

5-3.6. Use By Special Review – Oil and Gas Facilities

A. INTENT AND APPLICABILITY

1. The intent of this Section 5-3.6 is to describe the approval process and approval criteria to locate an Oil and Gas Facility in unincorporated Arapahoe County and to regulate the surface impacts of an Oil and Gas Facility’s operations to such extent as is reasonable and necessary to protect public health, safety, and welfare and the environment in accordance with the authority provided under SB19-181. Any Oil and Gas Facility and related site preparation or development, including any such Facility that requires a Colorado Oil and Gas Conservation Commission (“COGCC”) permit, shall not be located, constructed, or operated within the unincorporated jurisdiction of Arapahoe County without first obtaining Administrative Use by Special Review or Use by Special Review approval in accordance with the Arapahoe County Land Development Code, regardless of the zone district or category in which the operation will be located. If permitted in accordance with the requirements of the Arapahoe County Land Development Code, Oil and Gas Facilities are allowed in all zone districts, including Planned Unit Developments, subject to obtaining all required Federal, State, or other Local permits and approvals, and also subject to continued compliance with the requirements for the Oil and Gas Facility and the operations thereof as set forth in this Land Development Code, unless and to the extent waived or otherwise exempted pursuant to this Land Development Code.
2. The Administrative Use by Special Review process available as provided under this Section 5-3.6 shall apply only to an “Oil and Gas Facility” as defined in Chapter 7-2 of this Land Development Code.
3. Nothing in this Section of the Land Development Code is intended to waive or modify any applicable provision of the Arapahoe County Regulations Governing Areas and Activities of State Interest (1041 Regulations).
4. All Oil and Gas development authorized by this section shall comply with applicable provisions of the Arapahoe County building and engineering standards, including but not limited to, the Floodplain Regulations, the Building Code, the Grading, Erosion, and Sediment Control (GESC) Manual, the Stormwater Management Manual, the Stormwater Ordinance, and the Infrastructure Design and Construction Standards.

B. RELATIONSHIP TO STATE OF COLORADO RULES

To the extent that there are differing standards or any conflict between an Arapahoe County requirement and any State of Colorado law, regulation or rule, the stricter standard or law, regulation or rule shall apply.

C. RELATIONSHIP TO SECTION 5-3.4 OF THE LAND DEVELOPMENT CODE

1. This Section provides for an Administrative Use by Special Review process for Oil and Gas Facilities, so that if an applicant meets administrative approval criteria, as set forth in this Section 5-3.6, and obtains approval pursuant to the process set forth herein, then separate approval under Section 5-3.4.B (Use by Special Review) of this Land Development Code is not required.
2. As an alternative to the Administrative Use by Special Review process set forth in this Section for approval to locate a proposed Oil and Gas Facility in unincorporated Arapahoe County, an applicant may submit an application in compliance with Section 5-3.4 (Use by Special Review), except to the extent modified in 5-3.6.J of this Section.

Any Oil and Gas Facility approved through the USR process in Section 5-3.4 as modified by Subsection J of this Section 5-3.6 shall be subject to and operate in compliance with the Operational Standards specified in subsection F of this Section 5-3.6.

3. This Section, and Section 5-3.4 for a USR application if applicable, shall govern all applications for a permit to locate, construct or operate an Oil and Gas Facility, including wells, well pads, access roads and other related infrastructure, within the unincorporated jurisdiction of Arapahoe County. These regulations do not apply to pipelines, gathering systems or transmission lines. Pipelines, gathering systems and transmission lines are governed by the Use by Special Review process outlined in 5-3.4 and by the Arapahoe County 1041 Regulations.

D. ADMINISTRATIVE APPROVAL CRITERIA

In order to obtain Administrative Use by Special Review approval for an Oil and Gas Facility, an applicant shall first satisfy the following Administrative Review Criteria:

1. Satisfy Submittal Requirements: The application and exhibits for the Administrative Use by Special Review must satisfy all applicable submittal requirements in this Section 5-3.6 and in the Development Application Manual.
2. Compliance with Land Development Code Requirements: The proposed Oil and Gas Facility must comply with all siting and design requirements and standards specified in this Section 5-3.6.
3. Environmental/Public Health and Safety Impacts: The proposed Oil and Gas Facility must be designed to protect against and minimize adverse impacts to public health, safety, and welfare and to the environment. The Oil and Gas Facility must address and mitigate any site-specific conditions that, by reason of oil and gas operations at that location, present a risk of adverse impacts to the public health, safety, or welfare, or to the environment. Approvals may be conditioned in accordance with these regulations to the extent necessary and reasonable to protect the public health, safety, or welfare and the environment.
4. Emergency Service Providers: The Oil and Gas Facility applicant must provide a commitment to serve (“will serve”) letter from the authority having jurisdiction for providing emergency services (fire protection and emergency medical services) for that facility, or if no authority has jurisdiction, provide proof of a contract for emergency services from an emergency services provider with the ability to provide such emergency services.
5. Facilities on Arapahoe County Owned Property: For Oil and Gas Facilities proposed on Arapahoe County owned property, including open space property, the applicant shall provide an Alternative Location Analysis (ALA) for the proposed location that meets the requirements of Rule 304(b)(2)(C). as adopted by the Colorado Oil and Gas Conservation Commission in its Rules and Regulations, as amended from time to time. In the event such ALA demonstrates that a location not on County owned property is technically feasible and can meet the requirements of this Land Development Code for approval, the application for location on County owned property may be denied. In the event the ALA demonstrates that no location other than on the County property is technically feasible, the application shall be processed as a USR in accordance with the provisions of Section 5-3.4 and Section 5-3.6.J of the Land Development Code.

