

**Amended Memorandum of Understanding for Coordination of Certain Procedures
Between Weld County's 1041 WOGLA Permitting and the Colorado Oil and Gas
Conservation Commission's Oil and Gas Development Plan and Comprehensive
Area Plan Permitting Processes**

This Memorandum of Understanding ("MOU") is by and between Weld County, Colorado, by and through the Board of County Commissioners of Weld County ("Weld County"), and the Colorado Oil and Gas Conservation Commission ("COGCC"). Weld County and the COGCC are referred to collectively herein as "the MOU Parties," or in the singular as "MOU Party."

INTRODUCTION

On April 16, 2019, Senate Bill 19-181 ("SB 19-181") became effective upon the signature of Colorado Governor Jared Polis. SB 19-181 allows local governments to designate areas of oil and gas development as areas of State interest without requiring that the COGCC first identify that area as an area of State interest. SB 19-181, Section 1. SB 19-181 also gives enhanced land use authority to local governments through C.R.S. § 29-20-104(1)(h) to determine siting of oil and gas facilities and oil and gas locations and to regulate in a manner to minimize the adverse impacts of oil and gas operations. SB 19-181, Section 4. Weld County has designated its unincorporated area as a mineral resource (oil and gas) area of State interest. Weld County's 1041 Oil and Gas Location Assessment ("1041 WOGLA") permitting process regulations became effective August 5, 2019. That same day, Weld County created and staffed the Weld County Oil and Gas Energy Department ("OGED") to oversee the 1041 WOGLA permitting process.

SB 19-181 directs the COGCC to "regulate the development and production" of oil and gas "in a manner that protects the public health, safety, and welfare, including protection of the environment and wildlife resources." SB 19-181, Section 6. The COGCC adopted regulations, effective January 15, 2021, called for by SB 19-181 ("COGCC Rules"). The COGCC Rules require oil and gas operators to submit an application for an Oil and Gas Development Plan, which includes one or more Form 2As, a Form 2B and a Form 2C. The Application may also include a drilling and spacing unit application ("DSU") if the lands require spacing prior to development. The COGCC Rules acknowledge and encourage coordination between local governments and the COGCC as each exercises its own regulatory authority over oil and gas operations. *See* COGCC Rules 301.f (concerning coordination between COGCC and local governments); 302 (concerning local government siting and consultation); 303.a.(6) (concerning permitting coordination notifications); and 304.e.(1) (allowing submission of information and plans developed through local government permitting processes in lieu of information and plans otherwise required by COGCC). SB 19-181 requires the COGCC to wait for disposition of the local government permit prior to approving DSU applications and Form 2's, unless the local government waives such requirement. SB 19-181, Sections 12 and 14. Rules 304.b.(1) and 305.a.(2) A. implement this requirement. Additionally, COGCC Rules 302.c.(1)-(4) define when COGCC will defer to local government siting determinations and when COGCC will

require an alternative location analysis.

Weld County's 1041 WOGLA permitting process requires each applicant to participate in a pre-application planning meeting with representatives of Weld County, COGCC, and CPW (if the proposed location is within a High Priority Habitat). Other agencies may be invited to attend by the OGED Director, such as a Proximate Local Government or the Colorado Department of Transportation. *See* Weld County Code ("WCC") Sec. 21-5-315. Each 1041 WOGLA application is referred by OGED staff to COGCC for review and response. The COGCC referral response is due prior to the 1041 WOGLA Hearing for consideration by Weld County's Hearing Officer. *See* WCC Sec. 21-5-330 C. The MOU Parties agree that meaningful participation by COGCC in the pre-application planning meeting and the submission of a comprehensive referral response by COGCC are critical elements in the 1041 WOGLA permitting process and, therefore, are critical to successful coordination between the MOU Parties contemplated in this MOU.

PURPOSE

Because SB 19-181 authorizes regulatory permitting by both the COGCC and Weld County, it is desirable to have agreement between the two entities as to timing and order of processes. This is especially important because C.R.S. § 24-65.1-108 requires in an area designated as one of State Interest that State permits be granted, denied, or a response given by the State within sixty (60) days after the filing of the State permit applications. COGCC Rules 302.a, 302.d, and 308.b.(9) each implement this requirement of C.R.S. § 24-65.1-108 by requiring permit applicants to inform COGCC about whether the permit is for a location within an area of state interest. Therefore, one of the purposes of this MOU is to provide the MOU Parties and applicants for permits to develop oil and gas resources in Weld County an understanding as to how the timing and order of processing of the COGCC OGDG and Weld County's 1041 WOGLA Permits will proceed.

