

The logo for the La Plata County Energy Council is a black oval with a white border, containing the text "La Plata County Energy Council" in white. The oval is set against a white background with a grey swoosh underneath it.

La Plata County **Energy Council**

September 6, 2012

Mr. Thom Kerr, Permitting Manager
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203

RE: Setbacks

Dear Mr. Kerr,

The La Plata County Energy Council (LPCEC) is a non-profit trade organization that promotes safe and environmentally responsible natural gas development in La Plata County, Colorado on fee, tribal, state and federal lands. Our forty individual and company members work to build community relations, increase public understanding, and address public issues relative to the industry. On behalf of LPCEC we submit these suggestions regarding setbacks in response to the request from the Colorado Oil and Gas Conservation Commission's staff.

The LPCEC supports the comments submitted by the Colorado Petroleum Association and comments made by any member operators.

The Governor's Executive Order Creating the *Task Force on Cooperative Strategies Regarding State and Local Government Regulation of Oil and Gas Development* met for several weeks earlier this year. Despite setbacks being specified in the Executive Order, farmers, ranchers and land developers clearly articulated the negative impacts on their respective operations if overly prescriptive setbacks are adopted. Industry representatives have discussed the complexities inherent in locating well sites, including the accommodation of individual surface owner needs, mineral owner lease requirements and stipulations, spacing and operating rules and technological limitations.

At a meeting with Matt Lepore on August 30, 2012 members of the La Plata County Energy Council learned that COGCC is looking for setback proposals by September 7th and prior to the last stakeholder meeting on September 14th. It appears likely at the COGCC hearing on October 1st in Steamboat Springs that staff will ask for formal rulemaking. LPCEC does not support formal rulemaking to extend state setbacks. We believe a workable consensus could be mitigation strategies to mitigate the impacts of concern and communication of existing COGCC Rules.

La Plata County has within their Chapter 90 Land Use Code, setbacks that differ from the COGCC. Industry has been consistent in all comment letters to the Board of County Commissioners and Planning Commissioners: The COGCC already has setbacks in place and the setbacks within the County Code present a preemption issue. When La Plata County has discussed extensions of the setback rule to commercial and industrial buildings for instance, our

message has been that extensions of setbacks must be supported by reasoned analysis. We do not support a setback distance that would be arbitrary in nature. The LPCEC questions the need for formal rulemaking to change the current setbacks regulations as contained in COGCC Rule 603. These current setbacks have been in place for more than a decade.

Operators have been working with the following *La Plata County Chapter 90* language due to the flexibility of the setback distance that is tied to waivers from affected surface property owners, or technical issues and site conditions:

La Plata County Chapter 90: Sec. 90-122. 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 wellhead 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 wellhead 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 may 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 structure boundary and the closest existing residential, commercial, or industrial building or property lot line shall be determined on a site specific basis, based on the major facility review criteria identified in section 90-43, as applicable, but shall be no less than those required for a minor facility, unless waived by the affected landowner, where applicable.

Here in La Plata County, there have been many landowner waivers to the 450 foot setback, which include the landowners land uses, as well as technical operator issues or constraints of wetlands or geological and land issues. In fact, it is part of reasonable accommodation: siting and balancing of land uses. In some cases, the surface owner is the mineral owner and in other instances, the surface owner is not a mineral owner. Regardless, LPCEC contends that a Surface Use Agreement must take priority and setback rules must not conflict with the statutory obligation of operators to reasonably accommodate surface owner wishes with respect to location of wells and facilities. C.R.S. 34-60-127.

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Regarding communication or education: Enhancing the Local Government Designee education by quarterly conference call meetings with the two new COGCC Local Government Liaisons is essential. Enhancing GIS to show drilling windows by basin would be another communication tool for landowners, local government designees and elected officials. County and City Planning Departments need to overlay drilling windows so when platted subdivisions are submitted for recording in Clerk and Recorder's offices they become public for all users (title insurance companies, bankers, purchasers and sellers). A summary of various COGCC Rules, such as noise, odor, dust, lighting, setbacks, fire protection and other COGCC rules that address public health, safety and welfare issues associated with setback distances should be a key part of communications. The COGCC website could be enhanced by having a setback icon with the 2009 data and statistics as well as the statutory obligation of operators to reasonably accommodate surface owner wishes with respect to location of wells and facilities (C.R.S. 34-60-127) and a list of Best Management Practices (BMP's).

