

## **SECTION 9 MINING**

### **9.1 SAND, SOIL AND GRAVEL MINING**

#### **9.1.1 Purpose:**

It is the intent of Archuleta County to ensure that sand, soil, and gravel are available to the public and that mining and related uses for sand, soil, and gravel occur without compromising the goals and objectives of the Archuleta County Land Use Code. It is the intent of Archuleta County to assure that these requirements are addressed without duplication of, or contradiction with, pertinent state or federal requirements for such mining. Archuleta County reserves the right to assume the functions of external agencies involved with sand, soil and gravel mining if such agencies are eliminated or their operations are curtailed.

#### **9.1.2 Applicability:**

All projects that have one (1) or more of the following characteristics are subject to this section:

**9.1.2.1** Project includes the mining of sand, soil or gravel.

**9.1.2.2** Temporary borrow pits to extract sand, soil or gravel.

**9.1.2.3** Project includes the following related issues:

**9.1.2.3.1** Accessory uses and structures associated with mineral extraction

**9.1.2.3.2** Crushing, screening, stockpiling of extracted materials

**9.1.2.3.3** Processing or batching of materials into other products such as asphalt and concrete

**9.1.2.3.4** Outdoor storage of equipment and materials used for mineral extraction

#### **9.1.3 Mining Operations That Do Not Require A Permit:**

If the proposed operation does not satisfy any one of the following subsections then a permit is required. In no instance will use of County Roads be allowed without a permit.<sup>1</sup>

**9.1.3.1** The use is for an agricultural operation where no material would be exported from the parcel and is for landowner's use on his own property. The associated equipment may only operate on roads on the landowner's property within the parcel boundaries

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<sup>1</sup> Amended December 2010; Resolution 2010-10

where the operation takes place. All associated operations, screening and loading must be at least 1,000 feet from the nearest residence not owned by the landowner<sup>2</sup>

**9.1.3.2** The activity is approved as a mining activity<sup>3</sup> by the County under separate permit, such as landfill sites, foundation excavations, building or subdivision developments, or water or road tunnel developments;

**9.1.3.3** If for an approved building or subdivision, the disturbed area is located within and immediately surrounding the footprint of an approved building, road, or recreational facility and for sand or soil only<sup>4</sup>.

#### **9.1.4 Minor Sand and Gravel permit:**

The following mining operations shall be reviewed and approved administratively, with conditions, or denied, by the Planning Department, after consultation with the County Engineer.

**9.1.4.1** The extraction site is adjacent to the project area and is owned or controlled by the same person, company or agency.

**9.1.4.2** The operation serves a specific one-time major construction project.

**9.1.4.3** The site will be limited to a maximum of ten (10) acres.

**9.1.4.4** The operation is located in an area where there are no existing mining operations which could serve the project without creating significant impacts on the road system or to surrounding areas.

**9.1.4.5** The operation will serve only the project for which it was intended under this permit.

**9.1.4.6** The operation will be reclaimed within one (1) year of completion of all mining activities. In the case of a multi-cell operation, reclamation of each cell will be made within one (1) year of completion of mining activities in said cell.

**9.1.4.7** The project site will not be visible from adjacent residences, or will be mitigated to have reduced visibility from adjacent residences.

**9.1.4.8** The mine will be located in proximity to the construction project which it is intended to serve, and will cause minimum impacts to the roads used from the mine to the project site.

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<sup>2</sup> Amended December 2010; Resolution 2010-10

<sup>3</sup> Amended December 2010; Resolution 2010-10

<sup>4</sup> Amended December 2010; Resolution 2010-10

**9.1.4.9** Roads used to access the construction site from the mine will be upgraded to withstand the additional traffic, and the permittee will prevent road damage and mitigate dust, under the supervision of the County Road and Bridge Supervisor.

**9.1.4.10** Flagmen and traffic control signs will be used during the construction project to assure safe traffic detours and to minimize conflicts with truck traffic serving the project.

**9.1.4.11** Crushers and/or batch berms will be allowed at a site permitted under this section 9.1.4.11 only under a separate Conditional Use Permit approved by the Board.

### **9.1.5 Major Sand & Gravel Permit:**

Unless exempt under Section 9.1.3 or allowed as a minor sand and gravel administrative permit under Section 9.1.4, all sand, soil and gravel mining operations must obtain a Conditional Use Permit as a Major Sand & Gravel operation.

### **9.1.6 Performance Standards for All Operations:**

**9.1.6.1** Compatibility of sand, soil, or gravel mining operations with surrounding uses shall be determined by review of the following criteria:

**9.1.6.1.1** Surrounding uses are primarily agricultural, forestry, or industrial.

**9.1.6.1.2** Truck traffic will not access the mining operation through residential, recreational or commercial areas, or such traffic will be mitigated.

**9.1.6.1.3** The mining site will not be visible to adjacent surrounding residences or will be mitigated to the extent reasonably possible, to have reduced visibility. Placement of the operation a sufficient distance from public roadways, behind natural landforms and existing major vegetation, and/or away from growth centers will minimize visual contact.

**9.1.6.1.4** Equipment used for the operation will not be visible from adjacent surrounding residences or will be mitigated to reduce visual impact.

**9.1.6.1.5** The operation will not generate noise or vibration apparent to surrounding residences, or such impacts will be effectively mitigated, to the extent required by the performance standards at Section 5.4.2.1.

### **9.1.6.2 Air Quality:**

- 9.1.6.2.1 Gravel, water or chemically stabilize public and private access roads, stripped areas, and excavations to minimize dust.
- 9.1.6.2.2 Increase watering operations immediately in response to periods of high wind or to dust complaints.
- 9.1.6.2.3 Plant stripped areas and soil stockpiles that are planned to remain uncovered for more than one (1) season with rapid growing vegetative cover to minimize dust, erosion, and weeds.
- 9.1.6.2.4 Cease aeration operations at commercial wastewater ponds during periods of high wind.

**9.1.6.3 Visual Amenities and Scenic Quality:**

- 9.1.6.3.1 Use low profile permanent equipment, and/or permanent equipment painted to “blend with surroundings”, and/or effective screening of permanent equipment. Permanent equipment shall be construed as that equipment left in place for one (1) year or more. Color selection shall be reviewed and approved by the Director of County Development.
- 9.1.6.3.2 Maintain weed control and watering programs to keep landscaping and vegetation viable.
- 9.1.6.3.3 Proposed landscaping, screening, fencing or other visual impact mitigation shall be approved by the Director of County Development prior to operation.
- 9.1.6.3.4 New long-term (more than one (1) year) mining operations will not be visible along highways.
- 9.1.6.3.5 The proposed mining operation will be located a sufficient distance from other mining operations so as not to create cumulative impacts to roads, air and water quality, or other resources and amenities.

