



COGCC OPERATOR GUIDANCE

RULE 604 - BUILDING UNIT OWNER/TENANT INFORMED CONSENT

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Rule 604.a.(4) - No Working Pad Surface will be located less than 500 feet from 1 or more Residential Building Units not subject to a Surface Use Agreement or waiver, that includes informed consent from all Building Unit owner(s) and tenant(s) explicitly agreeing to the proposed Oil and Gas Location siting.

Rule 604.b - No Working Pad Surface will be located more than 500 feet and less than 2,000 feet from 1 or more Residential Building Units or High Occupancy Building Units unless one or more of the following conditions are satisfied:

- (1) The Residential Building Unit owners and tenants and High Occupancy Building Unit owners and tenants within 2,000 feet of the Working Pad Surface explicitly agree with informed consent to the proposed Oil and Gas Location.

Purpose of Rule

Rule 604.a.(4) prohibits the siting of any Working Pad Surface (“WPS”) less than 500 feet from a Residential Building Unit (“RBU”), unless a Surface Use Agreement (“SUA”) or waiver, that expressly includes informed consent, is obtained from the RBU owner(s) and tenant(s). Rule 604.b.(1) prohibits the siting of any WPS between 500-2,000 feet from a RBU or High Occupancy Building Unit (“HOBU”), unless informed consent is obtained from the RBU or HOBU owner(s) and tenant(s).¹ These rules apply to all applicable Building Units (“BUs”) within 2,000 feet of a proposed WPS. The purpose of these rules is threefold:

1. to ensure adequate protection from potential adverse impacts of oil and gas operations to those people living² near proposed development;

¹ Rule 604.b.(1) is not the only method for an operator to prove to the Commission that a location between 500 and 2000 feet of an RBU or HOBU is appropriate. However, the alternatives enumerated in Rules 604.b.(2)-(4) are not addressed by this guidance document.

² The term “living” in this guidance is intended to include “working”.

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2. to provide operators a means by which Oil and Gas Development Plans (“OGDPs”) and associated permits may be approved for operations within 2,000 feet of RBUs and HOBUs in accordance with all COGCC rules; and
3. to ensure any BU owner or tenant who consents to oil and gas operations within 2,000 feet of their building has been given all necessary information regarding the proposed development in order to fully understand the impacts they may experience and the potential risks they are assuming by providing their informed consent.

Background

Prior to the Mission Change Rulemaking, COGCC Rules included a basic “hard” setback of 200 feet between a well and the nearest building. “Soft” setbacks included the 500-foot “Exception Zone” and 1,000-foot “Buffer Zone” between a well or production facility and a BU. Oil and gas operations were permitted within these zones if operators provided additional Best Management Practices (“BMPs”) and other supporting documents, but the old rules did not require operators to obtain consent from the BU owners or tenants within those zones.

Under the mandate of Senate Bill 19-181 (“SB19-181”), the COGCC is required to “regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources.” C.R.S. § 34-60-106(2.5)(a). During the course of the Mission Change Rulemaking in 2020, various requirements for the siting of Oil and Gas Locations (“Locations”) were revised or newly established to ensure protection from potential adverse impacts from oil and gas operations for those people living in proximity to proposed new Locations or expanded operations on existing Locations. Although the basic setback for a well remains unchanged at 200 feet from a building (see Rule 604.a.(1)), the Mission Change Rules (effective January 15, 2021) increased the setback between a Location and a RBU or HOBUs to a new distance of 2,000 feet. The new rules also changed the measuring point from an individual well or production facility to the edge of the WPS, further expanding the setback distance between wells/equipment and BUs. Rules 604.a.(4) and 604.b.(1) also require the “informed consent” of RBU and HOBUs owners and tenants when operators wish to apply for OGDPs and Form 2As, Oil and Gas Location Assessments (“Form 2As”) for Locations within 500 or 2,000 feet of one or more RBUs or HOBUs. This increased setback distance protects the health, safety, and welfare of residents near proposed operations, and the informed consent requirement gives them an opportunity to make an informed decision about the siting of operations proposed near them. Under Rule 507.a, RBU and HOBUs owners and tenants may also participate in the Commission’s permitting process as “affected persons.”

