WESTERN COLORADO CONGRESS

An Alliance for Community Action

October 9, 2012

Dear COGCC Director Matt Lepore, Thom Kerr, Stuart Ellsworth and Greg Deranleau, and COGCC staff:

Western Colorado Congress (WCC) has appreciated being part of the COGCC stakeholder process to consider changes to residential setbacks and associated oil & gas issues. We have studied the COGCC's 09/21/2012 setback "straw-man" rule-making proposal and respectfully offer these comments.

THE COGCC PROPOSAL

The current COGCC straw man proposes four "zones" that require the industry to use varying levels of protective mitigations, and also offer homeowners different levels of input depending on how close a proposed oil and gas location is to a home. We find it helpful to categorize the COGCC's proposed zones in the following way...

Name of Zone	Description of Zone	Distance
Exclusion Zone	No oil and gas locations in this area**	*Less than 200 feet*
Consent Zone	No oil and gas location without homeowner consent **	*200 to 350 feet*
Consultation Zone	Operator must notify homeowners about the proposal and make a "good faith effort" to meet with homeowners in this area	*350 – 700 feet*
Public Meeting Zone	Operators must notify homeowners in this zone and agree to hold a public meeting with those homeowners	*700 - 1,200 feet*

*** Variances can always be applied for pursuant to COGCC rule 502(b).*

Director Lepore has also stated that the levels of protective mitigations required would vary based on the proposed oil and gas location's proximity to a home. The closer the proposed location is to a home, the more mitigation presumably would be required at that location to protect public health and welfare.

Community Alliance of the Yampa Valley • *Routt County* Ridgway-Ouray Community Council • *Ouray County*
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Western Colorado Congress of Mesa County

☑ WCC is a member group of the *Western Organization of Resource Councils* and *Community Shares of Colorado*

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The COGCC has also proposed that "high-occupancy buildings" will have additional protective zones. A proposed oil and gas location within 750 feet from a "high occupancy building" will require a "public hearing". A "public meeting" will be required for proposed oil and gas locations within 750 to 1,200 feet from a "high-occupancy building."

WCC RECOMMENDATION

WCC's strongest recommendation is to do away with the consultation zone and instead expand the consent zone to 1,000 feet.

The problem with COGCC's proposed "consultation zone" is that "consultation" in the proposed straw-man, is completely undefined. Thus far, there is no guarantee that citizen information and/or concerns would be incorporated into permitting decisions. How does the state, local government, the public or industry know when adequate consultation has occurred? When would a homeowner feel that she has been consulted? Will a one-sided communication by the industry suffice as "consultation?" What incentive does the oil and gas industry have to acknowledge homeowner concerns? How can citizens be confident that their input and concerns will be honored?

As written, "consulted" homeowners have no more rights than any other member of the public. Those homeowners may get more information, but they will have no ability to influence the ultimate outcome of where the well will be located or what mitigations will be in place to protect their family's health and property. By giving individuals or groups of homeowners access to the permit applicant, without providing formal mechanisms for influencing permit decisions, the "consultation zone" may create more problems than it solves.

The solution is to do away with the "consultation zone" and expand the "consent zone" to 1,000 feet. Requiring homeowner and landowner consent for any new oil and gas location within 1,000 feet of their home gives homeowners some leverage to gain additional protections for their family and property. Of course, if industry offers a reasonable proposal, and it is still not able to gain homeowner consent, then industry will still be able to apply for a variance from the COGCC.

The reality is that there are very few oil and gas locations that would fall inside a 1000-foot consultation zone. According to the statistics supplied to us by the COGCC, there will be less than 25 locations proposed within 1,000 feet of a home in all of 2012.

In our stakeholder meetings, there are two situations that seem particularly problematic. The housing development community is most concerned about protecting future development (and developable space), and the oil and gas industry is concerned about dealing with existing locations. A 1,000-foot consent zone could work in both situations.