**9.1.6.4 Crushing, Processing, Batching, and Hot Mix operations shall meet the following criteria:**

- 9.1.6.4.1 Current Colorado Department of Public Health and Environment, Air Pollution Emissions permits shall be obtained for all processing equipment.
- 9.1.6.4.2 Visual impacts from batch plants to adjacent and surrounding residences must be mitigated to the extent reasonably possible.

- 9.1.6.4.3** Batch plants shall not be located within a one-hundred (100) year floodplain unless all requirements of the National Flood Insurance Program can be complied with.
- 9.1.6.4.4** Recirculation ponds associated with batch plants or other processing equipment shall be lined with impervious material, or enclosed recirculation tanks shall be used to prevent intermingling of processing water with groundwater. Surface runoff water shall be diverted away from batch plant areas.
- 9.1.6.4.5** All stationary sources shall meet current Colorado Department of Public Health and Environment emissions standards for air and water. More stringent requirements may be set by the Board of County Commissioners in certain locations.
- 9.1.6.4.6** Results of relocation and annual inspections of batch plants by the Colorado Department of Public Health and Environment shall be submitted to the Planning Department.
- 9.1.6.4.7** The Board of County Commissioners may approve a mining operation for a specific period of time, not to exceed twenty (20) years, with a five (5) year review by Planning Commission and the Board. The compatibility and size of the project will be considered in determining the appropriate length of time for the mining operation. Renewals of the permit may be granted upon a new permit review, and subject to new and additional conditions.
- 9.1.6.4.8** The Board of County Commissioners will require a performance guarantee in addition to the bond required by the Colorado Division of Minerals and Geology (CDMG) to insure that certain conditions of a permit will be complied with. The County will require a certified copy of the bond required by the CDMG.

**9.1.7 Submittals for Sand, Soil, and Gravel Mining Operations:**

- 9.1.7.1** Copy of application submitted to the Colorado Division of Minerals and Geology (CDMG), including:
  - 9.1.7.1.1** Site Plan
  - 9.1.7.1.2** Operations Plan
  - 9.1.7.1.3** Road Use Plan
  - 9.1.7.1.4** Reclamation Plan
  - 9.1.7.1.5** Copy of Bond

- 9.1.7.1.6** Wildlife, soils, geology, hydrology, and other environmental information.
- 9.1.7.2** The application shall include (by reference to information submitted as part of other permit applications and copies of same) the following items:
  - 9.1.7.2.1** Maps and Sketches:
    - 9.1.7.2.2** Quadrangle Map of site and surrounding areas within a one (1) mile radius, including:
      - 9.1.7.2.2.1** An outline of the proposed site
      - 9.1.7.2.2.2** Location of adjacent residences and other buildings
      - 9.1.7.2.2.3** Property lines, water wells, irrigation ditches, oil/gas wells, other
      - 9.1.7.2.2.4** Gravel mines, and County and private access roads.
    - 9.1.7.2.3** Site Plan of all proposed equipment and facilities, stockpiles, and other features of the exploration operation.
    - 9.1.7.2.4** Grading Plan to show grading during and after the extraction operations, pre- and post- disturbance drainage, and final grading.
    - 9.1.7.2.5** Two (2) foot contour map of the existing site and final contours.
    - 9.1.7.2.6** Site Description: Written description of location of the existing site, including:
      - 9.1.7.2.6.1** Existing vegetative types
      - 9.1.7.2.6.2** Existing land use of the site and surrounding areas
      - 9.1.7.2.6.3** Location of extraction areas, stockpiles, topsoil and overburden piles, nearest waterways, nearest residences, proposed or existing fencing.
    - 9.1.7.2.7** Written description of access roads to be used, including:
      - 9.1.7.2.7.1** Surface type, width, geometry, structure, bridges and intersections
      - 9.1.7.2.7.2** Anticipated impacts, existing and proposed traffic volumes



**9.1.7.2.10.5** Weed control plan

**9.1.7.2.11** Environmental and vicinity impact analysis to include:

**9.1.7.2.11.1** Soils information

**9.1.7.2.11.2** Visual impacts, including distances, areas, neighborhoods, and public roads from which the project will be visible

**9.1.7.2.11.3** Wildlife habitat and population information,

**9.1.7.2.11.4** Site-specific geologic, floodplain, wildfire hazards

**9.1.7.2.11.5** Potential air pollution, water pollution, noise, surrounding drainages, and water rights

**9.1.7.2.11.6** climatological data

**9.1.7.2.11.7** Surrounding property uses and land values.

**9.1.7.2.12** Proposed impact mitigation plan to include:

**9.1.7.2.12.1** Visual impact mitigation plan

**9.1.7.2.12.2** Wildlife mitigation plan

**9.1.7.2.12.3** Plan to address geologic hazards, floodplains, hydrologic hazards

**9.1.7.2.12.4** Air pollution emissions permit

**9.1.7.2.12.5** Water quality and quantity protection and water augmentation plan

**9.1.7.2.12.6** Methods of preservation of significant vegetation

**9.1.7.2.13** A Fugitive Dust Control Plan shall be submitted which shall:

**9.1.7.2.13.1** Comply with requirements of the Colorado Air Quality Control Planning Commission

**9.1.7.2.13.2** Be approved by the Colorado Air Quality Control Division

**9.1.7.2.13.3** Address site-specific areas of concern, such as stockpiles and wind breaks.



**9.1.7.2.13.4** Be implemented by the operator and/or hauling contractor at the mine and on all haul roads.

**9.1.8 Mitigation for Sand, Soil, and Gravel Mining Operations:**

Mitigation required by the Colorado Division of Minerals and Geology (CDMG), and other state and federal agencies will be reviewed by the County to insure that the plans adequately address potential impacts. Archuleta County does not intend to duplicate or conflict with federal or state requirements. Where mitigation plans do not appear to address potential impacts, additional mitigation plans will be required by the Planning Department. The County maintains a list of mitigation techniques as suggestions in the Planning Department. Some or all of these techniques may be applied to the permit. Additional techniques may be required or may be proposed by the applicant. All mitigation required shall be at the operator's expense, unless otherwise approved by the Board of County Commissioners.

**9.2 OIL AND GAS DEVELOPMENT PERMIT**

**9.2.1 General Provisions:**

**9.2.1.1 Authority:**

This Section is authorized by C.R.S. §§ 29-20-101 et seq., 34-60-101 et seq., and 30-28-101 et seq.

**9.2.1.2 Purpose:**

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 Archuleta 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 statutes of the State of Colorado 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.

**9.2.1.3 Jurisdiction:**

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.

**9.2.1.4 General Procedures:**

Development of oil and gas facilities within the unincorporated areas of Archuleta 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.

Construction, installation and operation of oil and gas facilities shall not commence until administrative approval has been granted by the County Planning Department, or approval following public review has been granted by the Archuleta County Planning Commission and/or the Archuleta Board of County Commissioners, as applicable under this section of the County Land Use Code. The Planning Department shall serve as the authorized representative of the Board of County Commissioners for the purposes of this article.