E. ADMINISTRATIVE PROCESS

1. Application Process

- a. Applications for an Administrative Use by Special Review for proposed Oil and Gas Facilities will follow the application process outlined in Section 5-2.1.B of the Land Development Code, Common Procedures for an Application.
 - b. Once a complete application has been submitted, County staff will refer the application for review to the various divisions of the PWD and other Arapahoe County Departments or Offices, as deemed appropriate. An application may require and will be referred for review to outside agencies such as Colorado Parks and Wildlife (CPW), any life-safety providers, adjacent jurisdictions, local public health department, the U. S. Army Corps of Engineers, and others as may be deemed appropriate.
 - c. The applicant shall provide a written response to all staff and referral agency comments.
 - d. Upon completion of the referral process and acceptance of the final copy of the complete application and exhibits by the PWD, the application materials will be forwarded for final review to the PWD Director.
2. Neighborhood Meeting

Prior to submitting an application to Arapahoe County, the applicant shall conduct a neighborhood meeting to describe and take neighbors' input on the proposed Oil and Gas Facility. The applicant shall send notification of the meeting to the Planning Division and to property owners and registered homeowners' associations within one mile of the proposed facility pad boundary. Meetings may be conducted in person or utilizing an electronic virtual or remote meeting platform. Notice of the meeting must be sent no less than 15 days prior to the scheduled meeting date. At said meeting, the applicant must provide information concerning the development plans for the specific facility, including the timing and phasing of construction, drilling and completion, the planned access route, and mitigations planned to address noise, light, odor, traffic, and visual impacts. The applicant shall include with its application for the proposed facility a summary of the neighborhood meeting and the list of attendees from the sign-in sheet(s).
3. Application Notice Requirements
 - a. The applicant shall provide written notification by U.S. Mail to all property owners of record, all occupied residences if occupants are different from record owner, and all registered homeowners' associations for residential subdivisions where any portion of the platted subdivision's boundary is within one mile of the pad boundary of the proposed Oil and Gas Facility that an application for an Administrative Use by Special Review for an Oil and Gas Facility, will be filed with the County. The Notice of Application shall meet the format prescribed by the County and shall be mailed at the time of filing the application with the County. The property owners of record shall be those identified in the County Assessor's property records. The Planning Division will provide the applicant with the names and addresses of the homeowners' associations. The applicant shall determine whether a residence is occupied by someone other than the owner and shall be responsible for such occupants.
 - b. Within five (5) days of filing its application with Arapahoe County, the applicant shall also post a sign listing the case number and type of case (Oil and Gas Facility), the phone number of the Planning Division, and the distance from the sign to the facility. The sign shall meet the format specified in Section 5-2.2.A.3 of the Land Development Code and it shall be posted for a period of at least fourteen (14) consecutive days. The sign shall be posted adjacent to and off the shoulder of the County road or other public highway, and at or near the intersection of the proposed facility's access road and the

public road, outside of the right-of-way or at such other location acceptable to and approved by Planning Division staff.

4. Application Submittal Requirements Found in the Development Application Manual (DAM) Applications for an Administrative Use by Special Review or for a Use by Special Review for an Oil and Gas Facility shall also comply with all relevant submittal requirements as set forth in the Development Application Manual.

5. Waiver Requests

An applicant may apply for a waiver or modification of the following requirements for a proposed Oil and Gas Facility: 1) neighborhood meetings, 2) the burying of temporary water lines at driveway and gravel road intersections, 3) visual mitigation, or 4) any other matter specifically identified as being eligible for a waiver or modification in this Section 5-3.6. A request to waive or modify a regulation shall be made in writing at the time of application and will be evaluated on the merit of the individual request. Requests must be justified by specific and extraordinary conditions of the location that make compliance with the particular standard or requirement not reasonably achievable or unnecessary and a showing that granting the request will not be detrimental to public health, safety, or welfare or the environment and is not otherwise inconsistent with the intent and purpose of the standard or requirement. A request under this Section 5-3.6.E.5 shall be submitted to the Director of Public Works and Development for decision. The applicant may appeal that decision to the Board of County Commissioners as provided in Section 5-3.6.G.7, below. A request for a waiver for a proposed Oil and Gas Facility will be decided in accordance with the provisions of this Section 5-3.6.E.5 and is not processed through the procedures for variances specified in Section 5-5.4 of this Land Development Code or subject to review by the Arapahoe County Board of Adjustment.

F. STANDARDS REQUIRED FOR OIL AND GAS FACILITIES

1. Regular Meetings

The Operator of any Oil and Gas Facility approved under this Section 5-3.6 or as a Use by Special Review as provided herein shall meet with the Director of Public Works and Development or his or her designee annually to monitor and discuss pertinent issues associated with the Operator's Facility or Facilities operating in the unincorporated territory of the County. At such Regular Meetings, the Operator and the Director or his or her designee will discuss the Operator's updated development plans, required reporting and recordkeeping, updates to the field-wide Emergency Response Plan (ERP), the facility-specific Emergency Action Plans (EAP) and Tactical Response Plans (TRP), outstanding training requirements, any health and safety issues, and potential implementation of new technology. An annual meeting may be conducted as a field visit to the Operator's Facility or Facilities and may be conducted more often than annually if desired by the Operator. Additional meetings in any one year may be required as necessary to address incidents, operational issues, or other issues related to the Facility or Facilities.