Developable Space

Here is how a 1,000-foot consent zone would work on vacant land that was going to be developed. Let's say a large landowner ("Homestead Homes") was planning a new subdivision in a location where the mineral rights were owned or controlled by an oil and gas company. Today, the oil and gas company would negotiate with Homestead Homes and require Homestead to leave as

much as a 350-foot distance between the proposed well location and the closest home. Homestead would then plan the subdivision around the proposed wells – leaving big open spaces in their subdivision for the future oil and gas locations.

A 1,000-foot consent zone would bring more flexibility into the situation – making it easier on all parties. By giving its informed consent to drill closer than the 1,000-foot setback, Homestead could determine for itself how close it wanted wells near homes for the entire subdivision. Homestead's waiver of the 1,000-ft setback could be attached to every lot in the subdivision— so long as the waiver is properly recorded (shows up in title work) and the waiver is also presented to the new lot owners *prior* to their purchase of the lot.

Existing Oil and Gas Locations

Multi-well pads have many advantages in that they limit the surface disturbance to the land, disturb less wildlife habitat, increase efficiency, and save the industry money. However, those same technological advancements compound impacts and create larger, longer-lived industrial operations. We have heard industry stakeholders caution that they have well sites that were planned for multiple wells but not all the wells have been drilled. In those situations, we believe that it is in everyone's best interest to ensure an updated 2A Form is competed for those undrilled wells, and homeowners within 1,000 feet of that existing location provide informed consent for future development. If consent is impossible, despite the addition of new protections (best practices and best available technologies), then a variance may be appropriate. In most cases, the variance will be uncontested. In the event that a homeowner wants to contest the variance, they should be given explicit notice of variance(s) sought and an opportunity to explain their concerns to the COGCC through a public variance process. We believe that there will be relatively few instances when the variance process has to be used.

We strongly encourage the elimination of the "consultation zone" and encourage the adoption of a 1,000-foot consent zone. In addition, the "public meeting zone" should be extended from 1,200 to 2,000 feet. This would only require minimal additional expense for notifying additional people from 1,200 – 2,000 feet.

ANALYSIS OF COGCC PROPOSAL

We have gone through the COGCC staff proposal point by point and offer these additional comments for your consideration.

1) **Minimum setback is being changed from 150 feet to 200 feet from a building unit.**
   ***See Rule 603(a)*

The COGCC proposal does not state that the minimum setback would be raised from 150 to 200 feet, but it was mentioned by Director Lepore at the stakeholder meeting on September 28th. This is an "exclusion zone" meaning that operators would have to go through the variance process to get closer than 200 feet from a home. This proposed change represents an extremely modest change to current COGCC rules. We have asked that the "exclusion zone" be extended significantly based on studies that indicate a health risk to those living close to oil and gas operations.

2) **"Rural setback" of 150 feet is eliminated.**
***See Rule 603(a)*

We are happy to see the rural setback removed. The COGCC has never been able to justify why people living in rural areas (average of one house on *more* than two acres) had less protections from oil and gas drilling and production facilities than people living in "high density" neighborhoods with an average of one house on *less* than two acres.

3) ***"Wells and production facilities are prohibited within 350 feet of a Building Unit absent written consent of all owners of surface property and Building Units within 350 feet."***
***See Rules 603(e)(6); 603(a)(2)*

This proposed new rule is not new at all. The existing COGCC rules state:

> **Location requirement exceptions and waivers.** Exceptions to the location requirements set out in (2) and (3) above shall be granted by the Director if the Director determines that Rule 318. has been complied with and **that a copy of waivers from each person owning a building unit or building permitted for construction within three hundred fifty (350) feet of the proposed oil and gas location is submitted as part of the Form 2**, and that the proposed location complies with all other safety requirements of the rules and regulations. **COGCC *Rule 603(e)(6) (emphasis supplied).***

By all accounts, the existing regulations that allow the industry to obtain waivers from people willing to live closer than 350-feet to a proposed oil and gas location is working. As stated above, we have recommended changing the "consent zone" from 350 feet to 1,000 feet. According to the statistics supplied to us by the COGCC, this minor change would require additional waivers in less than 25 cases during all of 2012.

