

Boulder County



DC-19-0002: Amendments Related to Article 12 of the Land Use Code

Proposed Land Use Code amendments addressing oil & gas development, seismic testing, and companion changes to the Land Use Code

Board of County Commissioners Public Hearing

December 1, 2020 4PM

TODAY'S AGENDA

December 1:

1. Staff presentation
2. Public comment (2 mins / speaker)

December 3 (4PM) – BOCC will reconvene to ask staff questions, discuss, and take action on DC-19-0002

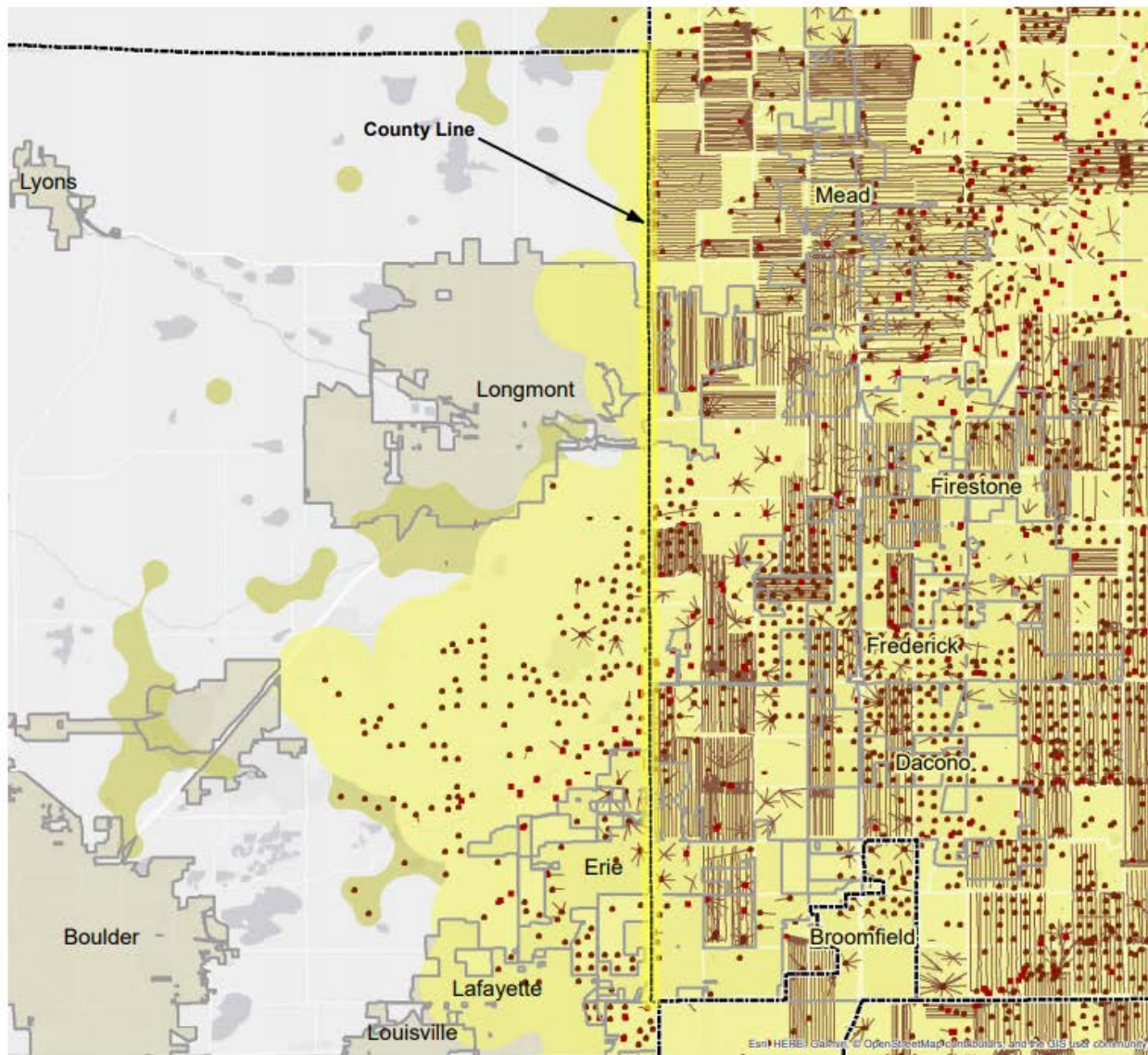
➤ Return on **December 10 (4PM)**, if necessary