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

Planning Commission review and recommendation, based upon a report prepared by the County Planning Department, together with the Board of County Commissioners review and approval shall be required for activities and facilities classified as major facilities.

Archuleta County encourages and, where determined to be feasible, requires the appropriate use of directional drilling, the placement of multiple wells on a single pad, the use of closed loop (“pitless”) systems, the use of non-toxic or “green chemicals” (as defined by the Archuleta County Land Use Regulations definitions) in all drilling and fracturing fluids and other techniques, including current and available best management practices, designed to protect the integrity of the surface estate and subsurface water resources.

**9.2.2 Minor Oil & Gas Facilities:**

- (1) An individual well pad built with one or more wells and operated for exploration or production of liquid petroleum and/or natural gas, including any and all associated equipment located on the well pad or within 150 feet of the wellhead

required for such production.

- (2) Gathering lines and ancillary equipment including but not limited to drip stations, vent stations, pigging facilities, chemical injection stations and valve boxes.
- (3) Total brake horsepower of all equipment associated with an application will not exceed 50 BHP.

**9.2.3 Minor oil and gas facilities requiring special mitigation measures:**

- (1) An individual well site built and operated for exploration or the production of petroleum and/or natural gas and associated equipment (as defined above) which does not meet the minimum setback and other requirements specified in this section for minor facilities.
- (2) Any of the facilities specified under subsection (1) of this section 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.

**9.2.4 Major Oil & Gas Facilities:**

- (1) Centralized facilities.
- (2) Water injection or centralized water transfer stations and associated facilities serving multiple well pads.
- (3) Storage yards and construction staging yards, including temporary or permanent offices or housing.
- (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 50 BHP, or greater.
- (5) Pipelines for which the power of eminent domain is available.
- (6) Any oil and gas facility not meeting the definition of minor oil and gas facility.

**9.2.4.1 Application Submittal:**

**Submittal Requirements:**

The applicant shall submit a minimum of 3 complete copies of the application and associated materials as application packets. Submittal requirements are as follows:

1. Application
2. Narrative, including:
  1. Operating plan
  2. Estimated number of site visits by vehicles
  3. 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.
  4. Other site specific information identified and requested at a pre-application conference.
  5. 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.
3. Emergency contact (telephone, contact name)
4. Contact Information

The applicant shall identify all operators, the operator's parent company(ies), all corporate partners and officers, and any subsidiary companies held by the operator or any investors or investor's groups which are doing business in the State of Colorado.

The applicant shall identify all subcontractors, the nature of their activities at the proposed location and all contact information and owners and/or corporate officers for all subcontractors, as well as the amounts and source of all insurance for all subcontractors who will operate on the proposed site(s) identified in the application.
5. Extent of Activities:

The applicant shall also identify all activities, and the size and nature of those activities, being conducted in Archuleta County and all bordering counties in Colorado and New Mexico by the applicant, its parent company, subsidiaries, investors, subcontractors and partners.
6. Disclosure of Violations:

The applicant shall identify any and all violations for which the operator(s), parent company, subsidiaries, contractors and subcontractors identified above have been cited for by any federal, State, county, local, health, environmental, labor or other agency while doing business within the State of Colorado, as well as the date, outcome or status of said citations or notices.
7. Site plan (map prepared for survey and location purposes by the applicant's surveyor may be used as per state and federal requirements), including:

- a. North arrow, appropriate scale, overlain on aerial photography
  - b. Existing improvements within map area
  - c. Utility easements, right-of-way
  - d. Irrigation ditches crossing or within 100 feet of site
  - e. Drainage plan – onsite and offsite, including proposed stormwater BMP's for access roads and facility
  - f. Proposed facilities including temporary use area, permanent well pad, flow lines, gathering lines, pits, equipment, etc.
  - g. Other site specific information identified and requested at a pre-application conference
  - h. Current surface ownership of facility site
8. Vicinity maps (County GIS maps may be used as base map), including:
- a. Section, township, range
  - b. Site boundary
  - c. North arrow and scale
  - d. Major geographic features, to include bodies of water, roads, utility corridors
  - e. Current surface ownership within one-quarter mile of site, to include names of platted subdivisions and approximate location of residences
  - f. Current surface ownership of parcels adjacent to proposed site
  - g. Existing and proposed access
  - h. Existing pipeline routes (gathering lines, transmission lines)
  - i. Other site specific information identified and requested at a preapplication conference
9. Weed and disturbance plan
10. Visual mitigation plan
11. Wildlife mitigation procedures
12. Noise mitigation procedures
13. Road Impact Plan
- The applicant shall provide as part of the application a map that identifies the access route to and within the parcel, color photos of the proposed road locations to be used for accessing the property, and a narrative estimating the number and types of vehicles anticipated per day, including weights, that will travel over the identified route(s).
14. Four color photos, each taken from the center of the site facing north, south, east and west, respectively, properly focused and exposed.
15. Grading Plan

16. Emergency Response Plan (see section 9.2.5.8)
17. Information regarding right of access and use of access roads and copies of any access agreements or road maintenance agreements if applicable
18. Certification to discharge under CDPHE general permit; storm water discharges associated with construction.
19. Evidence of notification (see Section 9.2.4.1.2)
20. Water Management Plan (see Section 9.2.6.3)
21. Waste Management Plan (see Section 9.2.6.3)
22. Acceptable and verifiable proof of insurance

Note: Certain submittal requirements may be waived or modified by the Planning Staff if it is demonstrated that the material to be waived or modified is not applicable to the specific application.

#### **9.2.4.1.1 Application and other fees**

The application fees to be imposed pursuant to this article are set forth in Archuleta County Fee Schedule – Building and Planning Departments, and adopted annually by resolution of the Archuleta 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 without specific prior notice to applicants, other than normal requirements for posting, general publication and listing in the newspaper(s) of record . In addition, permit applications may be subject to Building Permit and Heavy Equipment Permit fees (see associated schedules as adopted and amended) as identified in associated County Building Codes and County ordinances.

#### **9.2.4.1.2 Notification**

(1) Written notice shall be provided to surface owners for all minor facility applications as well as the current surface owners of those parcels of land within one-quarter mile (1320 feet) of the perimeter of the surface property, as well as any and all directly impacted property owner, homeowner, subdivision, water or sewer association or road maintenance associations, whether governmental or quasi-governmental in nature, private individuals, partnerships or corporations. The applicant shall present proof of such notice by submitting a copy of the letter, a list of the land owners, corporations and associations notified, and certified mail receipts. This notice shall be mailed no less than 10 days prior to the application being submitted to the County Planning Department. Notice of the application shall be made as follows:

- a. To the current surface owners of the parcels of land within which the minor facility is proposed to be located, as well as the current surface owners of those

parcels of land within 1/4 mile (1320 feet) of the perimeter of the property, as such ownership is indicated for tax purposes in the current records of the county assessor's office.