AGREEMENT

Weld County and the COGCC agree to the following:

1. Weld County section 21-5-315.A requires Weld County to conduct a pre-application meeting with an operator for a proposed oil and gas well location within 14 days of receiving a pre-application meeting request. Under the terms of this Agreement, COGCC will commit the appropriate COGCC Staff to attend this pre-application meeting. Weld County will use best efforts to coordinate with COGCC Staff to set the pre-application meeting at a time and place that are convenient for both MOU Parties. Weld County Staff and COGCC Staff will establish the day, time, and place for standing, weekly pre-application meetings. The MOU Parties agree that COGCC attendance at pre-application meetings is critical to the 1041 WOGLA permitting process and COGCC staff pledge to attend all such meetings, however, the Parties agree that failure to attend a meeting is not a breach of this Agreement. If COGCC Staff is unable to attend a pre-application meeting, they will promptly notify Weld County Staff and the pre-application meeting will be postponed, no more than once, to the next regularly schedule pre-application meeting date. The MOU Parties agree that nothing in this MOU prevents Weld County from holding a second pre-application meeting if the MOU Parties agree one should be held. There are multiple benefits to COGCC Staff attendance at the pre-application meeting, including:
 - a. to coordinate the 1041 WOGLA permit process and the COGCC OGDG permit process in order to, where possible, ensure successful permitting processes at both Weld County and COGCC;
 - b. to coordinate the Alternative Location Analysis (“ALA”)/Site Analysis process so that it satisfies both the Weld WOGLA process and COGCC Rule 304.b.(2). The MOU Parties agree that the COGCC ALA spreadsheet is a good tool for both permitting entities and agree to encourage its use by the operator;
 - c. to discuss, identify, and, where possible, allow the operator to use substantially equivalent information pursuant to COGCC Rule 304.e for its OGDG application; and
 - d. to allow for a robust early meeting between the MOU Parties and the operator to provide non-binding guidance to the operator concerning all aspects of the potential proposed OGDG and the 1041 WOGLA.
2. The MOU Parties agree that the pre-application meeting contemplated herein does not constitute a technical review pursuant to C.R.S. § 29-20-104(3)(a) and is not subject to the same requirements as a technical review.
3. For the purposes of this MOU, the MOU Parties agree that the sixty (60) day requirement set forth in C.R.S. § 24-65.1-108 applies to Forms 2 and 2A filed with the COGCC on or after August 5, 2019. As noted above, COGCC Rules 302.d and 308.b.(9) are intended to implement this requirement by identifying Form 2 and Form 2A applications in areas of state interest.

- a. For an OGDG and associated Form 2As, the MOU Parties recognize and agree that the timeframes of current COGCC regulations make it impossible for an operator or the Commission to comply with the sixty (60) day requirement. Accordingly, the MOU Parties agree that the COGCC will be in compliance with the sixty (60) day requirement for an OGDG associated with a Form 2A when the COGCC responds to the 1041 WOGLA referral within the twenty-eight (28) day response time set forth in Section 4, below.
 - b. For Form 2 applications, COGCC will use best efforts to grant, deny, or otherwise respond to the Form 2 applicant in the manner required by C.R.S. § 24-65.1-108 within sixty (60) days following its receipt of each Form 2 permit application.
 - c. In order to expedite the permit processes for the operator, Weld County and COGCC will request the operator to file its OGDG with COGCC simultaneously or near in time with its 1041 WOGLA filing. However, COGCC agrees that it will not issue the Director Recommendation required by Rule 306 on a proposed OGDG until after the associated Weld WOGLA Final Order is issued.
4. Section 21-5-330 of Weld County's 1041 WOGLA regulations requires a referral to the COGCC from Weld County prior to hearing of the 1041 WOGLA Permit by the County's hearing officer. The COGCC will review and provide substantive comment on the 1041 WOGLA application within twenty-eight (28) days of the date of referral to the COGCC by Weld County. The MOU Parties agree that the COGCC's review and comment is not binding on the COGCC and does not in any way limit the COGCC's authority to review and make a decision on any application.
5. The MOU Parties agree that if an operator chooses to pursue a Comprehensive Area Plan ("CAP"), the MOU Parties will encourage the operator to file the CAP first with the COGCC prior to filing a correlating Comprehensive Development Plan ("CDP") with Weld County. This will allow COGCC to consider whether to stay approval of other OGDG and/or DSU applications within the area of the proposed CAP pursuant to Rule 314.d.(5). The MOU Parties agree to coordinate their efforts on the CAP and the CDP to the extent such coordination is possible. As such, the COGCC will advise Weld County when an operator files a CAP, in order for appropriate coordination between the MOU Parties to take place.
6. Consistent with COGCC Rule 303.a.(6), the MOU Parties will share with each other the application information submitted by applicants for the MOU Parties' respective permits, unless an applicant has designated certain information in an application to the COGCC as confidential pursuant to COGCC Rule 223 and provided no consent for Weld County to view such information. Furthermore, the MOU Parties will communicate and coordinate regarding questions, comments,