4) ***"Detailed notice of proposed oil and gas operations to be provided to all owners of surface property or Building Units within 700 feet of proposed wellhead or production facility, as well as local government designee."***
***See Rules 305(e); 305(e)(1)(A)*

This is a very modest change from current Rule 305(e). Current rules require that operators supply the Form 2A (and other materials listed in 305(e)(1)(A)) to all landowners within 500 feet of a proposed location. WCC has advocated that the notice requirement be extended to 2,000 feet from a proposed location and the information required in Form 2A be greatly expanded.

Tenants of rental property appear to have no additional guarantee of notice or standing. The requirement that homeowners notify their tenants should be clarified and expanded.

We understand from the last stakeholder meeting that the COGCC is proposing to expand Rule 303(d)(4) which currently states that approval of Form 2A is only required in four counties and in other limited circumstances. We encourage the required approval of Form 2As in all cases but special oversight should be given to Form 2A applications for proposed locations within 2,000 feet of a home.

When an oil and gas location is being proposed in a residential area, more information should be required in the Form 2A. To complement the performance standards discussed below, an enhanced Form 2A process for proposed sites within residential areas should require the operator to submit additional planning documents. These documents should include:

- drainage and erosion plan,
- operating plan,
- emergency response plan,
- nuisance mitigation plan,
- fire protection plan
- weed management plan,
- transportation plan,
- water acquisition and disposal plan
- water quality monitoring plan,
- air quality plan
- waste management plan
- public communication plan – *(how industry will hear about neighbor concerns and/or contact neighbors if development or production plans change)*

These plans are already required in La Plata County, Gunnison County, and/or Boulder County.[1]

The purpose of these plans would be to provide the COGCC, local government, and the community, information about how the industry planned to meet the residential area performance standards and other local concerns such as traffic and response to an emergency.

5) ***If there is a building unit within 700 feet of a well or production facility, the "[c]omment period [is] extended from 20 days to 40 days"***
***See Rule 305(c)*

This would be a welcome change. The current requirement is 20 days (or 30 days if requested by LGD). (305(c)). Often, local governments do not have the opportunity to respond at all due to the short time-frames given. Yet, local governments should be able to retain their current ability to ask for a 10-day extension to the comment period. The wells will be there for 20-50 years. Adding a few extra business days to allow for local government input would not be consequential. The local government should have the right to request an additional ten days to gather information or give substantive comments about a well's location or conditions of approval.

6) ***"Good faith consultation with owners of surface property or Building Units within 1200 feet of any proposed wellhead or production facility, as well as local government designee. Form 2 or Form 2A will not be approved until Applicant certifies consultation was held."***

[1] See Gunnison County "Regulations for Oil and Gas Operations", adopted August 28, 2012. Available at: http://www.gunnisoncounty.org/planning_regulations_guidelines.html; La Plata County Land Use Code, §90. Available at: http://co.laplata.co.us/departments_elected_officials/planning/codes_plans_maps; Boulder County Land Use Code, Boulder County, Colorado, 4-904 (Development Plan Submission) Available at: http://www.bouldercounty.org/property/build/pages/lucode.aspx

***See Rules 306(a-b)*

"Good faith consultation" gives no meaningful protection to homeowners. The consultation zone should be eliminated and the consent zone should be extended to 1,000 feet as described above.

7) ***"Surface owners and Building Unit owners [within 1,200 – 350 feet of a proposed location must be] invited to attend public meeting(s) to be held at convenient times and locations."***
***See Rule 508*

The requirement of a public meeting may be a good addition to the COGCC rules, but WCC has numerous questions related to standardization of process, agency oversight, and assurance that citizen comment would be considered.

The only similar requirement in current COGCC regulations is found in the requirement for a "local public forum" (for increased density issues) and "public issues hearing" (as requested by LGD) in Rule 508. The proposed rule does not appear to be as formal as either of these two existing opportunities for public comment. Moreover, when public forums based on Rule 508 have occurred in Battlement Mesa, local citizen groups questioned the meeting's efficacy and consideration of public comment.