- b. The notice of the application for approval of a minor facility 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. The identification of the applicant, and, if applicable, any designated agent(s) 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 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 Archuleta County Planning Department. A statement that comments on the application should be submitted to County Planning Department within ten business days of its submittal.
  3. A statement concerning the County's need to enter property subject of minor facility permit as follows: For the purpose of implementing and enforcing the County's oil and gas regulations, County personnel may, from time to time, need to enter onto the property which is the subject of a minor facility application or permit upon reasonable notification to the operator who will then provide reasonable notification to the surface owner, lessee or other party holding a legal interest in the property.
  4. A statement informing the surface owner and any other parties having standing that they may request written notification by the operator of the commencement of construction and drilling operations (if the application is approved). Those parties requesting notification shall advise the Department in writing of such request within fifteen (15) days from receipt of the written notice required by this section. The applicant will then provide written notice to those landowners desiring notice no less than 10 days prior to the commencement of construction and drilling operations.
  5. The current mailing address, website address, telephone number for Archuleta County Planning Department and COGCC, as well as a statement that additional information on the application will be available from the Archuleta County Planning Department.

**9.2.4.1.3 Posted notice.**

A posted notice of a size of not less than 36 inches in width by 24 inches in height

shall be placed on a prominent position of the subject property so that it may be read from the most frequented public or private right-of-way entering the property or nearest to the property. The posted notices will be in a form prescribed by the County and available at the Planning Department. The prescribed form shall include the application name, the project number, the public meeting date or comment due date whichever applies, and the contact number for the Planning Department.

**9.2.4.1.4 Notice of Planning Commission review.**

Not less than 15 days, nor more than 30 days prior to the public meeting, if required, 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 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 designated agent, and a statement that additional information may be obtained from Archuleta County Planning Department.

**9.2.5 Pipeline Permit Submittal Requirements:<sup>5</sup>**

- (1) Completed Land Use Application and appropriate fee
- (2) A current form of the following:
  - a. Emergency Preparedness plan
  - b. Certificate of Liability Insurance
  - c. Performance Security for the proposed facility
- (3) Proposed facility description:
  - a. Describe all equipment to be located or operated above ground and whether equipment is for construction or continued operation:
- (4) Proposed pipeline description:
  - a. Line size (or sizes)
  - b. Pressure rating
  - c. Material (steel, poly, etc.)
  - d. Number of lines
  - e. Product (gas, produced water)
- (5) Verification or description of all easements proposed to be crossed.
- (6) Reasonable evidence of written notification to the Division of Wildlife regarding the proposed pipeline.
- (7) Weed management plan

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<sup>5</sup> Amended March 20, 2012, Pipeline Permit Section added; Resolution 2012-14



- (8) Status of Right-Of-Way Permit application from Road and Bridge and if available, the County-issued permit number.
- (9) Attachments to be submitted:
  - a. Written driving directions to the beginning and end of the proposed pipeline from Pagosa Springs, using bearings, tenths of miles and visible landmarks:
  - b. Vicinity map. The vicinity map must show the entire length of the proposed pipeline.
  - c. Site plan. You may use a surveyor to create a site plan which must show the following (multiple pages are discouraged, however acceptable. Please be sure all pages relate to each other if all elements cannot be included on a single plan):
    1. Appropriate standard scale (e.g. 1"=200')
    2. Title block, key and north arrow.
    3. Section, Township and Range
    4. Current surface ownership of all properties with the pipeline right-of-way
    5. Existing improvements associated with this pipeline
    6. Proposed above-ground equipment
    7. Utility easements, roads, ditches, bodies of water
    8. Irrigation ditches crossing the pipeline right-of-way
    9. Staging area
    10. Existing vegetation (aerial photography may be used).

#### **9.2.6 Review Process:**

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

- (1) The Archuleta County Land Use Code and supporting Regulations
- (2) The Archuleta County Master Plan/Community Plan;
- (3) The Archuleta County Road and Bridge standards adopted in 2005 and as amended;
- (4) The ICC International Building Code(s), and applicable elements, as adopted and amended by Archuleta County
- (5) Plans and regulations of governmental and quasi-governmental entities in the County, where applicable;
- (6) Other applicable local, county, state and federal plans, policies and regulations.

##### **9.2.6.1 Duration, modifications and preexisting uses.**

(a) *Duration.* Approval granted for minor and major facilities shall expire and be considered revoked if construction of the facility is not commenced within one year of the date of approval. Approval granted for minor facilities that are individual well sites shall expire or be considered revoked if drilling operations are not commenced within one year of the date of approval.

(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 activity described in the submittal may be granted administrative approval if it complies with the performance standards. (In cases where the amendment would consist of the addition of a major facility, public review shall be required as described for Major Facilities.) The applicant shall provide the County Planning 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 of their commencement.

(d) *Effective date, preexisting/nonconforming 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 has not commenced as of the effective date, all applicable provisions of this article shall apply.

#### **9.2.6.2 Construction or installation of unapproved oil and gas facilities.**

It is unlawful to construct, install, or cause to be constructed or installed, any oil and gas facility within the unincorporated areas of the County unless approval has been obtained pursuant to these regulations from the Archuleta County Planning Department and with the required approval, per the provisions of this article, of the Archuleta County Planning Commission and/or the Archuleta County Board of County Commissioners, as applicable.

#### **9.2.6.3 Penalty.**

Subject to the provisions of C.R.S. § 30-28-124 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 County Planning Department for minor facilities and minor facilities requiring special mitigation, or approval from the Board of County Commissioners for major facilities, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,500.00 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. Section 30-28-124.5.

#### **9.2.6.4 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.

**9.2.6.5 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. Both the applicant and the County Planning Department shall be provided with an opportunity to be heard at the public meeting prior to the Board of County Commissioners rendering its decision.

**9.2.6.6 Performance security and insurance requirements.**

- (1) *Performance bonding*
  - a) A performance bond in the amount of \$10,000 and,
  - b) an additional, site specific performance bond which shall be 100% of the estimated actual cost of plugging and abandoning wells, removal of surface facilities and restoration of disturbed surface areas.

The required performance bond shall remain in place until all obligations contemplated by the bond have been fulfilled to the satisfaction of the County and, in the case of plugged and abandoned wells, for five (5) years thereafter.

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 and major facilities: the actual estimated cost of reclamation and to implement any and all conditions of approval with a minimum of \$10,000 performance bond (irrevocable letter of credit, or equivalent financial security acceptable to the County Attorney) for each minor facility to uncompleted conditions of approval.

Performance bond requirements for major facilities will be determined on a case by case basis, but set at an amount of not less than the minimum terms and amounts as set forth above for a minor facility.

Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and/or adjacent landowners required by the applicable performance standards contained in this section with regard to the county permit.