2. Setbacks

- a. All pad boundaries shall be located at least:

- i. 2,000 feet from any occupied structure, unless the owner of the occupied structure requests a lesser setback and the fire district agrees to provide service to the Oil and Gas Facility. This setback may be reduced provided that the Oil and Gas Facility application is approved through a Use by Special Review as provided in Section 5-

3.4 of the Land Development Code and provided that the reduction in setback is justified by specific and extraordinary conditions of the proposed location that make compliance with the particular standard or requirement not reasonably achievable or unnecessary and a showing that granting the request will not be detrimental to public health, safety, or welfare or the environment. However, in no case may this setback be reduced below 500 feet.

- ii. 2,000 feet from the nearest boundary of a platted lot smaller than 15 acres in area. This setback may be reduced provided that the Oil and Gas Facility application is approved through a Use by Special Review as provided in Section 5-3.4 of the Land Development Code and provided that the reduction in setback is justified by specific and extraordinary conditions of the proposed location that make compliance with the particular standard or requirement not reasonably achievable or unnecessary and a showing that granting the request will not be detrimental to public health, safety, or welfare or the environment. However, in no case may this setback be reduced below 500 feet.
 - iii. 200 feet from any adjacent property's boundary line.
 - iv. 100 feet from public right-of-ways.
 - v. 2,000 feet from a Designated Outside Activity Area.
 - vi. 2,640 feet from the nearest property line of an operating or closed landfill.
 - vii. Outside of a 100-year floodplain.
 - viii. 500 feet from the outer edge of any riparian area, or any ordinary highwater mark of any perennial or intermittent stream channel, or for any perennial surface water body, whichever is more restrictive.
- b.** All access roads shall be located at least 250 feet from a residential or non-residential property line, excluding industrial zoned properties.
- c.** No new occupied structure shall be constructed less than:
- i. 250 feet from an existing Oil and Gas wellhead of any status (permitted but not drilled yet, drilling, completing, producing, active gas storage, injecting, shut-in, temporarily abandoned, dry and abandoned, or plugged and abandoned prior to 2014).
 - ii. 150 feet from a plugged and abandoned oil and gas well or remaining equipment that was plugged and abandoned from 2014 onward.
- 3.** Health and Safety Requirements
- a.** The applicant must submit an initial facility-specific Emergency Action Plan (EAP) and an initial facility-specific Tactical Response Plan (TRP) with an application for any new Oil and Gas Facility. The initial EAP and the initial TRP shall be forwarded to the County Office of Emergency Management ("OEM") for approval. Provided that an Administrative Use by Special Review or full USR has been approved for the proposed Oil and Gas Facility and provided that OEM has approved the initial EAP and the initial TRP and further provided that required engineering permits have been obtained from Arapahoe County, the applicant or other Operator may commence construction of the pad and access road for the proposed Oil and Gas Facility. After the pad and access road have been constructed, the Operator shall prepare ArcGIS Shape files for the well pad and access road. The Operator shall prepare and provide to OEM a detailed EAP and a detailed TRP, which incorporate the ArcGIS information for OEM's review and approval prior to commencing any drilling at the site. OEM shall review and approve or deny approval of the detailed EAP and TRP within two weeks of submission by the

Operator. The initial and detailed EAP and TRP shall follow the templates as specified in the DAM.

- b.** The EAP and TRP shall be updated annually and whenever there is any change in or need to change any of the content of the EAP or TRP, such as but not limited to, the addition or subtraction of chemicals used or stored on site.
- c.** The Operator shall coordinate with the fire district having jurisdiction at the facility in establishing evacuation routes in the event of an emergency at the facility. Evacuation route considerations will include any occupied structures, platted lots, critical infrastructure, public facilities, schools, or other high-occupancy buildings that are within proximity to the oil and gas facility, and routes shall be based on guidance from the fire district and OEM.
- d.** The Operator shall maintain and provide to the County 24-hour contact information for the Operator and shall maintain 24-hour contact information for all contractors and subcontractors working at the facility. Operator shall provide all such contractor and subcontractor contact information to the County upon request.
- e.** The Operator shall maintain a Hazardous Materials Inventory Statement for all hazardous materials on site at the facility and shall provide the Statement to the fire district having jurisdiction at the facility and OEM on an annual basis.
- f.** The Operator shall provide OEM and the fire district having jurisdiction at the facility with a list of all chemicals used or stored on each site from the time of construction to abandonment of the facility. The list of chemicals will be updated whenever new chemicals are added or removed, and such updated list shall be provided promptly to OEM.
- g.** Upon reasonable advance notice, no less than 8 hours, to the Operator, the Operator shall provide access to the fire district having jurisdiction over the facility and to County staff for inspection of the Oil and Gas Facility to determine compliance with applicable provisions of this Land Development Code, fire codes, and public safety standards.
- h.** The Operator shall mark all wells and all well pads with directional signage in a conspicuous place at or near the intersection of the access road with the public road, from the time of initial drilling until final abandonment. The Operator shall maintain signs in a good and legible condition and shall replace damaged or vandalized signs within fourteen (14) days. Directional signs shall be placed at locations and shall contain directions sufficient to advise emergency crews where drilling or completion is taking place.
- i.** A sign with the Operator's 24/7 contact information, the address for the COGCC complaint website, shall be placed at the entrance to the Oil and Gas Facility. All signage content shall follow COGCC regulations for such signage, except to the extent that COGCC regulations are inconsistent with the above stated County signage content requirements.
- j.** The Operator shall repair any damages to County infrastructure or property caused by Operator's activities or omissions, or that is caused by any emergencies that occur at the facility, in compliance with the Operator's Road Damage Agreement.
- k.** Training
 - i.** The Operator shall conduct a coordinated training exercise with OEM and the fire district having jurisdiction at the facility for at least one well pad every year. If the Operator's standard well pad design layout changes, then an additional

