La Plata County Colorado

POLICY MEMORANDUM

DATE: November 7, 2022
FROM: County Attorney's Office and Community Development Department
TO: Board of County Commissioners; Planning Commission
RE: Chapter 90 Oil & Gas Development: County Setbacks

I. INTRODUCTION

As part of the public review process, the County has received comment regarding staff's first draft of chapter 90. Policy related questions about the nature and extent of the County's setback requirements have been identified as needing further clarity and direction from the Board, namely:

1. Should the County's 500-foot minimum setback in draft subparagraph 90-10.II.C.2 pertaining to setbacks for commercial or industrial buildings or property lines also apply to residential building units and high occupancy building units?
2. With respect to setbacks other than the minimum setbacks already established in the draft, should the County defer to the COGCC to establish setbacks between 500' and 2,000' using the "off ramp" considerations in rule 604.b or does the Board wish to exercise more local control over the process?
3. If the County does not defer to the COGCC, in what ways does the Board wish to deviate from the COGCC's process that would be at least as protective as those set forth in rule 604.b?

This policy memo aims to address these matters by providing background information about the State's approach, the rationale used in the current draft of chapter 90, and the pros and cons of the available options to aid the Board and the public during this decision-making process.

II. BACKGROUND

In 2019, the Colorado General Assembly passed SB 19-181 that amended the Oil and Gas Conservation Act of the State of Colorado (the "Act"), which regulates oil and gas development in Colorado. SB 19-181 changed the Colorado Oil and Gas Conservation Commission's ("COGCC") mission from "fostering" to "regulating" oil and gas in a manner that protects public health, safety, welfare, the environment and wildlife resources. The COGCC was required by the Act to conduct several rulemakings, which have largely

concluded in early 2022 and resulted in several state-mandated minimum setback provisions. To provide a better understanding of the rationale that staff relied upon for the first draft of chapter 90, this memo will address the testimony and data that assisted in determining the State's approach to setbacks and a summary of State setback requirements.

A. Purpose of setbacks.

The primary purpose and goals of SB19-181 are to protect public health, safety, welfare, the environment, and wildlife resources from the adverse impacts of oil and gas operations. To fulfill these goals, SB 19-181 clarified many ways in which local governments regulate surface impacts of oil and gas operations, including land use, location and siting of oil and gas facilities, impacts to public facilities and services, water quality, water source, noise, vibration, odor, light, dust, air quality, land disturbance, reclamation, cultural resources, emergency preparedness, security, and traffic issues related to oil and gas development.[1] Setbacks are one of the tools used by COGCC 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 and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations."[2] In short, setbacks are intended to avoid, minimize, or mitigate the adverse impacts of oil and gas operations on public health, safety, welfare, the environment, and wildlife resources in the surrounding community.

The COGCC's Setback requirements were decided after consideration of various impacts, including to health, safety, and general welfare.[3] A major point of consideration in the COGCC's decision making process on setbacks was the health-related concerns and impacts to the community. In October 2019, CDPHE published an expert report by ICF (a consulting firm) regarding human health risks associated with living near oil and gas operations in Colorado.[4] The ICF report was prepared pursuant to a 2017 CDPHE public health assessment recommendation to continue the evaluation of potential health risks using more comprehensive exposure data from Colorado State University, which was then completed by ICF in conjunction with CDPHE. The CDPHE's 2017 screening health risk assessment found that overall, all available data shows a low risk of harmful health effects from short-term to long-term exposure to substances emitted from oil and gas operations.[5]

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[1] Statement of Basis, Specific Statutory Authority, and Purpose of New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission (800/900/1200 Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemaking) (Nov. 23, 2020), at page 4, citing to C.R.S. §29-20-104(1)(h)(I)-(IV), available at: https://drive.google.com/drive/folders/1kTZUgXmhVpOy4gEZ2tSOYVDDvYXupzvA

[2] C.R.S. § 34-60-106(2.5)(a)

[3] See discussion of rule 604 in Statement of Basis, Specific Statutory Authority, and Purpose of New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission (200-600 Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemaking) (Nov. 23, 2020), beginning at page 205 with specific details beginning at page 207, available at: https://drive.google.com/drive/folders/1iGGOf_AMUwzy32Wl9e46xauzYiS7W2Te.