Specific minor and major facilities will be released from the bonding requirement after the applicant demonstrates to the Planning Department that all conditions of approval have been met.

Any and all activities which fall under COGCC jurisdiction are exempted from this performance security coverage. This provision is not meant to impede or substitute for the COGCC's financial assurance requirement.

The amount of each performance bond set by this section shall be reviewed on an annual basis by the Archuleta County Planning Department and any recommended modifications determined by the Department to be appropriate shall be presented by the Director the County Planning Department to the Planning Commission within 30 days for approval.

(2) *Insurance requirements.*

(a) The applicant shall identify the amounts and source of any liability coverage for any operator(s), their parent company(ies), subsidiaries and all contractors or subcontractors operating on the proposed site(s) identified within the application.

(b) For any facility or operation permitted under this Section, the applicant shall submit a certificate of insurance to the Archuleta County Planning Department, showing that a policy of comprehensive general liability insurance or a self-insurance program approved by the Colorado Insurance Commissioner, in the amount of no less than \$1,000,000.00 per occurrence, insuring the applicant against any and all claims or causes of action made against the applicant, the operators, and contractors or subcontractors or vendors performing work at or related to the site(s) identified in the application for damages arising out of the drilling, maintenance, operation or other work done at, near, in conjunction with, in association with or circumstances resulting from activities associated with the proposed facilities and operations.

(c) The policy shall be written by a company authorized to do business in the State of Colorado, unless the applicant is self-insured.

(d) The certificate shall require at least 30 days notice to Archuleta County and the COGCC prior to termination of coverage for any reason.

(e) If the insurance policy lapses or becomes void for any reason whatsoever, all approvals issued by Archuleta County and its agents shall cease to be valid until a new insurance certificate is provided and filed

with the County Planning Department. All approved oil or gas or related activity shall cease, consistent with safety considerations, until the applicant provides evidence that satisfactory insurance coverage in the prescribed amount and meeting the required criteria is in effect.

**9.2.6.7 Right to enter.**

For the purpose of implementing and enforcing this article, the applicant shall provide notice, as provided in section 9.2.4.1.2, to the surface owners that County personnel may need to enter onto the property which is the subject of a minor or major facility application and/or an issued permit. If the surface owner objects to entry by County personnel, the applicant shall so inform the County and, if entry is necessary to process the permit application, the County will suspend further processing of the minor or major facility application. After issuance of a minor or major facility permit, as necessary, County personnel may enter onto the property subject of such permit upon reasonable notification to the operator, who is then responsible for providing notice of such proposed entry to the surface owner. If such entry is denied, the County may, at its discretion, suspend the effectiveness of any issued permit and/or obtain an order from a court of competent jurisdiction to obtain entry.

**9.2.6.8 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 10 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 all 24-hour emergency numbers and 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.

**9.2.6.9 Pre-Application Meeting:**

In addition to the pre-application procedures described in Section 2.2.4.1, the following provisions shall apply:

**9.2.5.9.1** The surface rights owner(s), home and property owners associations, improvement district members, and all other parties which must be noticed under this section shall also be given the opportunity to attend the pre-application meeting. It shall be the applicant's responsibility to invite the surface rights owner and other required notified parties of interest to the pre-application meeting. The notification of the pre-application meeting shall be done by a letter sent at least fourteen (14) days in advance of the pre-application meeting by a certificate of mailing and by posting of the property at all entrances by road or at the nearest County or State highway, in a prominent location, and displaying the required information, as indicated in this section.

**9.2.6.10 Review Procedure For Minor Facilities**

**9.2.5.10.1 Generally**

Applications for county land use approval for proposed minor facilities shall be processed administratively by County Planning 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 County Planning Commission or Board of County Commissioners' hearing or review, in accordance with the procedures set forth in this section. An application which the Planning Department finds to be in compliance with the relevant standards shall be granted administrative approval.

**9.2.6.10.2 Application Submittal Procedure**

The application shall be in the form prescribed by section 9.2.4 of this Code 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 the applicant's designated 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.

#### **9.2.6.10.3 Determination of Completeness**

Should the Archuleta County Planning Department determine that the application, as submitted, is not complete, it shall provide the applicant with written notice of the specific deficiencies within fifteen (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 County Planning Department. If the application is found to be complete, containing all information and/or documentation required by this article, County Planning Department shall then review the application for compliance with applicable standards and requirements. This review may include a field inspection of the proposed site.

#### **9.2.6.10.4 Administrative action; site visit**

Review of a complete application and approval or denial will typically occur within twenty-one business days. More or less time may be required for review depending on the County Planning Department's work load or requests for additional information made to the applicant. If a permit is not approved within twenty-one (21) business days, the County Planning 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 county Planning Department shall issue an approval for the proposed minor facility. Should the Planning 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. At the request of either the applicant, surface owner, or other landowner receiving notice pursuant to Section 9.2.4.1.2, the Planning Department may, at the discretion of the Archuleta County Planning Department Director and upon notice to the surface owner, conduct a public site visit with these parties to evaluate well

locations, compliance with applicable County Codes, and mitigation that may be required under Section 9.2.6.3. 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 County Planning Department may hold an informal dispute resolution meeting pursuant to sec. 9.2.6.7 at a convenient community building, such as a local grange.

**9.2.6.10.5 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 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 County Planning Department shall issue written approval for the proposed minor facility. Should the County Planning Department determine 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 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.

**9.2.6.10.6 Appeal of administrative denial or approval.**

(a) Should the County Planning Department deny administrative approval under this section, 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 and decide 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. 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, the County Planning Department shall be notified and given an opportunity to present evidence at the hearing. Should the applicant provide satisfactory documentation that either the proposed minor facility complies with all applicable requirements of this article or that the proposed facility's noncompliance with this article can be adequately mitigated, in accordance with the applicable standards and requirements set forth in this subcategory, the Board of County Commissioners shall approve the application forthwith. The decision of the Board of County Commissioners is a final decision subject to appeal to the District Court.

(b) All surface owners and owners, residents, associations, government entities, improvement districts and other entities subject to notification under this section shall have standing to file an appeal of the administrative decision



regarding the siting of a minor facility. Parties subject to notice in §9.2.4.1.2 who can demonstrate a reasonable likelihood of actual injury in fact based upon operator's failure to meet specific standard(s) shall have standing to file an appeal of the administrative decision regarding the siting of a minor facility. 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 administrative decision. The Board of County Commissioners shall proceed to consider and decide an appeal at the next regularly scheduled Board of County Commissioners hearing for planning agendas for which proper public notice, in accordance with all the terms of this section, can be given. Upon request of the applicant, the Board of County Commissioners shall provide it with an opportunity to be heard on such an appeal.

#### **Minor Facilities Requiring Special Mitigation Measures**

(1) 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 Planning Department, subject to compliance with the applicable provisions of this article.