We encourage the COGCC to add a lot of specifics to this requirement. What is the purpose of this "public meeting"? Is it to receive public comment on the proposal? Will comments go into a formal record to be considered by the COGCC staff as potential conditions of approval? What are the requirements for the "public meeting"? Will there be a COGCC-CDPHE observer at such public meetings?

The COGCC should make it clear that mail notice (two weeks in advance) should be given to everyone within 2,000 feet of a proposed oil and gas location. The COGCC should also require that the meetings provide information about the proposed location and potential mitigation strategies. Written or oral comments about the proposed location should be considered as official comments and made part of the proposal's COGCC Form 2A file. A member of the COGCC staff should attend every public meeting to answer questions and to make his/her own report on what took place at the public meeting.

8) ***If a well or production facility is within 1,200 feet of a building unit, mitigation measures to include:***
   - ***i. Restrictions on operating hours;***
   - ***ii. Restrictions on, or prohibitions of, pits***
   - ***iii. Restrictions on allowable noise levels***

   ***See Rules 805(b)(2)(D); 802*

We look forward to the COGCC's providing more detail to what appear to be good ideas. These provisions could be supported by our organization but, as written, the straw-man lacks the details needed to ensure these proposals will offer additional protections. What are the restrictions on operating hours? What are the proposed "restrictions on pits"? It should be remembered that Rule 805(b)(2)(D) currently prohibits pits within ¼ mile (1,320 ft) from a building unit if the pits

have a potential to emit 5 tons of VOCs per year and are located in Mesa, Garfield or Rio Blanco County. The conservation community has recommended that the 805 rules be applied statewide.

iv. Development of traffic plan

This is a welcome change. Most local governments that regulate oil and gas development already require the submission of a traffic plan. The COGCC should require the submission of traffic plan *approved* by the local government.

v. Green completions required
***See Rule 805(b)(3)*

This is a good change. Green completions are already required in many circumstances (See Rule 805(b)(3)). We expect this change in regulations would mean that green completions are now required for ANY wells within 1,200 feet of a home. The rules should also specifically state that flowback pits shall not be allowed under any circumstances. The extremely high air pollution emissions from flowback pits have been well-documented by the EPA.[2]

vi. Emissions control devices required
***See Rule 805(b)(2)*

This could be a welcome change but more concrete standards are necessary for this new requirement to have any meaning. We believe the enforceable standard should be "best available control technologies".

vii. Operations and facilities consolidated where possible
***See Rule 1002(e)(3)*

WCC agrees that use of multi-well pads is a practice that should be encouraged in most situations. Certainly, the land area impacted by development is greatly reduced by consolidation of facilities. We also understand that it saves industry money through increased efficiency. However, the flip side of the coin is that the few neighbors within 2,000 feet of a consolidated oil and gas location will have to deal with months of drilling activity, rather than weeks. The combined fugitive air pollution emissions from a multi-well pad are going to be many times those of a single well. There is a balance that must be achieved, and greater consolidation of facilities must come with greater setbacks and additional mitigations.

This balance can only be achieved through the requirement of a "residential drilling plan". Rather than evaluating the impacts of each oil and gas location individually, a residential drilling plan would look at the cumulative impacts of oil and gas production over an entire neighborhood. With proper planning, industry will be able to identify appropriate locations for consolidation of facilities.

[2] U.S. Environmental Protection Agency. 2011. Oil and Natural Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution, Office of Air and Radiation, July 2011 at 4-7. Available at: http://www.epa.gov/airquality/oilandgas/pdfs/20110728tsd.pdf

Additionally, without any requirement to engage in planning, this provision will not result in meaningful change. A similar requirement is already in place for protection of wildlife, "*Where practicable, operators shall consolidate facilities and pipeline rights-of-way in order to minimize adverse impacts to wildlife resources...*" Rule 1002(e)(3). WCC strongly encourages the COGCC to mandate that operators submit a "residential development plan" with their form 2A application that would, among other things, explain how the operator has consolidated facilities and shared infrastructure with other operators in the area whenever possible.

viii. Blowout preventers

***See Rule 603(e)(4)*

Blowout preventers are already required in high density areas. Rule 603(e)(4). We hope this common-sense requirement is applied statewide to any well within 2,000 feet of a home.