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Rule 604 Building Unit Owner/Tenant Informed Consent Guidance

If an operator decides to seek the informed consent of a RBU or HOBUE owner or tenant for a Form 2A permit application, the operator should generally follow these steps:

1. Identify all BUs that are within 2,000 feet of the proposed WPS:
 - a. If a BU is transected by the 2,000 foot radius, or the BU is exactly at the 2,000 foot distance, that BU must be included in the outreach effort for informed consent
 - b. If a multifamily RBU is identified (ex: a duplex or three-unit townhouse), each individual residential unit within that BU must be counted as a unique unit and be included in the informed consent outreach effort
 - c. If a multifamily HOBUE is identified (ex: a fourplex or 10-unit apartment building), each individual residential unit within that BU must be counted as a unique unit and be included in the informed consent outreach effort
2. Identify the address and the legal owner of each BU:
 - a. Use public records and other sources to obtain the address and the owner's name for all applicable BUs
 - b. If a BU is owned by one person, but another person is living there as a tenant, both people must receive the information
 - c. The mailing address of a BU owner may be in a different state or location; in this case the information should be sent to both the local/physical address and the mailing address
 - d. Address the information to the owner and resident by name if known; if BU ownership or tenancy is unknown, address information to "Resident"
 - e. Some physical addresses are not set up to receive mail; in this case, identify and use the mailing address if possible
 - f. If mailing addresses are unknown, or if operator prefers, the necessary information (listed below in item #3) may be delivered by hand directly to the BU using the physical address
3. Provide each BU owner and tenant with a formal request for informed consent and all required information about the oil and gas development proposed near them. The exact nature of the information that should be provided will vary on a case-by-case basis depending on site-specific aspects of the proposed location, but in general should include:
 - a. An informed consent request letter
 - i. Use the Informed Consent Template Letter (see "Template Letter Instructions" below)
 - ii. Operators may use a letter of their own construction
 - iii. The letter must clearly demonstrate both that the recipient has been fully "informed" and has provided "consent," consistent with Colorado law

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- iv. The letter must have a space dedicated to consent determination, including a space for signature and date
- v. For consent to be considered informed, the information must be provided to the recipient in a language they understand
- b. A description of the physical setting of the proposed Location, including the legal description, and a map showing the proximity to the resident's home
 - i. Map should include a recent aerial image with the subject BU and proposed WPS clearly marked, and the distance shown as measured from the edge of the WPS to the BU
 - ii. Map should show the 2,000-foot radius from the edge of the WPS (or 500 foot radius if the operator is seeking informed consent only pursuant to Rule 604.a.(4))
 - iii. Provide the lat/long and legal description of the proposed Location, but rely primarily on more "local" descriptions, which may include road intersections or property names that the BU owner or tenant will be more familiar with
- c. A description of how the proposed Location was selected using the Alternative Location Analysis ("ALA") process
 - i. Provide a general description of the ALA process, and how the proposed Location's proximity to the subject BU meets ALA criteria
 - ii. Provide a map showing the alternative locations that were not selected for development; include the subject BU on the map for clarity and orientation
- d. A description of the mineral acreage to be developed from the proposed Location, and the number and orientation of wells, types of equipment, and other on- and off-location infrastructure related to anticipated operations
 - i. Provide a map showing the outline of the Drilling and Spacing Unit ("DSU") to be developed by the proposed Location; the map should include the Location, the wellbore trajectory of the proposed wells on that Location, and the location of the subject BU
 - ii. Provide a diagram (similar to a Layout Drawing) that shows a close up of the proposed Location; the map should indicate the location of wells, tanks, separators, and other permanent equipment, and the direction of any off-location flowlines
- e. A description, proposed timeline, and expected duration of different operations that are planned, including construction, drilling, completions, flowback, interim reclamation, production, and final reclamation