coordinated training exercise will be conducted that year and every time the standard pad design changes.

- ii. Key personnel at an Oil and Gas Facility are required to complete the National Incident Management System (NIMS) training courses IS-100.C and IS-700.B prior to commencement of drilling operations at the Oil and Gas Facility. Key personnel shall include those employees of the Operator and any field consultants who are team leads or equivalent having supervisory authority over any of the oil and gas operations conducted at the Facility. OEM may also specify additional specific training requirements pertinent to the proposed Facility that will be required for key personnel prior to the start of drilling. The Operator shall provide to County certificates of completion of the NIMS trainings required in this paragraph at least one week prior to the start of drilling and shall provide certificates of completion for any new or replacement key personnel at a Facility within one month of the person commencing work at the Facility.
- l. Fire Prevention and Procedures**
 - i. The Operator shall store a quantity of water or other fire suppressant material on or near the site in the amount, type and location approved by the fire district having jurisdiction over the Facility. Alternatively, if approved by the fire district having jurisdiction over the facility, the Operator will provide a sufficient supply of an approved fire suppressant material to the fire district for use at the Operator's facilities.
 - ii. No open burning, except flaring, shall occur on the site of any Oil and Gas Facility.
- m. Incident Reporting**
 - i. All emergencies shall be reported to 911 immediately upon discovery, and as soon as reasonably possible to Office of Emergency Management and the County Local Government Designee (LGD). In the case of an emergency situation where a delay caused by reporting would endanger public health, safety, welfare, or the environment or wildlife, the initial notice may be given orally. Formal incident reports are required for, but not limited to, the following incidents: spills, releases, uncontrolled release of pressure, loss of well control, vandalism, terrorist activity, fires, explosions, detonations, lightning strikes, any accidental or natural event that damages equipment, accidents resulting in fatalities, significant injuries or chemical exposures, or any condition or occurrence that threatens or harms safety on any of the Operator's facilities, including pipelines. Formal written incident reports for all reportable incidents shall be submitted to the Office of Emergency Management, the fire district having jurisdiction at the facility, and the County LGD within three (3) calendar days of the incident. When in doubt as to whether the incident is reportable, the Operator will contact the County LGD.
 - ii. The Operator shall submit copies of any initial and supplemental spill report filed with the COGCC to the County LGD, OEM, and the fire district having jurisdiction at the facility, as well as any associated remediation reports, all within three calendar (3) days of filing with the COGCC. Those copies may be submitted electronically, if electronic submission is available.
- n. Spill and Release Reporting**
 - i. The Operator shall provide a copy of the Spill Prevention, Control and Countermeasures (SPCC) Plan for each facility, prepared in compliance with 40 CFR Part 112 (as amended), to the fire district having jurisdiction at the facility and to

OEM prior to the start of production. The Operator shall also provide to the fire district and OEM a listing of hazardous chemicals used on site if required by the Emergency Planning and Community Right-to-Know Act (42 USC 11001, *et seq.* as amended) and related regulations. If the holding capacity of any planned on-site equipment or storage tank is changed from what is identified in the SPCC or if the listing of hazardous chemicals is changed from what was identified in the SPCC, the Operator shall update the SPCC and provide the update to the fire district with jurisdiction over the Facility, to OEM and to the LGD.

- ii. The Operator shall make available at each well pad and shall require its field staff or contractors to carry, spill response kits capable of mitigating small to mid-size spills (5 to 50 gallons).
- iii. Operator shall submit all reports required under COGCC Rule 912.b to OEM, the fire district serving the facility, and to the LGD. Spill containment and treatment does not relieve the Operator of any spill incident reporting obligations required under these or other applicable federal, State, or local law or regulations.
- iv. The Operator will install automated safety systems on all new facilities. Each system will include a Surface Safety Valve (“SSV”) or wellhead master control valve, installed before the commencement of the production phase and connected to the production tubing at the surface. The SSV or wellhead master control valve shall be capable of remotely shutting the well in should upset conditions be detected. The SSV will have documented, quarterly testing to ensure functionality per manufacturer’s specifications. The Operator shall maintain and keep the quarterly testing results records for at least three years and said records shall be made available to the County upon request by the PWD Director.

4. Lightning Response

- a. If damage is sustained to any portion of a facility due to a lightning strike, the entire facility shall be shut in immediately and inspected by the Operator prior to restarting operations at the facility.