County staff:

- Kim Sanchez, Deputy Director - Planning (Community Planning & Permitting (CP&P)) & Local Governmental Designee
- Jasmine Rodenburg, Senior Planner (CP&P)
- Kate Burke, Senior Assistant County Attorney (County Attorney's Office)

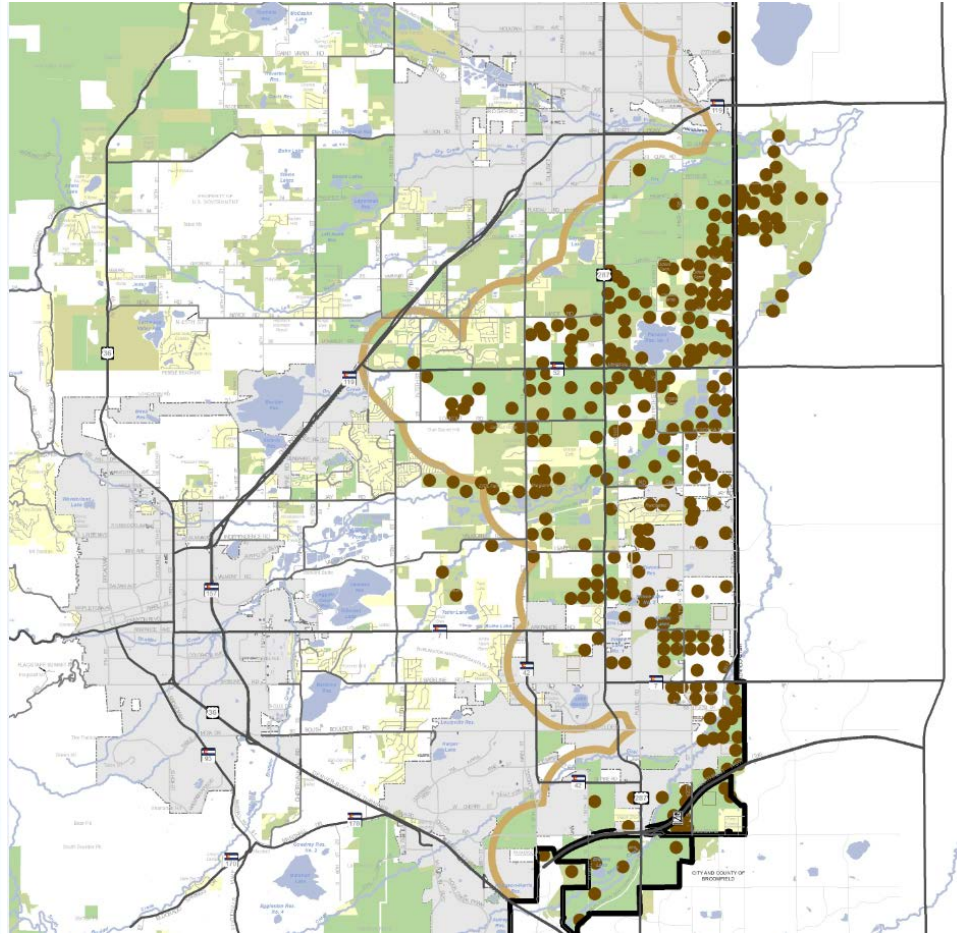
Boulder County





Boulder County





Traditional zoning
vs.
severed mineral estate

Boulder County



O&G CHANGES IN LAST 10 YEARS

- Shift toward **large-scale** and consolidated facilities
- Concerns with **intensity** of oil & gas development
- Concerns with impacts on **community, public health, and the environment**
 - Heightened interest in the Greater Wattenberg Area
 - Encroachments into populated areas
- **New evidence** of impacts on public health
- **Rulemakings** at the State (COGCC and AQCC)
 - ✓ Governor's Task Force Rulemaking
 - ✓ Mission Change Rulemaking