[4] *Final Report: Human Health Risk Assessment for Oil & Gas Operations in Colorado*, available at: https://drive.google.com/file/d/1pO41DJMXw9sD1NjR_OKyBJP5NCb-AO0I/view

[5] *Assessment of Potential Public Health Effects from Oil and Gas Operations in Colorado, at page ii, available at: https://drive.google.com/file/d/0B0tmPQ67k3NVVFc1TFg1eDhMMjQ/view?resourcekey=0-6GnSmpvWj5qHhQl-Ezg05g*

CDPHE published an "At-A-Glance" summary of ICF's report which provides the general conclusions of human health risks related to O&G operations and points out the following: (1) there may be a risk of negative health impacts from short-term exposure (headaches; dizziness; respiratory, eye, and skin irritation) at all distances modeled (300 – 2,000 feet) during worst-case conditions; and (2) cancer risk from short-term or long-term exposure was within the EPA's acceptable risk range.[6] While ICF's report helped inform the COGCC on risks associated with potential setbacks, it did not provide a specified setback recommendation for distances that would be protective of public health. Moreover, COGCC's Statement of Basis and Purpose acknowledged that the evidence surrounding potential health impacts lacked scientific clarity. In the face of some uncertainty, COGCC also acknowledged that it was required to act with respect to policy making in spite of the ever-evolving nature of the scientific evidence. In addition to considering public health, COGCC explained that its final setback decisions were also based on considerations of public welfare and safety, including the impacts of noise, truck traffic, light, dust, and odor.

As part of the COGCC permitting process, applicants must provide proof that they have applied to the local government authority that has jurisdiction over the siting of oil and gas locations.[7] In addition to applying with the local government authority, an applicant must provide the COGCC with a disposition from the local government as to the proposed siting of an oil and gas location (if said local government has not enacted any regulations as to the siting of oil and gas locations, then the applicant is required to submit evidence that such is true). All these requirements at the State level aid the COGCC in their permitting process to ensure a system of checks and balances as to the siting of oil and gas locations and recognizes the dual authority of both entities. It is intended that the COGCC and local governments will work together to determine the appropriate site of an oil and gas facility. The COGCC's regulations set forth the State's minimum standards and requirements for setbacks, but local governments have the authority to adopt more protective/stricter setback requirements if they so choose.[8]

B. La Plata County's current setback regulations and the vote on Proposition 112.

The County's current setback regulations for oil and gas are set forth in section 90-122.II. In summary, those setbacks are:

1. 500 feet between the wellhead and existing residential structures or platted building envelopes. This distance may be waived if the affected property owner provides verified written consent.
2. 150 feet between a wellhead of a minor facility and the closest property line. This distance may be waived if the affected property owner provides verified written consent.
3. 200 feet between the wellhead of a minor facility and buildings, public roads, major above ground utility lines and railroads.

[6] CDPHE "At-A-Glance" analysis publication for the Human Risk Assessment for Oil & Gas Operations in Colorado, available at: https://drive.google.com/file/d/1ST8yZ0bUBrEzIkWsalOWCMHNjHNXarHO/view
[7] C.R.S. § 34-60-106(1)(f)(I)(A)
[8] See, e.g., Rule 422.

4. Setbacks between a major facility structure boundary and the closest existing residential, commercial or industrial building or property lot line are determined on a site-specific basis but cannot be less than 500' unless the affected property owner provides verified written consent.
5. 50 feet between the nearest edge of flow lines, intermediate lines, gatherings lines and transmission lines and residential, commercial and industrial buildings.

Each of the foregoing setbacks may be adjusted if site conditions or state or federal regulations make it "technically impractical" for the applicant to meet the setback requirements and waiver is not obtained. However, the operator must meet the setbacks to the maximum extent possible and may be required to implement special mitigation measures.

At the November 4 Board of County Commissioner's meeting with Jeff Robbins, Chair of the Colorado Oil and Gas Commission, there was discussion of Proposition 112 which was a 2018 ballot measure that sought to impose a statewide minimum distance for new oil and gas development of 2,500 feet from any structure intended for human occupancy. Staff wishes to clarify that the countywide outcome of the vote was 52.19% in favor of the statewide minimum setback and 47.81% against. However, a closer review of the precincts within the unincorporated areas of the county where oil and gas development physically exists reveals that of those voters who actually live within the vicinity of oil and gas development, 42.59% voted in favor of the statewide minimum setback and 57.41% voted against it.[9]

C. State requirements for setbacks.[10]

The new COGCC setback requirements that are most generally applicable are found in rule 604 and went into effect on January 15, 2021. Rule 100 also contains the following relevant definitions:

HIGH OCCUPANCY BUILDING UNIT means:
a. Any School, nursing facility as defined in § 25.5-4-103(14), C.R.S., hospital, life care institution as defined in § 12-13-101, C.R.S., or correctional facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons[11];
b. An operating Child Care Center as defined in § 26-6-102(5), C.R.S.; or
c. A multifamily dwelling unit with four or more units.