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- i. Simple diagrams or flowcharts depicting each type of operation or process may be helpful
 - ii. Timelines and durations should be provided using months or quarters, and years, as is reasonably anticipated
- f. A description of the different immediate impacts that the BU owner or tenant may experience during each stage of operations, which may include noise, vibration, light, odor, dust, traffic, and visual impacts
 - i. Provide a realistic description of specific impacts that are likely to be experienced by a person living at the subject BU (ex: the spud rig sounds like this when it is drilling the upper portion of the well, and the big rig sounds like this when it is drilling the horizontal portion of the well); consider site specific issues such as topography, other buildings, or vegetation that may buffer certain impacts
 - ii. Describe the daily routine and timing of likely impacts (ex: lights on the rig will be on 24-7 during drilling, but once the Location goes to production, the only permanent light fixture on the Location will be on the meter house, and it will be on a motion sensor)
 - iii. Provide a summary of COGCC’s regulatory requirements for each of the “nuisance” impacts anticipated at the subject BU (ex: Rule 423 maximum permissible noise levels), and how the operator intends to reduce or mitigate those impacts
- g. A description of potential adverse or beneficial impacts that the BU owner or tenant may experience as a result of planned operations at the 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
 - i. At a minimum, provide the Health Study Information Sheet or equivalent information
- h. Any additional information specific and relevant to the proposed Location or operations, that may be important for a BU owner or tenant to fully understand the proposal prior to making a consent determination. Examples may include (but are not limited to):
 - i. Whether the Location is part of a Comprehensive Area Plan (“CAP”) (which should be followed by an explanation of what a CAP is)
 - ii. A description of any BMPs that may reduce potential impacts
 - iii. Other ALA criteria that are met by the proposed Location, such as High Priority Habitats (“HPH”) or Floodplains

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- iv. Any lease information of interest, such as lease expiration dates, or Federal or State mineral ownership
- v. How many other BU owners and tenants are receiving the request for informed consent
- vi. The operator's hoped-for date to receive this (and other) letters providing informed consent; the operator's hoped-for date of submitting the entire OGD application
- i. Contact information for the operator, Relevant Local Government(s) ("RLG"), and the COGCC, and instructions for how the resident can access additional information
 - i. Provide the name, direct phone number, and email address of an employee of the operator who can answer questions or route them appropriately; this should not be a 24-hour hotline
 - ii. Provide the name, phone number, email address, and website (if available) of the RLG; if a local permit is being sought, provide the type of permit, name of permit, status of permit, and instructions on how to get more information about the permit
 - iii. Provide the COGCC's phone number and website address; include instructions on how to get more information about the OGD application process, and how to use the COGIS online interactive GIS map. The COGCC Information Sheets for Rule 303.e.(2) may be useful to provide at this stage as well.
4. Be available to answer any questions the BU owner or tenant may have
5. Provide a self-addressed stamped envelope or other convenient means such as an email address by which the BU owner or tenant can easily return the letter or respond to the operator's request

Template Letter Instructions

COGCC has provided two informed consent template letters that operators may use when seeking informed consent from BU owners/tenants: one is specific to Locations proposed in Weld County, and the other is to be used statewide outside of Weld County. The use of these templates is not required, but is strongly recommended, as they clearly inform the recipient of their rights and options in making an informed consent determination. Operators may design their own letter or use a different template, but if their letter does not include all the necessary information or adequately meet either of the required "informed" or "consent" components, COGCC staff, the Director, or the Commission may find the letter does not meet the intent of "informed consent", and the operator's document may be found invalid or inadequate during the permitting process, which may significantly impact the Commission's ultimate decision to approve or deny the OGD application.

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Weld County Template Notes:

The Weld County template letter was prepared in cooperation with Weld County, and meets all the requirements of the 1041 WOGLA process for informed consent. This allows operators to obtain a single signed informed consent letter from each BU owner and tenant, rather than having two separate letters (one for Weld and another for COGCC).