“MULTI-PRONGED” APPROACH TO ADDRESS OIL & GAS DEVELOPMENT

- **Oil & Gas Regulations**
- **County Funding of Studies & Monitoring Programs**
- **Continued Inspections**
- **Energy Efficiency Projects and Programs**
- **Legislative Work**
- **Court Cases**
- **State Rulemakings (COGCC, AQCC)**
 - ✓ **Complainant**
 - ✓ **2013 Flood Lessons Learned**
 - ✓ **Governor’s Task Force**
 - ✓ **School Setback**
 - ✓ **Mill Levy**
 - ✓ **Flowline (x2)**
 - ✓ **Pooling & Hearing Process Clean-up**
 - ✓ **“Mission Change”**
 - ✓ **Regulation 7- Leak Detection & Repair, Oil & Gas, Pneumatics**

Boulder County



S.B. 19-181

- S.B.19-181, known as “Protect Public Welfare Oil and Gas Operations,” was signed into law on April 16, 2019
 - Prioritizes the protection of public safety, health, welfare, and the environment in the regulation of the oil and gas industry
 - Strengthens local governments’ broad authority to regulate oil and gas development
- Boulder County last updated its oil & gas regulations in March 2017
- On June 4, 2019 the BOCC authorized amendments to Art.12 of the Land Use Code (Special Review for Oil and Gas Operations) for the purpose of re-evaluating our 2017 oil & gas regulations in light of S.B.19-181
- On June 28, 2019 the BOCC enacted a new moratorium while staff works on changes based on the new authorities granted by S.B.19-181
- COVID-19 delayed the scheduled public hearings that were to begin in March
- County staff and many public also actively participating in COGCC Mission Change Rulemaking to implement S.B.19-181 at the State
 - Current moratorium is in effect through **December 31, 2020**

Boulder County



Local Government Authority

S.B.19-181 clarified and granted additional authority to protect public health, safety, and welfare, including the following matters:

- the location and siting of oil and gas facilities
- impacts to public facilities and services
- water quality and source, noise, vibration, odor, light, dust, air emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security, traffic and transportation impacts, and other nuisance-type effects of oil and gas development
- financial securities, indemnification, and insurance to ensure compliance
- inspections oil and gas facilities
- ability to impose fines for leaks, spills, and emissions
- ability to impose fees on operators or owners to cover the costs of permitting and regulating, monitoring and inspection programs, and enforcement

Boulder County



PROCESS TO DATE AND OUTREACH

- Researched new areas of authority that were not previously included in our oil & gas regulations
- Hundreds of hours of legal and practical research
- Numerous internal staff meetings to discuss ideas and changes
- Collected comments from the public to consider in the changes
- Held Stakeholder discussions with environmental groups, neighborhood activist groups, and industry representatives
- Released First Draft Regulations for public review on March 6, 2020. After receiving more public comment, released Second Draft Regulations on October 20, 2020
- Most recent Draft Regulations (Third Draft) were released November 23, 2020
- Simultaneously participating in State Rulemakings (COGCC and AQCC)

Boulder County



LEGAL LANDSCAPE

- Pre-2019: *Longmont* and *Fort Collins* cases and operational conflict
- S.B. 19-181: new local authority and new local powers
 - Some new areas of authority: siting; water source; vibration; financial assurances
 - Highlighted new powers: inspection; fines/penalties
 - “No land use preemption”



Edges of the Legal Landscape

Regulations must be:

- For “surface impacts” and “land use”
- “Necessary and reasonable” to protect public health, safety, and welfare, and the environment and wildlife

November 1, 2020: *Our Health, Our Future, Our Longmont* case

- Boulder County District Court said fracking bans are not legal under S.B. 19-181

Boulder County



PROPOSED REGULATIONS

Boulder County



Operator Registration and Renewal (12-400)

- Required before applying for Special Use Review
- Key Submittal Requirements:
 - Map of all mineral rights
 - Instances of violations of state, federal, local requirements during past 10 years
 - List of all incidents such as accidents, spills releases in past 10 years
 - Financial Fitness