#### **Application submittal procedures.**

(2) The application shall include information and/or documentation establishing that the proposed facilities 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 9.2.4.1 of this Code. 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 9.2.5.10.1, *et seq.*

### **9.2.6.11 Review Procedure for Major Oil & Gas Facilities:**

#### **9.2.6.11.1 Review Procedure:**

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.

**9.2.6.11.2 Submittal Procedure:**

The major facility application shall consist of all items identified in section 9.2.4.1 of this article. Prior to formal submittal of the application, County Planning Department shall meet with the applicant to discuss and identify any additional information required to adequately review the proposed facility.

**9.2.6.11.3 Determination of completeness.**

The County Planning Department will review the application for completeness. If the application is deemed complete, the Department will commence project review, pursuant to the requirements of the Archuleta County Land Use Code and its supporting regulations. If the application is incomplete, the applicant will be notified of the deficiency and the application shall be withdrawn from the review process until the required information is submitted.

**9.2.6.11.4 Notice upon request.**

Notice shall be sent to any other person, agency or organization that has filed a request with County Planning Department to receive notice of major facilities undergoing public review; such notice to be sent by County Planning Department at the applicant's expense.

**9.2.6.11.5 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 Planning 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 9.2.5.11.7.

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. 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.

**9.2.6.11.6 Board of County Commissioners' review.**

The Board of County Commissioners shall conduct a public hearing for review of the major facility at the next Archuleta 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.

**9.2.6.11.7 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 the Archuleta County Land Use Code, the requirements of this article, and by applying the following evaluative criteria to the 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.* The suitability of the location proposed for 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 site 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, and 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.

**9.2.7 PERFORMANCE STANDARDS**

**9.2.7.1 Compliance.**

All oil and gas facilities granted administrative approval by the County Planning Department, recommended for approval by the County Planning Commission, and/or approved by the Board of County Commissioners must comply with the standards contained in this Section. For major facilities, the County Planning 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.

**9.2.7.2 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 450 feet shall be required between the well head 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 well head of a minor facility and the closest property line, unless verified written consent is obtained from the affected property owner.

(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 shall 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 and the closest existing residence or property lot line shall be determined on a site specific basis, based on the major facility review criteria identified in section 9.2.5, as applicable, but not less than those required for a minor facility.

(5) Setback requirements for flow lines, gathering lines, and transmission lines from general residential, commercial, and industrial buildings shall be a minimum of 50 feet. The setback distance shall be measured from the nearest edge of the pipeline(s) right-of-way or easement. The County Planning 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) *Platted subdivisions.*

(1) 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 access off 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 well head compressor engines) shall be electrified if located within 1,320 feet of distribution voltage. Applicant may provide information demonstrating that such electrification is infeasible. The County Planning Department shall review this information and may provide a waiver of this requirement. If distribution voltage is not currently within 1320 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 1320 feet of the proposed facility. Internal Combustion 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 County Planning Department, the County Planning 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 non-mitigatable 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; or

b. Where there is a public or private school within 660 feet of the facility site perimeter; or

c. Subject to a written waiver by the surface owner, where there is any other existing structure with commercial occupancy as defined by the Building Code within 660 feet of the facility site perimeter; or

d. Subject to a written waiver by the surface owner, 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 County Planning Department review.

### **9.2.7.3 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 within a floodway of a stream or river as shown on the Flood Insurance Rate

Maps (FIRM) or as determined by a state licensed professional engineer.

(3) The County recognizes that in some instances, existing minor oil and gas facilities which initially met the requirements of this section would not meet the requirements if a current application were filed due to (i) the encroachment of other development into the setback area, (ii) because the regulation was not in effect when the original installation occurred 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 will be considered a legal nonconforming use not subject to the requirements of this section, provided that land use performance standards are not in any way superseded by the placement of the new well on the existing or expanded well pad.

(4) For minor oil and gas facilities not covered by a memorandum of understanding, the number of well pads shall not exceed four (4) within any single six hundred and forty (640) acre governmental section of real property. However, to the extent reasonably practicable, operators shall share existing well pads and shall expand the well pads only as necessary to accommodate additional minor facilities. Preference shall be given wherever possible to the use of directional drilling from existing wellpads over establishing new wellsites. 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 criteria shall be used to site an oil and gas facility. Facilities that cannot comply with the following criteria may be denied according to section 9.2.5.10.4 or 9.2.5.10.5 or may be required to mitigate the site as outlined in subsections 9.2.6.3 (c) (9) and 9.2.6.3 (4).

The mitigation requirements may be waived by the County Planning Director if existing topography and vegetation mitigate the land use impacts of the site. The county shall determine the compliance of the proposal using the following



standards. Standards are ranked according to importance. Where conflicts between standards occur the higher ranked standard will be used.

- a. Minor facilities shall be constructed using existing infrastructure, including the use of only existing roads, pipeline routes and well pads. This designation shall not apply if the use of existing infrastructure would impact an area 50% or greater of the property which is the subject of the minor facility unless both the Archuleta County Planning Department and the surface owner consent in writing.
- b. Minor facilities shall adhere to the setback and location requirements found in Section 9.2.6.2.
- 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 be sited to avoid crossing hills 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 plan shall incorporate the appropriate design elements of *visual impacts* subsections of this section and include the design information in subsection *visual mitigation plan* of this section. The Visual Mitigation Guidelines for Oil and Gas Facilities in Archuleta County (or equivalent guidance document cited by applicant and approved by the County Planning 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 *visual impacts* subsections 9.2.6.3 (c)
  - 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 re-vegetation.
  - p. Title block:

1. Name of development;
  2. Name of applicant or developers;
  3. Project number;
  4. Date of preparation; and
  5. Section, township and range.
- q. Performance security. For sites requiring a visual mitigation plan, performance security shall remain in place for at least two years after installation of the plant and landscape materials. The performance security shall be of an amount sufficient to cover the costs of the proposed improvements or the amount required by section 9.2.5.6, whichever is greater.
- (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 Archuleta County Planning Department if well pad dimensions are related to a visual mitigation plan proposal to blend with the natural topographical conditions.

(8) Within six months after well completion, the pad area (except the main access road and the immediate areas within 25 feet of the aboveground facilities) shall be reseeded with native grasses or existing vegetation acceptable to the surface owner and the Natural Resource Conservation Service (NRCS). At all times Best Management Practices will be used to prevent storm water discharges from impacting surface water quality.

(9) 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.

(10) Exterior lighting, when required, shall comply with any lighting criteria of the Archuleta County Land Use Code, including the County Dark Skies Ordinance, and be directed away from residential areas, or effectively shielded from such areas.