ix. Others

WCC recommends that the COGCC put in place new ***residential area performance standards*** that would allow for flexibility and innovation in industry practices and technologies. Some performance standards you may want to look to as models are in Gunnison County regulations.[3]

For example, a residential area performance standard requires that oil and gas operations near homes "shall not cause significant degradation to water quality" would be an enforceable performance standard. The term "significantly deteriorate" or "significant degradation" has been defined by the courts to mean means "to lower in grade or desirability to a significant, as opposed to trifling, degree."[4] Similar performance standards would be needed for noise pollution, light pollution and air quality.

Oil and gas activity near homes should require use of "best available control technologies" to reduce air pollution. This (BACT) standard is understood within the industry, allows for technological improvements, and is legally enforceable.

To complement the performance standards, an enhanced Form 2A process for proposed sites within residential areas should require the operator to submit additional planning documents listed above.

9) *High Occupancy Buildings: buildings such as schools, hospitals, nursing homes, with sensitive populations or identifiable difficulties with ingress or egress.*

i. Locating a wellhead or production facility within 750 feet of a High Occupancy building requires Commission approval following a full public hearing.

ii. The Director may approve a proposed wellhead or production facility located more

[3] Gunnison County "Regulations for Oil and Gas Operations", adopted August 28, 2012. Available at: http://www.gunnisoncounty.org/planning_regulations_guidelines.html.

[4] *City of Colorado Springs v. Bd. of County Com'rs of County of Eagle*, 895 P.2d 1105, 1114-15 (Colo. Ct. App. 1994) (The phrases "significantly deteriorate" and "significant degradation" were NOT found to be unconstitutionally vague)

than 750 feet, provided consultation with owners within 1200 feet is conducted.
***See Rules 603 (c) and (e)*

This requirement is for a full public hearing prior to approval of a well location or production facility within 750 feet of a "high occupancy building". "***High occupancy building***" is a new term that is limited to "buildings such as schools, hospitals, nursing homes, with sensitive populations or identifiable difficulties with ingress or egress."

The term "high occupancy buildings" does not seem to include the current COGCC definition for "ASSEMBLY BUILDINGS" which refers to ***"****any building or portion of building or structure used for the regular gathering of fifty (50) or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking or dining, or awaiting transport."* Rule 100.

The definition of "high occupancy buildings" seems pretty loose. The proposed definition makes it appear that sensitive populations will only receive additional protection if they are contained within a High Occupancy Building. Entire communities, like Battlement Mesa or Anthem Ranch (Broomfield), are retirement areas occupied by sensitive populations. Nor is there is specific mention of apartment buildings or other types of rental properties.

If the definition is not clarified, the industry should be required to identify *all potential* "high occupancy buildings" in their Form 2A applications. The decision as to whether the building fits that description would then have to be made on a site-by-site basis by COGCC staff.

We appreciate the public comment opportunity during permit considerations, although "public hearing" is also not defined in the current COGCC rules unless the proposal is referring to the "Public Issues Hearing" described in Rule 508 (j).

The conservation community has endorsed an oil and gas location exclusion zone of 1,500 feet from high occupancy buildings. The COGCC proposal to allow oil and gas development within 750 feet (so long as they hold a public hearing) offers no real protection – only a procedural hurdle. One wonders how many members of the public would turn-out for a well proposed 350-feet from a federal prison.

Additionally, important health and safety standards located in section 805 currently apply only to Mesa, Garfield and Rio Blanco counties. The protections in section 805 should be state-wide.

10) WHAT IS MISSING FROM THE COGCC PROPOSAL: Requirement for increased monitoring and enforcement

Currently there are 17 COGCC inspectors for 47,000 active oil and gas wells. The Colorado Air Pollution Control Division has only *four* staff members. The conservation community has recommended that, in a residential area, there be one COGCC inspection during the hydraulic fracturing process as well as one inspection each year thereafter. We would also recommend that the Colorado Air Pollution Control Division establish an air monitoring program for oil & gas facilities near residential areas, add more staff, and do more to train local air quality inspectors to ensure compliance with COGCC and state air quality regulations. Division air quality inspectors

should also be equipped with the latest in infrared cameras that will enable them to easily locate violations and fugitive emissions. The costs of these additional staff and equipment would come from a newly-established residential oil and gas location application fee described below.