Pre-Existing Facilities (12-500)

- Standards and requirements for legally existing facilities
- Key Components:
 - Inspection requirements
 - Spill/leak/release reporting
 - Noise limitations
 - Odor limitations
 - Emergency Response Plan
 - Revegetation/Reclamation
 - Stormwater Quality Control



Well and Pipeline Abandonment/Decommissioning (12-600)

- Flowlines must be removed unless authorized by Director in consultation with landowner
- Allows for Conditions of Approval
 - Timing constraints
 - Tracer for pipelines abandoned in place
 - Revegetation/Reclamation



Seismic Testing (12-700)

- Permit required before any geophysical exploration activities are conducted
- Permit Application Requirements:
 - Vibration Monitoring and Control Plan
 - Prohibition of methods involving explosive materials (“shotholes”)
 - Insurance Requirements
 - Notice to nearby property owners including an offer of baseline condition and post-testing condition inspections



Special Review Process (12-800)

- Pre-application conference
- Application submittal
- Completeness Determination
- Notice to surface owners, tenants, and water source owners within one-mile and signage
- Neighborhood meeting with adjacent and surrounding landowners and other interested parties
- Referrals to county departments and agencies, including technical consultants, if needed
- Site visit
- Planning Commission public hearing
- Parks and Open Space Advisory Committee (POSAC) review, if well(s) is/are on or near county open space
- Board of County Commissioners public hearing

Boulder County



Application Requirements (12-900)

Must submit detailed information on the proposal and its anticipated impacts in their application materials, including:

- Verification of the operator's legal rights to use land, roads, and access minerals
- Insurance coverage
- 16 maps and information on current conditions at the proposed location, including the Operator's rationale behind choosing the selected site with respect to other possible locations
- Detailed information on the proposed facility, as well as worker training and records
- Assessments, studies, and plans from independent experts regarding the various types of anticipated impacts of the development and intended methods for avoiding, mitigating, or minimizing those impacts



REVIEW STANDARDS (12-1000)

- Staff, Planning Commission and the Board of County Commissioners will determine whether the proposed oil and gas facility or operation, individually and in light of the resulting cumulative impacts, complies with the Special Review standards.
 - The Applicant bears the burden of proving that the proposed oil and gas facilities and oil and gas operations meet the standards.
- A proposal meets the standards if it will either avoid adverse impacts to public health, safety, welfare, the environment and wildlife resources, or through the imposition of conditions of approval will sufficiently minimize and mitigate unavoidable impacts.



REVIEW STANDARDS (12-1000)

- Air Quality
- Water Use *NEW*
- Agricultural Land, Floodplains and Floodways, Drainage, Natural Resources, Water Bodies, Hazards, Wildlife, Recreational Areas/Trails
- Financial Fitness
- Noise and Vibration
- Odor
- Lighting
- Pipelines, Waste
- Water Quality
- Emergency Prevention, Response, and Safety
- Setbacks



SETBACKS (12-1000.V)

Minimum Setback from Dwellings, Educational Facilities and Child Care Centers

1. A Well Pad at an oil and gas facility must be located a minimum of 2,000 feet from an existing Dwelling and related residential uses.
2. A Well Pad at an oil and gas facility must be located a minimum of 2,000 feet from an Educational Facility or licensed Child Care Center.

Section 12-1100.A (Location) also allows for the proposed location to be adjusted based on review of the Standards.



Conditions of Approval (12-1100)

- Board of County Commissioners may impose specific conditions of approval to ensure compliance with the review standards.
- If conditions cannot be devised to make a proposed development protective, the proposal will be denied.