5. Secondary Containment for Onsite Storage Tanks

- a. Secondary Containment is required around aboveground produced water and crude oil storage tanks and shall be constructed of steel berms with synthetic liners or earthen berms constructed of compacted soil and armored with cobbles. Secondary containment shall be of sufficient capacity and effective to contain at least 1.5 times the volume of the largest tank.
- b. Secondary containment is required around any other aboveground storage tanks or containers of any liquid substance other than fresh water on well pads, and specifically including but not limited to solvents, methanol, fuels, coolants, antifreezes, or lubricants or lubricating oil, and shall have sufficient capacity and be effective to contain at least 1.5 times the volume of the largest tank.
- c. All secondary containment shall be inspected for evidence of discharge weekly by the Operator or their contractors and within 48 hours of any precipitation event sufficient to reduce the capacity of the secondary containment to less than 1.5 times the volume of the largest tank. Such accumulated precipitation must be removed within 24 hours of an inspection.
- d. The Operator shall keep written records of secondary containment inspections and shall maintain such for at least three (3) years; the Operator shall make such records available to the County upon the written request of the PWD Director.

- 6. Disposal of Drill Cuttings**
 - a.** Drill cuttings must be disposed offsite at least twice weekly, at a State-approved solid waste facility. No onsite disposal is allowed.
- 7. Pad Surface**
 - a.** The surface of a pad shall be paved with either crushed granite or gravel, in a sufficient amount to eliminate mud-tracking offsite and to comply with the County's Grading Erosion and Sediment Control regulations.
- 8. Number of Tanks and Tank Separation Requirements**
 - a.** All oil and produced water storage tanks shall be spaced at least 6 feet apart.
 - b.** No Oil and Gas Facility shall be permitted to have more than a combined total of nine (9) oil, produced water and/or condensate tanks, with a total Facility capacity of no more than 6750 barrels.
- 9. Groundwater Baseline Sampling and Monitoring**
 - a.** The Operator shall, at its own cost, perform initial baseline sampling and testing of all water sources located within one-half (1/2) mile radius of Oil and Gas Facility if requested by the owner of such water source or owner of land upon which such water source is located. If no water sources are available in a one-half mile radius of the proposed Facility, the Operator shall sample and analyze up to two (2) down-gradient water sources in a one-mile radius of the proposed Facility. The written results of such baseline testing shall be provided to the requesting property owner, COGCC and to the County.
 - b.** Water sampling and testing shall be performed in accordance with the standards and requirements specified in COGCC's Rule 615 a. through f. and as amended from time to time, except for 615 b. (2) and 615 c. (1).
 - c.** The requirement to test a well upon request does not apply if the water well has already been tested by any Operator and the Operator is able to furnish such results to County or if access is denied.
 - d.** The Operator shall sample, on a one-time basis, down-gradient and perennial surface water within a one-half (1/2) mile of a proposed well pad prior to the construction phase.
 - e.** The Operator shall provide a letter notice to all owners of properties within a one-half (1/2) mile radius of the proposed pad with a water well listed in the State of Colorado Division of Water Resources database, to inform those water well owners of the opportunity to have their water wells sampled prior to drilling.
 - f.** For all water sources for which the Operator has performed initial baseline sampling at the request of the property owner in accordance with these regulations, the Operator shall also perform subsequent sampling and testing of such water sources on the schedule specified in and in accordance with COGCC Rule 615 d. The written results of such subsequent testing shall be provided to the requesting property owner, COGCC and to the County.
- 10. Noise Mitigation Requirements**
 - a.** Noise emitted from the facility pad shall not exceed 60 dBA or 65dBC, measured at the nearest property line of the property with the nearest occupied structure. These noise levels, as measured, constitute the Maximum Permissible Limit of noise that may be allowed to emanate off site from the Oil and Gas Facility.

- b.** During the hours between 7:00 AM and the next 7:00 PM, the maximum permissible noise levels may be increased 10 dB(A) for a period not to exceed 15 minutes in any 1-hour period. The increase is permissible only for a 1-hour period during any 12 hours.
- c.** The Operator may apply for a modification or waiver to exceed the Maximum Permissible Limit in accordance with and subject to the standards in Section 5-6-3.6.E.5 above where the Oil and Gas Facility is proposed to be located in an area with existing ambient background noise levels that are at or above the Maximum Permissible Limit or if proposed for an area that is sufficiently remote from any property with an occupied structure or any High Priority Habitat, provided that the lack of High Priority Habitat is supported by recommendation of CPW. The Operator may also apply for a waiver in accordance with and subject to the standards in Section 5-6.3.6.E.5 of the requirements below to prepare a noise survey and Noise Mitigation Plan for a pad site that will not contain any oil and gas wells and will not be drilled or fracked.
- d.** The Operator shall conduct an ambient noise survey for each proposed well pad no more than 90 days prior to application in order to establish baseline noise levels for the site, and the Operator shall also conduct noise modeling for the well pad to simulate noise during drilling and completion.
- e.** The noise survey and the noise modeling shall be used to create a Noise Mitigation Plan for the site for keeping sound emissions from the site within the Maximum Permissible Limit. The Noise Mitigation Plan shall describe noise mitigation practices, equipment, strategies, infrastructure, or other strategies to be used and implemented at the Oil and Gas Facility in order to comply with the Maximum Permissible Level of noise emanating from the Facility. The Operator shall update the Noise Mitigation Plan for any changes in equipment that may reasonably be expected to affect the ambient noise levels at the site or if the Facility is not constructed within two (2) years of the date of the County's Administrative Use by Special Review or Use by Special Review approval for the Facility. The Noise Mitigation Plan shall also be updated if any new occupied structure is constructed within 2,000 feet of the pad boundary, between the time of Administrative Use by Special Review or Use by Special Review approval of the Facility and the commencement of drilling. The Operator shall provide the updated Noise Mitigation Plan and implement any strategies identified in the updated plan prior to putting such new equipment into operation or prior to commencing construction of the Facility as applicable.
- f.** If the noise modeling indicates that noise levels for either or both A-Scale (dBA) and C-Scale (dBC) noise for drilling and completion will exceed the Maximum Permissible Level at the property line of any property with an occupied structure, where that structure is within 2,000 feet of the pad, additional noise mitigation measures will be required as necessary to achieve the Maximum Permissible Level.
- g.** If the noise modeling indicates that drilling or completion activity or production equipment on a well pad without noise mitigation will exceed the Maximum Permissible Limit, notwithstanding other mitigations that may be proposed in the Noise Mitigation Plan, sound walls shall be constructed prior to both drilling and completion commencing.
- h.** The Noise Mitigation Plan shall address noise/vibration through sound walls and other practices such as, but not limited to, utilizing electric equipment, Tier 4 diesel engines, installing mufflers or covers on noisy equipment or the use of Quiet Fleet™, or similar