or concerns they may have regarding conditions of approval, best management practices, and/or development standards. In particular, under COGCC Rule 303.a.(5), the operator will provide certain cumulative impacts information on a Form 2B and this information will be shared with Weld County.

7. Under certain circumstances, either the COGCC rules or the Weld County rules allow for a surface owner or tenant to waive certain regulatory requirements. The MOU Parties agree to accept a completed form attached hereto as Exhibit A as a valid waiver.
8. The MOU Parties agree that by entering into this agreement, they are not committing to make a decision to approve or deny any application and are not committing to include the same terms, conditions of approval, or best management practices in any approved permit application. The MOU Parties retain independent authority to decide any pending application.
9. This MOU takes effect upon the signature of both MOU Parties, and shall remain in effect until terminated upon 30 days written notice by either MOU Party.

10. Miscellaneous Provisions:

- a. Notices. Any notice or referral required under this MOU must be personally delivered, mailed by prepaid certified mail, or transmitted by electronic mail transmission to the mailing address or electronic mailing address of the MOU Parties as listed below. Unless otherwise provided above, notice or referral shall be deemed to be the date of personal delivery, three (3) days after mailing, or the day of electronic transmittal. The MOU Parties may, for purposes of this MOU, change the below contact information by giving notice pursuant to this Section 10.a.

Colorado Oil and Gas Conservation Commission

Attention : Julie Murphy
1120 Lincoln Street, Suite 801
Denver, Colorado 80203
Telephone: 303-894-2100, ext. 5122
Email: julie.murphy@state.co.us

Weld County, Colorado
Attention: Jason Maxey
1301 N. 17th Avenue
Greeley, Colorado 80631

Telephone: 970-400-3579
Email: jmaxey@weldgov.com

- b. Authorities. This MOU is not intended to supersede existing state or federal law, rule or regulation. Nothing in this MOU will be construed as affecting the authorities of the MOU Parties or as binding beyond their respective authorities.
- c. Reservations. This MOU is entered into without prejudice to, and without waiving, any jurisdiction or other rights, powers and privileges of any of the MOU Parties thereto.
- d. Information Disclosure. Any information furnished pursuant to this MOU will be subject to disclosure to the extent allowed under the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a), and/or the Colorado Open Records Act (C.R.S. § 24-72-201 *et seq.*).
- e. Similar Activities. This MOU in no way restricts the MOU Parties from participating in similar agreements or similar activities with other public agencies, organizations, or individuals.
- f. Separate Activities and Resources. Each of the MOU Parties will conduct its own activities and utilize its own resources, including expenditure of its own funds, in implementing this MOU.
- g. Obligation of Funds. Nothing in this MOU shall commit either MOU Party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property between the MOU Parties will require separate agreements and be contingent upon the availability of appropriated funds.
- h. Entire Agreement. This MOU and the exhibit attached hereto contain the entire agreement of the MOU Parties with respect to the subject matter of this MOU, and supersede all prior negotiations, agreements and understandings with respect thereto. This MOU may only be amended by a written document executed by both MOU Parties.
- i. Dispute Resolution. Should a disagreement arise between the MOU Parties regarding the meaning of a provision of this MOU or should one MOU Party allege a violation of this MOU by the other MOU Party (collectively, a "Dispute"), the MOU Parties agree to negotiate in good faith to resolve the Dispute. If the negotiations fail to resolve the Dispute, the MOU Parties agree to attempt to resolve

not previously exist with respect to any person not a party to this MOU.