Conditions correspond to the Review Standards and include:

- ✓ Location, number of wells, pad dimensions, timing of project
- ✓ Air Quality – aggressive hydrocarbon emissions control measures
- ✓ Water Quality Monitoring and Well / Water Source Testing; prohibition of toxic chemicals in fracking fluids
- ✓ Spills, leaks, releases
- ✓ Compliance with emergency response plan
- ✓ Noise, odor, lighting, dust, traffic, transportation infrastructure
- ✓ Financial assurances



FINANCIAL ASSURANCES

Three aspects:

- **Registration (12-400, 12-500)**: provide audited financial documents for past 5 years
- **Insurance requirements (12-900)**: \$2 Million General Liability + \$10 Million Professional Liability + \$25 Million Pollution Liability + \$25 Million Well Control + \$25 Million Excess/Umbrella
- **Financial securities (12-900)**: financial pledges (e.g., bonds, letters of credit) to guarantee compliance with all conditions of approval through final reclamation



INSPECTIONS AND ENFORCEMENT

Inspections and violations (12-1400):

- Right to enter and inspect for all compliance with the Code
- If COGCC fails to enforce its own rules, County can file suit

Fines and Penalties (12-1500):

- \$300-\$15,000 per day depending on violation (statutes require some of these numbers)
- Fine will depend on nature and severity of the violation
- Non-financial penalties (**12-1400**) include stop work order



PUBLIC COMMENT

- Staff reviewed hundreds of public comments posted on County's Oil and Gas website:
<https://www.bouldercounty.org/property-and-land/land-use/planning/oil-gas-development/#public-comment>
- At Planning Commission hearing, the public reiterated many of the written comments including requests for bans and greater setback distances from more types of features (open space, etc.)
- Implemented several suggestions including:
 - Minimum setback between well pads and residences
 - Clarification on County's ability to deny applications
 - Numerous in text clarifications and edits



PLANNING COMMISSION ACTION

- At the November 10, 2020 Planning Commission public meeting, the Planning Commissioners asked numerous clarifying questions regarding the Draft Regulations
- Staff enumerated these points of discussion, questions and suggested changes Planning Commission asked staff to consider in the staff memo
- Staff incorporated many of the changes into the 11/23/2020 Draft Regulations
- Planning Commission approved and recommended approval of docket DC-19-0002, with their suggested changes, by a vote of 7-0.



SCHEDULE

Planning Commission

- ✓ **Monday, November 9, 2020**, 4 p.m. Planning Commission **public hearing** – public comment was taken.
- ✓ **Tuesday, November 10, 2020**, 4:00 p.m. Planning Commission **public meeting** – for questions / discussion. Planning Commission recommended approval to the BOCC.

Board of County Commissioners

- **Tuesday, December 1, 2020**, 4 p.m. Board of County Commissioners **public hearing** – public comment to be taken.
- **Thursday, December 3, 2020**, 4 p.m. Board of County Commissioners **public meeting** – no further testimony will be taken.
- **(If necessary) Thursday, December 10, 2020**, at 4 p.m. Board of County Commissioners public proceedings continued, if necessary.
- **(If necessary) Tuesday, December 15, 2020** at 4 p.m. Board of County Commissioners public proceedings continued, if necessary



BOULDER COUNTY O&G WEBSITE

[Property Search](#)[Jobs](#)[Volunteer](#)[Elections](#)[County Government](#)[Departments](#)[Contact](#)[Select Language](#)[FAMILIES
& ADULTS](#)[OPEN SPACE
& RECREATION](#)[PROPERTY
& LAND](#)[ROADS
& TRANSPORTATION](#)[ENVIRONMENT
& SUSTAINABILITY](#)[SAFETY
& LAW](#)[LICENSES, PERMITS
& RECORDS](#)

OIL & GAS DEVELOPMENT

[Home](#) / [Property & Land](#) / [Land Use](#) / [Planning Division](#) / [Oil & Gas Development](#)

Oil & Gas Development

Boulder County is concerned about the potential for significantly expanded oil and gas development within the county. We support appropriate tighter restrictions and increased local control to mitigate the impacts of these activities.

The Board of County Commissioners and staff have laid the groundwork for how the county will work to address the potentially hazardous impacts of oil and gas development on local public health, safety, and the environment.

In order to maximize the use of its limited local authority and protect county residents, Boulder County is committed to undertaking a series of legislative, legal, environmental, and public health approaches to help minimize the impacts of oil and gas development on people and the environment. View [details of the county's multi-pronged approach](#).