noise mitigation. If sound walls will be required for mitigation of noise during completion, they shall be erected prior to drilling.

- i.** Additional mitigations, as necessary to achieve the compliance with the Maximum Permissible level, must be described and used by the Operator if C-scale noise levels are increased to the larger of either (i) 5db over ambient or (ii) 65 dBC at the property line of the property upon which the nearest occupied structure exists. The County may require larger setbacks and/or sound walls or other structures on a case-by-case basis for mitigation of C scale noise, based on data from the noise model.
 - j.** The Operator shall follow the most recent and most appropriate BMPs to reduce noise related to drilling and completion.
 - k.** Tubular goods may not be unloaded from 8 PM to 7 AM unless there are no occupied structures within 2,640 feet
 - l.** Engine idling shall be minimized.
 - m.** The Operator shall provide a 24-hour contact number for noise complaints on the facility sign required in section 5-3.6.F.3.h, as well as the COGCC's complaint hotline number.
- 11. Access Road Standards**
 - a.** Prior to commencing construction of the Oil and Gas Facility, the Operator shall connect the site via an access road designed to support an imposed load of 75,000 pounds that will accommodate emergency response vehicles such as, but not limited to, law enforcement, emergency command vehicles (cars/SUVs), ambulances, hazardous materials response vehicles, water tenders, and fire apparatus during construction and operation of new tank batteries, new drilling activity and reworks or recompletions of existing wells, unless a local fire department or fire district agrees in writing to a different or lesser standard for the access road..
 - b.** Access roads shall be constructed to be at least sixteen (16') feet wide with at least four (4") inch road base.
 - c.** The Operator shall maintain such access roads in good condition and suitable for emergency vehicle use until such time as the Oil and Gas Facility has been plugged and abandoned.
 - d.** Best efforts will be made to improve inadequate access to existing tank battery sites identified by the fire district or County as determined through service calls and demonstrated problems of access to the site.
 - e.** The County and/or appropriate emergency response agency may conduct spot inspections of access roads to ensure that emergency access in accordance with this section is maintained.
- 12. Odor Mitigation**
 - a.** The Operator shall prevent odors migrating offsite during drilling through the use of low-odor Category III drilling fluid, unless a waiver or modification is allowed under 5-3.6.E.5 of these regulations
 - b.** The Operator shall use closed-loop systems in place of open pits.
 - c.** The Operator shall proactively respond to and address odor complaints.
 - d.** The Operator may be required to address odor complaints with additional measures such as wiping down drill pipe, increasing mud additives, using filtration systems, enclosing shale shakers and frequently transporting drill cuttings offsite for disposal.
- 13. Site Lighting**