(d) *Wildlife.*

(1) *Referral to Colorado Division of Wildlife and Site Specific Mitigation Conditions.*

Standard Operating Practices (SOP's) shall be developed by the County, in concert with the CDOW and the Southwest Land Alliance (SLA), or other State DoW and Archuleta County approved land conservation and/or wildlife protection organization for the protection of wildlife resources in the County during oil and gas development activities, as well as the potential for the placement of surface rights into conservation and/or open space easements, agreements, or surface management agreements, for which the applicant may be granted special considerations by the County in the form of the waiver of fees, priority processing and other waivers.

The SOP's shall provide for a written consent of the surface owner(s) in order to address, where applicable, the agricultural production needs of the surface owner and timing of oil and gas development activities on the surface owner's agriculturally producing property. The SOP's shall be incorporated into the County Land Use Code by reference, and shall become part of the performance

standards for any minor or major facility approval. The SOP's may be included as conditions of approval to address site specific wildlife mitigation measures for a minor or major facility. The applicant shall notify CDOW in the form described in Sec. 9.2.4.1.2 and shall identify in the notification the SOP's recommended by CDOW that apply to applicant's proposed facility in Archuleta County. If applicant is unable to comply with the SOP for the protection of wildlife resources in Archuleta County due to conflicts with other provisions of the County Land Use Code, the inability to obtain the land owner's consent, or if there is no applicable SOP, applicant shall identify the conflict and propose alternate site-specific mitigation or best management practices for the protection of wildlife resources. If applicant proposes an alternate plan or best management practices to protect wildlife resources, the alternate site-specific mitigation or best management practices shall be approved by CDOW, and may be included as conditions of approval to address site specific wildlife mitigation measures for a minor or major facility.

(2) *Multiple sites.* In lieu of a site-specific mitigation review for each facility, the applicant may submit to the Archuleta County Planning 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 (c)(2) of this section.

(3) *Non-mitigable impacts.* Any and all 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) *Water Management Plan.* The applicant shall provide as part of its application a detailed plan and all relevant data on the projected use of water, its quantity, current availability (including the status of obtaining any water rights required and confirmation and status of any and all applications to appropriate and required reviewing and regulatory agencies) and source, and a plan for the disposal, re-use or disposal of source water from dewatering operations, water used in processing operations or other used or disposed of water by source, quantity, frequency of use and end disposition after the use.

The Water Management Plan shall include the identification of irrigation ditches and other water structures within miles and any watersheds, water sources (including rivers, streams, marshes, wetlands, aquifers, and recharge areas) that will or could be affected by the operation, as well as any ownership of water rights appurtenant thereto, and evaluation of any impacts to the structures, water rights or water quality.

The Plan shall also include an element to describe all prevention and

mitigation efforts that will be taken to avoid contamination or negative impacts on the identified water resources, including a water conservation plan to minimize the use or artificial stress of these water resources in the exploration and production processes identified in the application, including de-watering of methane coal beds in the extraction process.

The amount of water used, extracted and disposed of will be identified by both anticipated amounts and the potential maximum upper thresholds for the project annually, as well as the source of where the by-product water will be disposed of, the method and daily and annual anticipated rate.

(a) If fresh or potable water is required for minor and/or major facility operation, the applicant shall identify the proposed amounts and source(s) of such water and legal right to access and utilize such sources and amounts.

(b) Onsite containment and disposal of water associated with minor and major facilities shall be in accordance with any applicable federal, State or County requirements. Any and all run-off created by the activities or development and improvements at the site, whether generated naturally or by use in construction or production activity, must be captured and contained on the site and removed, treated or otherwise disposed of properly and may not be released into any subsurface aquifer, surface wetlands, streams, ponds, rivers or other sources of drinking water or wildlife habitat.

(f) *Waste and Waste Water*

(1) *Waste Management Plan.* The applicant shall provide a plan for the handling and storage, transportation, treatment, recycling and disposal of waste generated by the operation, including exploration and production (E & P) waste.

Operators shall ensure that all waste generated on-site, including exploration and production waste, is properly stored, handled, transported, treated, recycled or disposed of to prevent threatened or actual significant adverse environmental impacts to air, water, soil or biological resources.

All human waste shall be fully contained and disposed of off the site at an appropriately licensed facility in accordance with all County and State health regulations, as demonstrated by a letter of approval of the waste disposal plan by the regional San Juan Basin Health Department.

(g) *Storage and Containment Requirements.*

(1.) *Prevailing Requirement.* Unless otherwise directed by the COGCC, all tanks used for storage shall conform to the following:

(a) Operator must use portable closed steel storage tanks for storing liquid hydrocarbons. Tanks must meet all A.P.I. standards. All tanks must have a vent line, flame arrester and pressure relief valve. All tanks must be enclosed by a fence applicable to the issued permit.

(b) Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into an aboveground self-contained tank or, after authorization by the COGCC, a lined pit. All disposals must be in accordance with the rules of the COGCC and any other applicable local, state or federal agency.

(c) Unless otherwise directed by the COGCC, waste materials shall be removed from the site and transported to an off-site disposal facility not less often than one (1) time every thirty (30) days. Water stored in on-site tanks shall be removed as necessary.

(d) All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the state, this article, and any other applicable ordinance of the County, San Juan Basin Health and all other applicable regulatory and monitoring entities.

(h) *Air Quality.*

(1.) *Air Contaminant Emissions.* Emissions shall be in compliance with the permit and control provisions of the Colorado Air Quality Control Program and any Air Quality regulations if and when the County adopts such regulations.

No oil and gas operation shall cause significant degradation to air quality, as measured against appropriate State and federal regulatory standards. Specifically, all standards and requirements under the Clean Air Act and Organic Act for the preservation of the Class 1 air shed for applicable public lands shall be met. Where air quality standards and regulations are in conflict, the stricter standard shall apply.

(i) *Mosquito Control.* The applicant shall be held responsible for monitoring and treating any pit containing water with Bti (*Bacillus thuringiensis v. israelensis*), commonly known as Mosquito dunks, or take other effective approaches to control mosquito larvae that may spread West Nile Virus to wildlife.

(j). *Electric Lines.*

All electric lines to production facilities shall be located in a manner compatible to those already installed in the surrounding area or subdivision.

(j) *Fracture Stimulation Operations.*

The following requirements shall apply to all fracture stimulation operations performed on a well: 1) at least forty-eight (48) hours before operations are commenced, the operator shall post a sign at the entrance of the well site advising the public of the date the operations will commence; 2) “flowback” operations to recover fluids used during fracture stimulation shall be performed during daylight hours only unless the County Permit approves such operations during non-daylight hours; 3) a watchperson shall be required at all times during such operations; and 4) at no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank. All formation fracturing operations shall be conducted during daylight hours unless the operator has notified and received authorization from the (county) oil and gas inspector that fracturing operations will occur before or after daylight hours to meet safety requirements.