To use the COGCC template:

1. Download the template from the COGCC website's Form 2A Page, under the Data Templates header: https://cogcc.state.co.us/reg.html#/forms/form2a_new
2. The template has multiple fields that operators will need to fill in and customize as appropriate. Some fields will be duplicated on every letter, like the operator's name; other fields will be unique to each letter, and should be carefully edited, such as the name and address of the BU owner or tenant, and specific OGD information
3. The filled-out letter should be provided to the BU owner or tenant along with the entire packet of information required. The owner or tenant must read ALL the information before signing
4. COGCC does not require the letter to be notarized
5. COGCC does not require the letter be signed by all parties living in each unit of the BU of record (i.e., only one signature is necessary from a tenant if two tenants live together in the same single-family building unit, but a signature from both the owner and a tenant is necessary)

General Notes

1. Informed consent, as used in the OGD and Form 2A permitting process, has two separate, but equally important components, both of which must be clearly illustrated by the person who is consenting:
 - a. "Informed" means that the person has been provided all relevant and pertinent information about the proposed OGD, has studied and considered that information, and comprehends that information to a degree that if asked, they would be able to describe, in their own words, and with some detail, the entire proposal. Their understanding must include the recognition of possible consequences or risks.
 - b. "Consent" means that the person agrees to allow the proposal as described and understood, and accepts the possible risks or impacts they may experience as a result of the proposal. It does not mean they consent to any significant or unannounced changes. It also does not transfer to other OGDs or Form 2As.

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2. Informed consent must be voluntarily given by a BU owner/tenant. An operator cannot force a BU owner/tenant to provide informed consent.
3. Information should be provided in “plain” language to the extent possible. Technical jargon and acronyms may not be readily understood by the person reading the information. Photos, maps, and diagrams should be easy to read and interpret for someone who is not familiar with the oil and gas industry. Thoughtfulness and care should be taken when compiling information for dissemination; seek to understand your audience and anticipate their needs.
4. Information should be provided in whatever language the BU owner or tenant most readily understands. If a BU owner or tenant has questions, assist them by providing a translator if needed. Obtaining translational services and ensuring translations are accurate is the responsibility of the operator.
5. Every signed informed consent letter will become part of the public record upon the OGDG passing completeness. If the signer requests that their personal information be kept confidential, COGCC Staff may redact signatures, names, or house numbers to ensure the privacy of the signer, but the street name will not be redacted.
6. Common sense dictates that a WPS with no BUs within a 2,000-foot radius may be an easier Location to permit than a WPS with multiple BUs that would require informed consent. Consider this when conducting the ALA.

FAQ

When is informed consent required?

Informed consent is required as part of an OGDG application when a proposed Location is subject to Rule 604.a.(4) or 604.b.(1). Rule 604.a.(4) requires informed consent when a WPS is proposed less than 500 feet from a RBU. Under this Rule, informed consent must be obtained from every BU owner and tenant within 500 feet of the WPS. The informed consent may be explicitly built into an SUA or a Waiver, or it may be obtained as a separate, standalone document. If built into an SUA or Waiver, the informed consent language must still adequately illustrate both the “informed” and the “consent” components described within this guidance document. Rule 604.b.(1) requires informed consent when a WPS is proposed between 500-2000 feet from a RBU or HOB. Under this Rule, informed consent must be obtained from every BU owner and tenant within that 500-2000’ zone. These Rules apply to new Locations and to existing Locations for which an amended Form 2A is being sought. Rule 604.b.(1) is not the only method an operator may choose to indicate to the Commission that a location between 500 and 2000 feet of an RBU or HOB is appropriate. However, note that an operator who wishes to seek a permit pursuant to Rule 604.b.(4) may also wish to seek

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informed consent from BU owners and residents within 2000 feet³. Whether some (but not all) BU owners and tenants within the 2,000 foot radius provided informed consent is a relevant factor for the Commission to consider when evaluating the operator's community engagement efforts pursuant to Rule 604.b.(4).G.

When should I seek informed consent?

It is up to the operator to determine when to approach a BU owner or tenant to initiate a discussion on possible siting and the possibility of obtaining informed consent, but the need for informed consent may play a critical role in the early planning stages of a proposed OGD or Location, and should be considered during the ALA process. If the ALA identifies locations that would require informed consent from one or more BU owners, the operator should reach out to the BU owners to see if they are receptive to oil and gas operations near their residence. If an operator already has a good relationship or an SUA with a BU owner, informed consent might be fairly easy to obtain early in the process. If the ALA indicates a location includes BUs within 2,000 feet of the proposed WPS, the operator should be prepared to work with all necessary BU owners and tenants prior to submitting an OGD or Form 2A application.