- k. No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this MOU, and all rights of action relating to such enforcement, shall be strictly reserved to the MOU Parties and nothing in this MOU shall give or allow any claim or right of action whatsoever by any other person not included in this MOU. It is the express intention of the MOU Parties that any entity other than the MOU Parties receiving services or benefits under this MOU shall be an incidental beneficiary only.

By signature below, each of the MOU Parties certifies that it is authorized to act in its respective areas for matters related to this MOU.

ATTEST: Arthur G. Meirik Weld County, Colorado, by and through the
Clerk to the Board Board of County Commissioners of Weld County

By: [Signature] Deputy Clerk to the Board
By: Steve Moreno
Steve Moreno, Chair
Date: APR 28 2021



Colorado Oil and Gas Conservation
Commission, by and through Jeff
Robbins, Chair

[Signature]
Jeff Robbins, Chair
Date: April 28, 2021

EXHIBIT A

OPERATOR'S LETTERHEAD

[Name of resident]

[Date]

[Address of resident]

[Operator's Name]

[Name of Operator's Contact Person]

[Phone Number of Operator's Contact Person]

[Email of Operator's Contact Person]

[Proposed OGDG Name]

[Proposed Location Name]

[Nearest crossroads to Location]

REQUEST FOR INFORMED CONSENT IN WELD COUNTY

Oil and gas operations are regulated in Colorado by the Colorado Oil and Gas Conservation Commission ("COGCC"). An oil and gas company, or "operator", may apply for permits from the COGCC to conduct oil and gas operations such as drilling wells to produce oil and natural gas. Effective January 15, 2021, operators must have an approved Oil and Gas Development Plan ("OGDP") to conduct new oil and gas operations. An approved OGDG gives an operator permission to build one or more new oil and gas locations, or expand existing locations, which may include wellpads where oil and gas wells may be drilled. Weld County also has permitting requirements through its 1041 Weld Oil and Gas Location Assessment ("1041 WOGLA") program. Thus, an oil and gas operator conducting oil and gas operations in Weld County must apply for both a 1041 WOGLA permit from Weld County and an OGDG from the COGCC.

COGCC's rules generally do not allow new oil and gas development within 2,000 feet of a residential or high-occupancy building such as a home or apartment building.¹ This is called a 2,000 foot siting requirement. However, there are some exceptions to

¹ The terms "building" and "home" in this letter include both the COGCC defined terms "residential building unit" and "high-occupancy building unit". Because some high-occupancy building units are commercial buildings like nursing homes and hospitals, this letter uses the term "live" to refer to "owning," "living in," and "working in" a home or building.

this siting requirement. One exception is if the owners and tenants of every occupied building within 2,000 feet of the proposed development provide informed consent for the proposed oil and gas operations.

You are receiving this letter because [OPERATOR] plans to submit an application to the COGCC for approval of an OGD and an application to Weld County for a 1041 WOGLA which propose new oil and gas operations within 2,000 of the building where you live. There are two specific COGCC rules that address informed consent of building owners or tenants. The rule that applies in your case is:

[Operator to select one of the Rules below:]

[COGCC Rule 604.a.(4), because the operator is proposing to build an oil and gas location (known as a “working pad surface”) within 500 feet of the building that you live in. Under this Rule, the operator must also negotiate a surface use agreement (SUA) or waiver with you through a separate process.]

[COGCC Rule 604.b.(1), because the operator is proposing to build an oil and gas location (known as a “working pad surface”) between 500 and 2,000 feet from the building that you live in.]

[OPERATOR] is asking for your informed consent to this proposed OGD and 1041 WOGLA. If you choose to provide consent, this letter will be included in the application materials and may be made public.

You are not required to consent to the development proposed near your home. If you do not consent, the operator may decide to pursue development at a different location or may revise their proposal to meet additional COGCC and Weld County conditions. The operator may also choose to undergo a more stringent application process. This may involve seeking a “variance” from COGCC rules, or demonstrating that its plans for the operations will avoid, minimize, or mitigate impacts on nearby residents like you through a process governed by COGCC Rule 604.b.(4). So, if you do not consent, it is still possible that the operator will obtain the COGCC’s and Weld County’s permission to conduct the oil and gas operations.