- a. All site lighting shall be directed downward and inward to prevent light spill outside the pad.
 - b. Wherever possible, lights will be mounted on the inside of the sound wall.
 - c. Any lights not concealed by a sound wall must be IES (Illuminating Engineering Society) full cutoff or shielded/screened to minimize the amount of light leaving the pad
 - d. During the production phase, site lighting shall be turned off between the hours of 10:00 PM and dawn. Motion-sensing lights may remain active during those hours.
 - e. Upon receipt of a lighting complaint and review by the Planning Division, the Operator may be required to address lighting complaints within 24 hours of the Planning Division's review of the complaint, with additional mitigation measures.
- 14. Visual Mitigation**
- a. Well pads within 1,320 feet of a property line of a property containing an occupied structure, a platted lot, or a parcel of 40 acres or smaller, shall be designed with some form of visual mitigation, to include but not be limited to, low-profile production equipment, solid fencing, berming, or landscaping.
 - b. Landscaping or fencing around the perimeter of the pad shall be installed within one year of the first well's completion. The screening shall be designed to minimize visual impacts from adjacent properties and the nearest streets.
 - c. Production pads shall be maintained free of vegetation, except such vegetation as may be required for interim reclamation or Arapahoe County GESC regulation requirements, and shall be maintained free of rubbish and debris. For the purposes of this Visual Mitigation regulation only, a production pad may exclude the reclaimed area, approved through a County-issued GESC permit.
 - d. Storage of equipment not associated with the on-going oil and gas operations at a specific pad is prohibited on that pad.
 - e. Privacy or solid fencing shall be Class 5 – Solid Fencing as defined in section 4.3 of the Land Development Code, at least 8 feet high and painted or stained with natural wood colors.
 - f. Whenever possible, the Operator shall use existing natural contours and existing vegetation to conceal the site from view.
 - g. Whenever possible, the Operator shall minimize the size and number of tanks and equipment installed or maintained on a production pad. When available, as provided below, use of pipelines to reduce the size and number of tanks and equipment maintained on a production pad is encouraged.
- 15. Locks/Emergency Access Hardware**
- a. The Operator shall provide approved emergency access hardware for any locked facility gates or access points.
- 16. Traffic Mitigation and Reduction Measures**
- a. The Operator shall make best efforts to schedule its traffic to limit heavy truck traffic on County roads during peak commuting hours and during school bus hours and shall comply with any restrictions established in accordance with the Road Damage Agreement.
 - b. The Operator shall use pipelines for the transport of produced water and hydrocarbon liquids from the well pad, wherever available.
 - c. To reduce traffic associated with the Operator's drilling and completion activities, the Operator is allowed to use temporary surface lines for transportation of water needed

- 19. Notification of Commencement of Geophysical Exploration/Seismic Testing, Construction, Drilling, Completion, and Flaring**
 - a.** The Operator shall provide advance written notice to the Planning Division of the projected commencement of geophysical exploration/seismic testing; the construction phase, drilling phase, and completion phase of each new well; and each workover one week prior to the start of each phase.
 - b.** Flaring shall be reported to the County LGD via email or text message prior to flaring whenever possible, or during the flaring event. An updated notice will only be required if the commencement of any phase is delayed more than one week from the original date indicated in the notice.
- 20. New Technologies**

The County may require modifications to equipment for drilling, completion, or production operations to incorporate new technologies for reduction of noise, odor, dust or for mitigating other surface impacts caused by the Oil and Gas Facility or its operations if such new technologies are technologically sound, economically practical, and commercially available to the Operator.
- 21. Compliance With Laws and Regulations**

The Oil and Gas Facility shall be operated in compliance with all applicable federal, state, and local laws and regulations.

G. APPROVAL/DENIAL/CONDITIONS OF APPROVAL OF ADMINISTRATIVE USE BY SPECIAL REVIEW/APPEAL

- 1. Action to Approve, Conditionally Approve or Deny**

The PWD Director may approve, approve with conditions, or deny an Administrative Use by Special Review application for an Oil and Gas Facility. Written notice of the decision shall promptly be provided to the applicant, and, if denied, the notice shall include a statement of the reason(s) for denial.
- 2. Revocation of Approval**

Approval may be revoked, after notice of the grounds for such proposed revocation and a hearing before the Arapahoe County Board of County Commissioners, if the Operator fails to meet or fails to continue to meet any requirements of this Land Development Code or any Conditions of Approval governing the installation and operation of an Oil and Gas Facility. The hearing will be conducted as a general business item at a regular meeting of the Board of County Commissioners. At said hearing, the Planning Division shall present evidence of the grounds for revocation of the approval and the Operator shall be afforded the opportunity at such hearing to present evidence in response to the proposed revocation. The Operator may appeal the Board of County Commissioners' decision in accordance with Rule 106(a)(IV) of the Colorado Rules of Civil Procedure.
- 3. Recordation**

Arapahoe County Public Works & Development shall record the approved permit for an Administrative Use by Special Review or for a Use by Special Review under Section 5-3.4 of the Land Development Code and the approved site plan in the Office of the Arapahoe County Clerk and Recorder within 30 days of the approval. The applicant shall pay any recordation fees.
- 4. PWD Director's Discretion to Refer to the Board**

In lieu of the PWD Director making a decision on an application, the Director has the discretion to refer any application for Administrative Use by Special Review or amendment thereto to the Board for its consideration and decision at a public hearing. In such event, the Board shall make its determination based upon the requirements of this Section; however, unless waived by the Board, compliance with the notice requirements set forth in Section 5-3.4.C.2. is required prior to the Board hearing. At such public hearing, the Board may approve, approve with conditions, or deny the application.