How do I obtain informed consent?

Ideally, operators will have already met with some BU owners and tenants during the ALA process, and may have a relatively good idea who will be receptive to giving their informed consent and who might not. In either case, a good practice is to reach out to each BU owner or tenant early in the process. Operators can send the information packet directly, or start with a phone call to let the BU owner or tenant know an information packet is coming their way. Once the BU owner or tenant has received the information, the operator should give them time to review it, and be readily available to answer questions or discuss any concerns they may have. The owner or tenant may wish to engage in a meeting to go over the material in detail. Operators should accommodate such requests to ensure that the BU owners and tenants have all the information they need to provide fully informed consent. Operators should be proactive in building a relationship and receptive to questions or suggestions made by the BU owners and tenants, who may be uniquely positioned to understand opportunities to avoid, minimize, and mitigate site-specific impacts given their familiarity with the area.

How do I submit signed informed consent letters?

³ Rule 604.b.(4) allows for the operator to request the Commission determines, through the hearings process, whether or not it is appropriate to site a WPS within 2000 feet of a RBU or HOB based on several enumerated factors that demonstrate substantially equivalent protections.

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Attach all signed informed consent letters (in PDF format) to the Form 2A using the attachment dropdown description “INFORMED CONSENT LETTER”. If you have more than one consent letter, attach each letter separately; do not combine them into a single PDF. If you are attaching an SUA that includes informed consent within the SUA, use the attachment dropdown description “SURFACE AGRMT/SURETY”. If you are attaching a Waiver that includes informed consent within the Waiver, use the attachment dropdown description “WAIVERS”. If you have an SUA or Waiver and a separate informed consent letter, attach them separately and use the appropriate attachment description.

Can I use the signed letter of informed consent in lieu of an SUA or waiver?

No. Informed consent is not an agreement to use a person’s land, nor is it a person’s declaration that they waive their right to something. If a Form 2A requires an SUA or waiver AND informed consent, the operator must either get both documents signed separately, or clearly indicate the informed consent information within the text of the SUA or waiver. If the informed consent information is within the text of the SUA or waiver, the signature must clearly show BOTH that the BU owner or tenant expressly agrees to the SUA or waiver AND gives informed consent.

What if someone does not give their consent?

BU owners and tenants are not required to provide their consent. If someone chooses to withhold their consent, operators should not try to persuade that person to change their mind. There are other permitting options available for operators to pursue, such as considering a different location, or meeting a different requirement of Rule 604.b. Operators can also request a variance from Rule 604.a.(4) or 604.b.(1) as part of the Form 2A permit application. Any variance request will be heard directly by the Commission at the OGD hearing, and not allowed on a consent agenda.

What if someone does not sign the informed consent letter?

If a BU owner or tenant received a request for informed consent, but has not yet responded to the letter, operators may reach out to the person to ask if they have any questions or need a duplicate or translated information packet or letter. Ultimately, however, a BU owner or tenant is not required to sign, or even respond. If an operator’s request is repeatedly ignored, it is the operator’s choice to continue trying to work with the BU owner or tenant, or to reassess the proposed Location.

What if someone provides their informed consent, then later revokes it?

The consequences of a BU owner or tenant providing informed consent for an OGD, then later revoking their consent, largely depends on the timing of the revocation. If the consent is revoked prior to the operator submitting the OGD application, the

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operator will have to reassess whether or not the application is complete and ready for submission. They may reach out to the BU owner or tenant to ask if new concerns or questions have arisen, and may be able to address those concerns, or answer those questions sufficiently so the BU owner or tenant is satisfied and provides their informed consent again. If the consent is revoked while the OGDG is in process and under review by either the Director or the Commission, the operator should notify the Director (via staff) immediately, so staff can discuss options with the operator and determine the best course of action. If informed consent is revoked after the OGDG has been approved, the OGDG approval will still be valid. In this case, however, the operator should work with the BU owner or tenant to understand their concerns, and try to meaningfully address those concerns through additional measures to avoid, minimize, or mitigate the impacts that caused the concern.