(k) *Dust, vibrations, odors.*

All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas, and other hydrocarbon substances. All equipment used shall be so constructed and operated so that vibrations, dust, odor, or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling or production site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

(l) *Hazardous Material.*

A copy of the hazardous materials management plan as required by the Archuleta County/Pagosa Springs Fire District Fire Marshal’s office. In addition to the hazardous materials management plan, all material safety data sheets (MSDSs) for all hazardous materials that will be located, stored, transported, and/or temporarily used on the drilling site shall be provided to the County Planning Department and the Archuleta County/Pagosa Springs Fire District Fire Marshall.

(m) *Chemical Products: Health-related disclosure requirements, confidentiality and limitations*

All entities holding a permit issued under this Section of the Archuleta County Land Use Code or operating under the auspices of said permit 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 Archuleta County, as set forth herein. The operator, or its vendor(s) or service provider(s), shall provide the chemical constituents of a Chemical Product to any health professional as may be required under state law or regulation. In the event that no state law or regulation so provides, the operator, or its vendor(s) or service provider(s), 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(s) or service provider(s) 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.

(n) *Chemical Products:*

- (1) Onsite containment, disposal, and disclosure and retention of information related to Chemical Products associated with minor and major facilities shall be in conducted accordance with applicable state laws or regulation. If however, a state law or regulation does not exist, the Owner or Operator shall comply with the following:
- (2) All entities holding a permit issued under this Section 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 or federal laws or regulations on this topic, as may be required by Archuleta County.

(3) Beginning January 1, 2009 Owners or Operators shall maintain material safety data sheets for any Chemical Products brought to a well-site for use downhole during drilling, completion, and work-over operations; including fracture stimulation.

(4) Beginning January 1, 2009 Owners or Operators shall maintain a Chemical Inventory by well-site 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 work-over operations including fracture stimulation. Entities maintaining Chemical Inventories under this section shall update these inventories quarterly throughout the life of the well-site. 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 Director, Engineer and/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 Director or County 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 Director or County 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 (5) 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 (3) 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.

(o) *Pits and Pit Liners.*

All pits shall be constructed in accordance with applicable State and federal laws and regulations. If, however, a State and/or federal law or regulation does not exist, the owner and/or operator (as applicable) shall comply to the following:

a) All pits shall be fenced in order to prevent access by persons, stock or wildlife unless the applicant provides alternate mitigation measures that are deemed satisfactory to the County, and which achieve the same goal(s) of protecting against entry into pits by unauthorized persons, stock, or wildlife.

b) 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.

(p) *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 comply with the adopted county floodplain ordinance when they are located in a 100-year floodplain area.

**9.2.7.4 Surface disturbance standards.**

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

(b) *Agricultural resources.* 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. This standard may be waived if verified written consent is obtained from the surface owner.

(c) *Roads and access.* Installation of major facilities which are accessible by non-maintained roads included in the County road system, which the County Engineer determines are inadequate to safely accommodate the additional traffic associated with the operation of the facility, shall be permitted only if such roads are improved and maintained by the applicant to a level which the county engineer determines is necessary to allow such traffic to use such roads in accordance with applicable state and county standards. Notwithstanding the above:

(1) Applicant will remove or require the removal of chains from its heavy equipment before entering a County road. All new roads shall have gravel access and well pads with a minimum of four inches (4”) of Class 6 Aggregate Base Course as defined by the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction over a stabilized base, both of which shall be maintained throughout permanent operations of the well pad; and if mud and/or debris is tracked onto the county road by applicant’s equipment, applicant shall remove same and restore the condition of the road as promptly as is reasonable under the circumstances.

(2) Applicant shall provide written documentation 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.

(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. 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 and fire district. 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 Archuleta County Noxious Weed Control Program in coordination with the requests of the surface owner.

(f) *Minimization of disturbance.*

(1) Where minor and major facilities reduce or destroy existing vegetation, the applicant in consultation with the NRCS shall develop a re-vegetation plan for the remainder of the facility site, for approval by the Archuleta County Planning Department. The plan shall specify species, planting schedule, planting method, quantity of seed or plant material to be used, and other related activities.

(g) *Restoration and re-vegetation.* 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 re-vegetated as soon as practicable in accordance with any and all State and federal laws and regulations. If, however, there is no applicable law of 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 thirty (30) days after completion of grading.

(2) Re-vegetation 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) Re-vegetation 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 a representative of the NRC to determine the proper seed mix to use in re-vegetating 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 may rely upon previous advice given by the NRC in determining the proper seed mixes to be used in re-vegetating 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 eighty (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 10% of the true mean with 80% confidence.

(ii) Vegetative cover is such that the 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 (3) and fifty (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 exists in the average of the immediately surrounding area.

#### **9.2.7.5 Special exception requests.**

(a) Special exceptions to this division may be requested by the applicant. All applications where a special exception is requested will be processed as a major facility. Requests for special exceptions for proposed facilities may include, but not be limited to, one or more of the following factors:

- (1) Topographic characteristics of the site;
- (2) Duration of use of the facility;
- (3) Proximity of occupied structures to the facility;
- (4) Ownership status of adjacent and/or affected land;
- (5) Construction of adequate infrastructure to serve the project; and

(6) Planned replacement and/or upgrading of facility equipment.

(7) Archuleta County strongly encourages all applicants to work with affected residents to the greatest extent possible to minimize disruption to pre-existing surface activities, including ranching, farming, wild life a wild life habitat preservation, on-site residences, etc., as well as to mitigate impact on roads, dust, noise, water , air quality and the surface users enjoyment of their rights.

Additionally the County advocates and supports a vigorous approach to the preservation of open space, scenic vistas, open range land, recreational open space, and conservation and believes that the multi-purpose use of such lands by surface and sub-surface owners can present a unique opportunity for all parties to benefit.

Toward this end, oil and gas permit applicants will be given special consideration in terms of waivers or easing of related regulatory requirements, related fees, and priority consideration in processing where it can be demonstrated by the applicant and the affect parties that;

(a.) the applicant has worked to mitigate all use-related and environmental-related impacts to the maximum degree possible, and/or,

(b.) the applicant has entered into a surface management, conservation easement, ranch, farm, conservation or open space agreement with a governmental entity or a non-profit organization recognized by the County and State for these purposes.

The County strongly encourages applicants who have obtained surface rights or who wish to negotiate surface rights agreements to explore the advantages, such as State and federal tax credits, in addition to special consideration(s) by the County that such opportunities can provide. Further, the County stands willing to facilitate such contacts and assist in the securing of such agreements.

(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 county in accordance with sections 9.2.5.11.6 through 9.2.5.11.7 of this Code. 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.

#### **9.2.7.6 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 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.

#### **9.2.7.7 Informal dispute resolution.**

(a) At the discretion of the Planning Director, any complaint related to an alleged non-compliance with the provisions of this chapter by an applicant, operator, surface owner, or an adjacent landowner as identified in sec. 9.2.4.1.2 may be referred to an informal dispute resolution process. The process shall be administered by Archuleta County Planning Department 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.