5. Expiration of Approval
 - a. An approval of the Administrative Use by Special Review, as delineated in the application, shall automatically expire three (3) years after the date of recordation, unless the facility is already substantially commenced by the drilling of at least one well on a pad.
 - b. For good cause shown, the Planning Division Manager or designee may grant a time extension to the expiration date stated in this Section for up to one year, upon a written request by the applicant. Such request shall be submitted in writing to the Planning Division Manager no less than sixty (60) days before the date of expiration of the approval.
 - c. The Board may, for good cause shown, grant an additional extension for an additional one-year period.
 - d. If drilling of a well is not completed within the time allowed under the original permit or any extension granted pursuant to this Section 5-3.6.G.5, the approval shall lapse and a new application is required. After a lapsed approval, the Oil and Gas Facility may be constructed, completed, or produced only in compliance with the Land Development Code in effect at the time of the new application.
6. Permits Required Prior to Commencement of Operations
 - a. If applicable under the Land Development Code or other Arapahoe County code or regulation, an Access Permit issued under the Infrastructure Design and Construction Standards, a GESC Permit, a Roadway Damage Agreement and Oversize/Overweight Vehicle Permit shall be required prior to the development of an Oil and Gas Facility. A Floodplain Development Permit shall be required prior to any work within a floodplain. A Building Permit may be required prior to construction of structures or the erection of equipment within the Oil and Gas Facility in accordance with the Arapahoe County Building Code.
7. Appeal of Decision on Application for Administrative Use by Special Review
 - a. An applicant may appeal the Public Works and Development Director's denial of an application for an Administrative Use by Special Review for an Oil and Gas Facility, denial of a waiver request, or any conditions of approval, to the Board of County Commissioners for a *de novo* hearing. The Applicant must file the appeal within fourteen (14) calendar days of the date of the PWD Director's decision by submitting a letter of appeal to the Planning Division Manager. Thereafter, the matter will be scheduled on the next available agenda of the Board, following public notice required by Section 5-3.4.C.2. At such hearing, the Board may affirm, reverse, or modify the decision of the PWD Director, based upon the criteria set forth in this Section 5-3.6.

H. ADMINISTRATIVE AMENDMENT

1. If the Applicant or the Operator proposes changes from the plans approved through the Administrative Use by Special Review, including but not limited to any changes in the

source or location of water to be used by the Oil and Gas Facility, the type and size of equipment on the facility or visual mitigation measures, the Applicant is required to submit an amendment to the approved Administrative Use by Special Review plans showing the proposed changes. The PWD Director may approve, conditionally approve, or deny the proposed amendment in accordance with the provisions of this Section 5-3.6. The proposed amendment will be reviewed by PWD staff and, as needed for the review of the application, PWD Staff may require additional information. The amended application will need to meet all requirements of this Section and be approved in writing. If the BOCC approved the original application on appeal, as a USR, or by reason of its otherwise having been elevated to the BOCC for decision under this Section 5-3.6, the proposed amendment shall be referred to the BOCC for consideration and decision following public hearing as provided in Section 5-3.6.G.4 above. The PWD Director may exercise his or her discretion to elevate any proposed amendment to the BOCC for consideration and decision as provided in Section 5-3.6.G.4 above. Upon recommendation of PWD Staff, the PWD Director may waive the need for amendment of the Administrative Use by Special Review or other BOCC approved Oil and Gas Facility permit provided that the proposed change is found to be minor, with no material effect to or departure from the original approval, and without the potential for significant surface impacts to public health, safety, welfare, or the environment at the Facility site.

I. TRANSFER/SALE OF FACILITIES TO A NEW OPERATOR

The Operator must notify the Planning Division in writing within seven days of the closing of any transfer of an Oil and Gas Facility or Facilities to a different Operator or other successor owner. Prior to commencing any operations at the site of the transferred Oil and Gas Facility, the new Operator or successor owner must first provide the following to the County:

1. Letter(s) authorizing the transfer of the Oil and Gas Facility operation as approved through the original Administrative Use by Special Review or Use by Special Review approval for the Facility to the new Operator and the new Operator's written acceptance of responsibility for the operations at the Oil and Gas Facility and agreement to abide by all terms and conditions of the Administrative Use by Special Review or Use by Special Review approval.
2. The Operator must meet with the LGD to discuss any pertinent issue relative to the new Operator's assumption of operations of the Oil and Gas Facility, including plans for development of pipeline installation to serve the Oil and Gas Facility.
3. An updated Emergency Action Plan (EAP) and Tactical Response Plan (TRP), two weeks prior to the transfer, with contact information for at least two employees of the new Operator.

J. NON-ADMINISTRATIVE APPROVAL PROCESS

Use by Special Review approval for an Oil and Gas Facility may also be requested through the process described in Section 5-3.4 of this Code, subject to the following modifications:

1. Plan Format

The site plan shall comply with the requirements of the Development Application Manual, Non-Administrative Use by Special Review for Energy Facilities. In addition, the final document shall be submitted in both paper and electronic forms instead of Mylar,

notwithstanding the requirements for a Use by Special Review contained in the Development Application Manual.

2. Criteria and Standards

In addition to the criteria set forth in Section 5-3.4 of the Land Development Code, an application for Use by Special Review for an Oil and Gas Facility will also be evaluated under the criteria specified in Section 5-3.6.D above and shall comply with the Standards specified in Section 5-3.6.F above, and shall be operated in compliance with the requirements of this Section 5-3.6. In addition, the provisions of Section 5-3.6.G.1 through 7 shall apply to an Oil and Gas Facility approved as a Use by Special Review. Also, Section 5-3.6.I shall apply to the transfer of any Oil and Gas Facility approved by a Use by Special Review.

3. Expiration of Approval

An approval of a Use by Special Review shall automatically expire three (3) years after the date of recordation, unless the facility well pad is already substantially commenced by drilling of at least one well. The Operator may request and extensions as described in Section 5-3.6.G.5 above.

K. COGCC AND COUNTY APPROVALS REQUIRED

Development of an Oil and Gas Facility shall not commence until and unless any required permits from the State or County, and a Use by Special Review (administrative or non-administrative) from the County, have both been approved. Prior to construction, the Operator must submit proof of any insurance and bonding that are required or may be required by these rules.