Here in La Plata County, over 95% of all well sites have negotiated Surface Use Agreements (SUA's) that could be impacted if COGCC extends the setback. There is language that says the setbacks will meet or exceed the 150 foot COGCC Rules. There are SUA's that have plats attached with distances defined as a result of staking and permitting. Contractual obligations are another reason to not consider rulemaking for additional setback distances.

The LPCEC has a good relationship with many of La Plata County's landowners. A consistent complaint from many landowners is they do not want someone telling them where a well can be located within the drilling window and they feel that they should not be paying property taxes on lands that they cannot use. If the landowner has 40 acres, and the oil and gas facility is 2 acres, and the county setbacks are met at 450 feet from the wellhead; the landowner pays property taxes on their entire 40 acre parcel and the operator pays property taxes on the 2 acre parcel for equipment and production values. Increasing setbacks would become more problematic for landowner uses regarding property taxes and off limit uses of landowner owned lands.

Encroachment on existing oil and gas facilities is the largest issue here in La Plata County. La Plata County Land Use Code, Chapter 90, has attempted to address that by using the following language:

Sec. 90-123. 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 of special flood hazard governed by chapter 78 of subpart B, or in an area designated

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as Restricted Surface Occupancy for wildlife resources by CDOW, unless after consultation with CDOW, a written waiver is provided by CDOW.

- (3) The county recognizes that in some instances, existing minor oil and gas facilities which initially met the setback requirements of this section do not currently meet the requirements due to (i) the encroachment of other development into the setback area, (ii) the facility is a nonconforming uses, as defined in this chapter, due to a failure to meet current setback requirements; 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 may be considered for siting of a new well, provided that the placement of the new well's wellhead is not closer to the nearest lot or property line or building structure for human occupancy than the existing well's wellhead.

More problematic, is La Plata County (and many other counties) do not have language in any Land Use Code chapters that require a landowner, builder, or developer to setback from existing oil and gas facilities or pipelines by any footage (150 feet or 450 feet) i.e. encroachment. Therefore, developers plat subdivisions with no knowledge of drilling windows, existing pipelines or existing wellpads. This is part of the educational problem. At a minimum, an Engineer's One Call should be required by all counties before platting (drawing lot lines), but obviously, the COGCC cannot make that requirement; land use conflicts will continue. In Archuleta County, a builder pulled a building permit to build a house and during excavation for the house foundation the contractor pulled up one wellpad anchor! This example shows that setbacks, even by the state, are not being met by landowners. Non-profit groups that oppose extractive industries, show pictures at angles that suggest a wellpad is in the front yard of a landowner. These deceptive pictures do not state when a building permit was pulled and when a well was spudded. In all visual testimony provided at various hearings here in La Plata County the well was first and the house was second.

Regarding mitigation instead of increasing setback distances: One consideration could be modifying pertinent definitions, *e.g.* High Density Area and refining the Local Government Designee process with the COGCC Local government Liaisons. Perhaps BMP's could be developed and posted to the COGCC website for operators, an example is listed below:

- To the maximum extent as possible, facilities should be sited to minimize the impact to existing residences, commercial structures, public buildings, and county approved platted building envelopes.
- To the maximum extent as possible, facilities should be sited to minimize the impact to agricultural operations.
- To the maximum extent as possible, facilities should be sited in order to minimize the amount of cut and fill needed to construct the facility.
- To the maximum extent as possible, facilities should 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.
- To the maximum extent as possible, facilities should be sited at the base of slopes to provide a background of topography and/or natural cover.

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- To the maximum extent as possible, facilities should avoid siting on or across hilltops and ridges or silhouetting.
- To the maximum extent as possible, facilities should be sited away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings and other landmarks.
- Minimize damage to existing trees and vegetation, when clearing trees and vegetation for construction facilities, to the maximum extent as possible, the vegetation and trees could be feathered to avoid blunt facility buffer edges.
- To the maximum extent possible, the applicant shall align access roads to follow existing grades and minimize cuts and fills.

We appreciate the opportunity to provide input to staff; and we have offered alternatives to rulemaking and compelling reasons not to increase setback distances. We will continue to provide any information you need to manage competing land uses. Please consider the La Plata County Energy Council as a resource to provide constructive input.

Sincerely,

Christi Zeller

Christi Zeller
Executive Director