To obtain your informed consent, an operator is required to provide you information about the nature, timeline, and scope of the oil and gas development that it proposes to conduct near your home, and the potential impacts that you may experience as a result of that development. This information must be presented in a language that you understand, and the operator must answer any questions that you have about the

information. [OPERATOR] is providing this information to you so that you can make an informed decision about whether or not to give your consent to the proposed oil and gas development that would be located within 2,000 feet of your home. To ensure that you fully understand the implications of providing your consent, at a minimum, [OPERATOR] is providing you with the following information:

1. Description of the physical siting of the proposed location, including legal description, and a map showing the proximity to your home;
2. How this proposed location was selected using an Alternative Location Analysis process;
3. A description of the mineral acreage to be developed from this proposed location, and the number and orientation of wells, types of equipment, and other on- and off-location infrastructure related to anticipated operations;
4. A description, proposed timeline, and expected duration of different operations that are planned, including construction, drilling, completions, flowback, interim reclamation, production, and final reclamation;
5. A description of the different immediate impacts that you may experience during each stage of operations, which may include noise, vibration, light, odor, dust, traffic, and visual impacts, along with the operator's planned mitigation ("Best Management Practices") designed to reduce the impacts you may experience during each state of the operation;
6. A description of potential adverse or beneficial impacts that you may experience as a result of planned operations at this location, including but not limited to scientific information discussing potential health impacts that are likely attributable to living in close proximity to oil and gas development;
7. A point of contact for you to obtain additional information from [OPERATOR], and how you can access additional information from the COGCC and your local government.²

Because your home is within 2,000 feet of the proposed oil and gas development, you qualify as an "affected person" under COGCC's rules. That means you have a legal right to participate in all COGCC proceedings to decide whether or not to grant the operator its OGDG permit to conduct oil and gas operations near your home. You have the ability to submit written public comments to the COGCC's Staff while the application is pending. You have the right to request the COGCC to conduct a local public hearing at a location near where you live. You have the right to provide written and oral public comments to the Commissioners about the proposed

² In addition to this information, the operator will also provide you with additional information required by COGCC at later stages of the application process, should the operator choose to move forward with the OGDG application process after learning whether you choose to provide your informed consent.

development while the Commission is considering the application. You also have the right to petition to participate as an “affected person,” which means you can exercise your rights in a process similar to litigation in court, before both a COGCC Hearing Officer and the Commissioners themselves. You also have the right to apply for intervention in the Weld County 1041 WOGLA permitting process to express your concerns before a Weld County Hearing Officer. Intervention party written comments and/or oral testimony will be considered evidence for the Hearing Officer to weigh as part of a decision to approve or deny the 1041 WOGLA Permit.

Before you sign this document, you must read all the information provided to you by the operator. Please initial below to certify that:

- (1) you have read all the information provided to you: _____
(2) you understand that information: _____

Informed Consent Decision:

By signing this document, you are informing the COGCC and Weld County that you have made a fully-informed decision on the oil and gas development proposed near the building that you own or live in. **YOU ARE NOT OBLIGATED TO SIGN THIS DOCUMENT. YOU HAVE THE RIGHT TO WITHHOLD YOUR CONSENT TO THE OIL AND GAS DEVELOPMENT NEAR YOUR HOME.** Your signature does not grant you additional rights or waive your existing rights, including your right to participate in COGCC’s permitting proceedings as an “affected person,” and Weld County’s 1041 WOGLA permitting process. Your signature is only relevant to the proposed oil and gas development in this OGDG and this 1041 WOGLA. It is not transferable to any other proposal or location or permit application. This document will be maintained as part of the public record in the hearing of this 1041 WOGLA Permit and this OGDG with the Commission.

I have read and I understand the information provided to me regarding the proposed Oil and Gas Location and its associated operations. The language was provided to me in a language that I understand. I have had the opportunity to ask [OPERATOR] questions. I understand the potential impacts of the development, including but not limited to potential impacts to my health. I also understand the benefits that I may receive as a result of the development.

I AGREE to the proposed location and associated oil and gas operations, and voluntarily provide my informed consent.

I DO NOT give my consent for the proposed location and associated oil and gas operations.

Signature: _____


Name (Printed): _____

Date: _____

Language other than English that materials were provided in: _____

AMENDMENT #1 TO MEMORANDUM OF UNDERSTANDING FOR COORDINATION OF CERTAIN PROCEDURES BETWEEN WELD COUNTY'S 1041 WOGLA PERMITTING AND COLORADO OIL AND GAS CONSERVATION COMMISSION'S OIL AND GAS DEVELOPMENT PLAN AND COMPREHENSIVE AREA PLAN PERMITTING PROCESSES

APPROVED AS TO SUBSTANCE AND FORM:



County Attorney