressing oil and gas development impacts, and
 - (c) draft and process proposed amendments to the Comprehensive Plan and Land Use Code to address the identified inadequacies.
2. To consider whether to direct staff to investigate and possibly retain outside consultants (geological/technical; economic; environmental; legal; other) to assist in the foregoing efforts, and/or to convene a public task force of interested groups and citizens for further study and recommendations to the County Planning Commission and BOCC.
3. To consider whether to schedule a joint, public study session between BOCC and the Planning Commission regarding this effort, and whether to invite involved government agencies and major interest groups to present information at such a session.
4. In light of the foregoing decisions, to decide whether to continue, amend, or terminate the temporary moratorium in Resolution 2012-16 (both as to the moratorium's current end date of August 2, 2012, and other substantive aspects of the moratorium).

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Information contained on page 2 of staff report.)*



Project updates and information

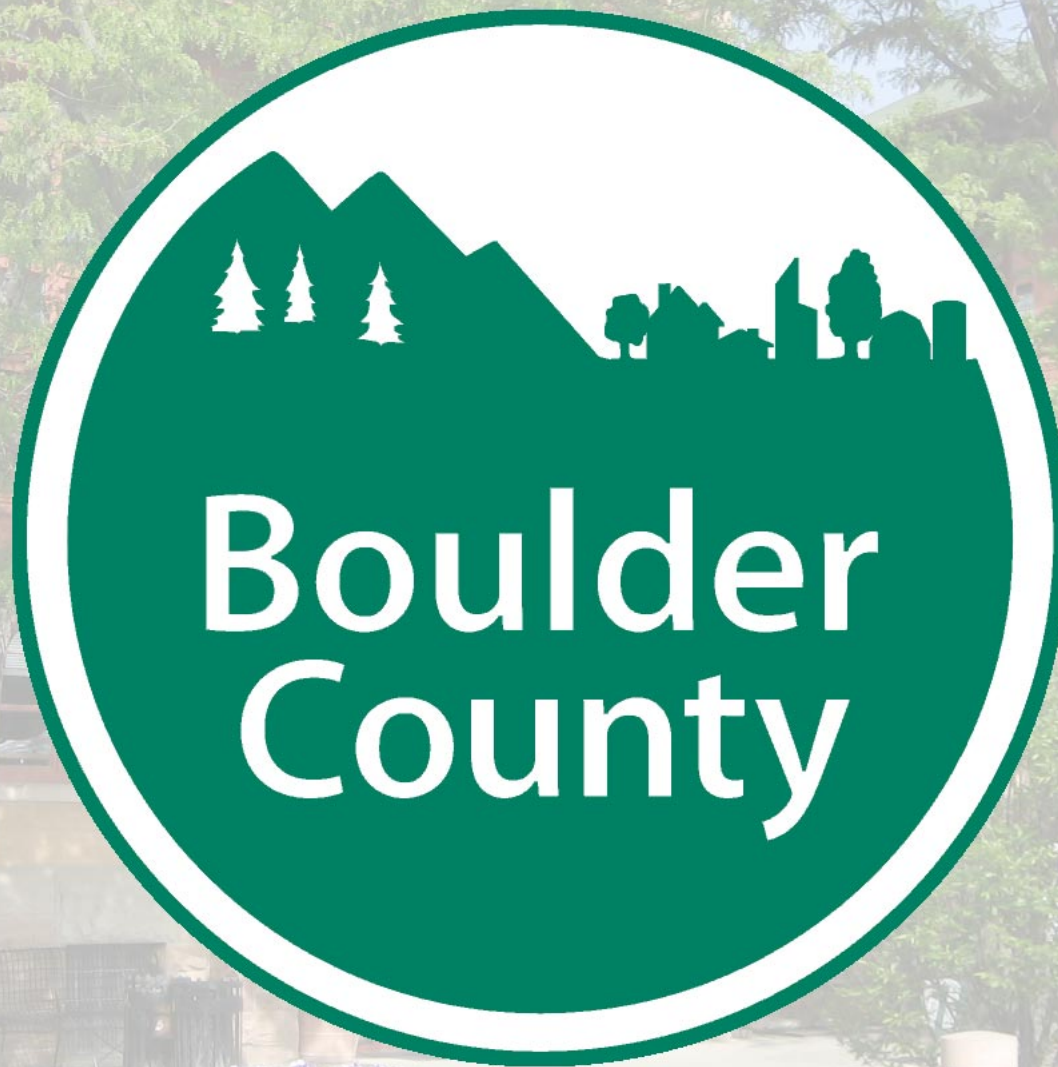
Project website at:

<http://www.bouldercounty.org/live/property/pages/oilgas.aspx>

Updates with further information, reports, meeting schedules, agendas, etc.

Assigned Docket number – DC-12-0003





Boulder County
Land Use Department