- ▼ ⓘ [Information on Public Participation at the COGCC](#)
- ▼ 📅 [Boulder County Oil & Gas Development Regulations](#)
- ▼ 📅 [Statement on Oil & Gas Development on Open Space](#)
- ▼ ☁️ [Air Quality Monitoring & Home Gas Detection](#)
- ▼ 🌿 [Atmospheric Monitoring at the Boulder Reservoir](#)
- ▼ ✉️ [Sign-up for oil/gas news updates](#)

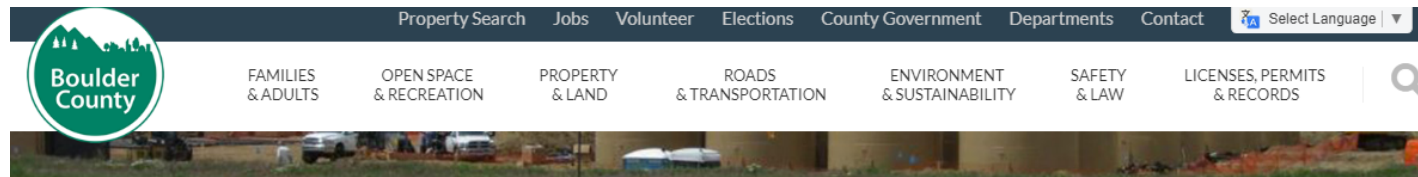
<https://boco.org/oilgas>

Boulder County



BOULDER COUNTY O&G WEBSITE

Sign-up for oil & gas news updates!



Oil & Gas Development

Boulder County is concerned about the potential for significantly expanded oil and gas development within the county. We support appropriate tighter restrictions and increased local control to mitigate the impacts of these activities.

The Board of County Commissioners and staff have laid the groundwork for how the county will work to address the potentially hazardous impacts of oil and gas development on local public health, safety, and the environment.

In order to maximize the use of its limited local authority and protect county residents, Boulder County is committed to undertaking a series of legislative, legal, environmental, and public health approaches to help minimize the impacts of oil and gas development on people and the environment. View [details of the county's multi-pronged approach](#).

- Information on Public Participation at the COGCC
- Boulder County Oil & Gas Development Regulations
- Statement on Oil & Gas Development on Open Space
- Air Quality Monitoring & Home Gas Detection
- Atmospheric Monitoring at the Boulder Reservoir
- Sign-up for oil/gas news updates**

Sign-up to receive notices of oil & gas meetings and news alerts from Boulder County

Enter Your Email Address Or SMS

Boulder County



COMMITMENT TO CLEAN ENERGY

- Boulder County is a founding member of **Colorado Communities for Climate Action** (<http://cc4ca.org/>) to help adopt climate policy, including leading best practices designed to make it faster, easier and more affordable for its residents to go solar.
- Locally, the County has adopted solar friendly permitting & building codes to support energy efficiency and renewable energy.

Boulder County



RENEWABLE ENERGY SERVICES

www.bouldercounty.org/environment/sustainability/switch-to-renewables/

- **EnergySmart** and **Partners for a Clean Environment (PACE)** provide residents and businesses energy, sustainability, climate mitigation consulting to encourage action
 - Over 60% of the Boulder County businesses have participated and 19,400 households.
 - In just participating households alone, \$40 million invested in energy efficiency and renewable energy.
 - Also, fuel switching efforts to help homeowners get off natural gas through **EnergySmart's Comfort 365** (<https://energysmartyes.com/comfort365/>)
- Boulder County EnergySmart partners with Elevations Credit Union and Clean Energy Credit Union to offer **Home Energy Loans**, which can be used for a wide range of energy efficiency and renewable energy upgrades including solar PV, windows, insulation, heating, cooling, water heating, and even electric bikes. These low-interest loans can be combined with **EnergySmart rebates** to fully fund your home energy efficiency upgrades.

Boulder County



CRITERIA REVIEW

Staff finds that proposed Land Use Code amendments meet the criteria in Art. 16-100 of the Land Use Code in that:

1. the existing text is in need of the amendment;
2. the amendment is not contrary to the intent and purpose of this Code;
3. the amendment is in accordance with the BCCP

Planning Commission approved (with some suggested changes) and recommended approval of this docket to the Board of County Commissioners.

Staff recommends that the BOCC approve DC-19-0002.