11) WHAT IS MISSING FROM THE COGCC PROPOSAL: Residential drilling plan

The residential drilling plan would follow many of the requirements of the established Comprehensive Drilling Plan (Rule 216). As discussed above, the Residential Drilling Plan would be the only way one or more operators would be able to demonstrate that they have considered the cumulative effects of the industry's activities on an area and looked for ways to limit those impacts through consolidation of oil and gas locations.

12) WHAT IS MISSING FROM THE COGCC PROPOSAL: Onsite inspections

Wyoming requires an onsite inspection prior to approving any oil and gas well. Ohio has a requirement for an onsite inspection for drilling in residential areas (Ohio Revised Code §1509.06.12). An onsite inspection should be required anytime a well is proposed within 1,000 feet of a home, or 1,500 feet of a high occupancy building. We understand that the COGCC is currently evaluating locations based on the maps submitted by the industry as part of the Form 2A process. Colorado neighborhoods are better protected by a COGCC staff member actually visiting the area and seeing, on the ground, where the facility will be located and what alternative locations might be available. Walking through an area does require additional staff time, but the additional cost should be covered through the adoption of a residential location application fee described below.

13) WHAT IS MISSING FROM THE COGCC PROPOSAL: Establishing an application fee for wells near homes.

There is an additional need for staff resources to evaluate residential Form 2As, conducting onsite inspections for Form 2A applications in residential areas, and for increased compliance inspections of wells in residential areas (during hydraulic fracturing and once a year thereafter). The COGCC currently has no application fees for Form 2As or APDs (Form 2). If the COGCC is truly committed to protection of public health, safety, and welfare then the COGCC can demonstrate that by committing additional resources to circumstances when the public and the industry are in closest proximity. We do not believe that COGCC can meet these additional obligations by shifting current staff positions within the COGCC. Nor does it make sense for the COGCC to be gaining needed positions by taking vacant positions from other departments within DNR.

We understand that there may be a need for a legislative remedy to the COGCC's staffing problem. We hope that the COGCC or DNR will use this rulemaking to highlight the need for additional staff and equipment. We believe that legislation could be passed during 2013 that would allow the fees collected from industry to be used to offset additional inspection costs by the COGCC and CDPHE. WCC and others in the conservation community would vigorously support such legislation.

CONCLUSION

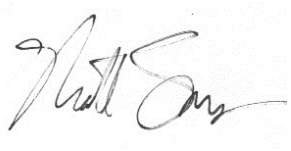
In conclusion, the current COGCC proposal to regulate oil and gas locations near homes is inadequate. The COGCC, and the CDPHE, have claimed from the beginning that "there was not enough scientific data" to show a risk to public health from oil and gas development. As a result, the COGCC staff has offered some additional procedures and mitigations that treat oil and gas development as merely a nuisance – not as a risk to human health. The COGCC approach rejects the scientific information that is available. It also flies in the face of common sense.

The public understands that the oil and gas industry is a dangerous, polluting industry. Just look at the list of chemicals used in drilling and fracking fluids. Calculate the amount of traffic it takes to drill a single well. Consider the decibel levels of a fracking operation. Consider the amount of benzene and other VOCs that occur in the product the industry is trying to produce in large quantities.

If the COGCC and CDPHE staff truly does not believe there is credible evidence that the oil and gas industry poses a risk to nearby residents, then the precautionary principle should apply. Until the industry can prove that it is safe to drill in residential areas, we should take reasonable measures to separate the oil and gas industry from our homes and schools. The current and proposed setback of 350-feet from a home is inadequate. Colorado can do better. Coloradoans deserve better.

We look forward to continuing our discussion with COGCC staff and other stakeholders. If you have any questions about these comments, please contact Matt Sura at 720-563-1866.

Sincerely,



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