RESIDENTIAL BUILDING UNIT means a building or structure designed for use as a place of residency by a person, family, or families. The term includes manufactured,

[9] The precincts in the unincorporated areas of the county where substantial oil and gas development exists are 11, 16, 18, 19, 21, 22, 23, 25, 29 and 32.
[10] This memo focuses on the general setbacks established by COGCC in Rule 604 for the most common types of oil and gas facilities. COGCC Rules include other, additional setbacks that are more unique to the situation or facility. See, e.g., from other wells and lease lines (Rule 401.a-b), from portions of a mine (Rule 401.e), between wellbores that are subject to hydraulic fracturing treatment (Rule 408.u), from tanks (Rule 608.a), from drilling compressors and their discharge lines (Rule 611).
[11] While the COGCC definition requires serving 50 or more, draft chapter 90 contains a slightly different definition that is more inclusive of smaller facilities by setting the threshold at 16.

mobile and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes. Each individual residence within a building will be counted as one Residential Building Unit.

WORKING PAD SURFACE means the portion of an oil and gas location that has an improved surface upon which oil and gas operations take place.

The State's primary requirements for setbacks in rule 604 are as follows:

1. **Well Locations[12].**

   a. **200 Foot Setback – 604.a.(1).** At the time a well is drilled (thus not accounting for subsequent encroachment by other development), the wellbore must be located at least 200 feet from any buildings, public roads, above ground utility lines, or railroads. This 200-foot setback is not waivable and, thus, represents the actual minimum setback established by COGCC from all buildings, public roads, above ground utility lines, and railroads.

   b. **150 Foot Setback – 604.a.(2).** The State requires an operator to complete a "Form 2A, Oil and Gas Location Assessment" prior to drilling. When Form 2A is filed with the State, the proposed location of the well must be located at least 150 feet from any surface property line. Exceptions may be granted if, (1) it is determined that it is not feasible for the operator to meet the minimum distance requirement and, (2) the operator has secured a waiver from the offset surface owner. The rule does not establish a floor below which an exception may not go, so this rule 604.a.(2) does not actually create a minimum setback from property lines.

   c. **School specific 2,000 Foot Setback – Rule 604.a.(3).** The working pad surface[13] must be located at least 2,000 feet from a school facility or child care center. There is a hearing process for disputes about proper measurement of this setback, but this setback is not subject to any specific exceptions, waivers, or other off ramps. As such, it does represent a minimum setback from these sensitive sites.

   d. **Residential specific 500 Foot Setback – Rule 604.a.(4).** The working pad surface must be located at least 500 feet from one or more residential building units that is not subject to a surface use agreement or waiver that includes informed consent from each owner and tenant. When no informed consent to a closer location exists, this rule does set a 500-foot minimum setback. However, the rule does not establish a floor below which informed consent may not go.

2. **Siting Requirements Near Residential Building Units and High Occupancy Building Units.[14]** When there is no informed consent to a location less than 500

[12] COGCC Rule 604.a.
[13] Whereas the "setbacks" in Rules 604.a.(1) and (2) are from the well itself, this setback is measured from the outer edge of the working pad surface.
[14] COGCC Rule 604.b.

feet or less, the COGCC's default setback of a working pad surface from one or more Residential Building Units or High Occupancy Building Units is 2,000 feet, but there are four different ways in which an operator can obtain approval for a setback of between 500 and 2,000 feet. Although the language is not clear, we believe the intent of the introductory language of rule 604.b is to establish a floor of 500 feet for each of the four "off ramps" in (1) through (4) and believe this is the way COGCC has implemented the rule. When considering a distance less than 2,000 feet, the COGCC considers the following four independent off ramps:

a. The owners and tenants of each Residential Building or High Occupancy Building Unit within 2,000 feet give informed consent to the proposed oil and gas location. Technically, rule 604.b.(1) establishes a floor of 500 feet for this waiver by informed consent, but the exact same informed consent from the owners and tenant may also allow them to accept a location closer than 500 feet pursuant to rule 604.a.(4)..
b. The location is within an approved comprehensive area plan that includes siting approval per rule 314.b.(5) or an approved comprehensive drilling plan. During the public hearing on the comprehensive area plan, presumably the other siting criteria of rule 604 would be considered before approving locations within 2,000 feet.
c. Any wells, tanks, separation equipment or compressors proposed on the oil and gas location will be located more than 2,000 feet from all Residential and High Occupancy Building Units. The practical result of this off ramp is that the edge of the working pad surface can get closer than 2,000 feet to these protected buildings as long as these key pieces of equipment are still at least 2,000 feet away.
d. The COGCC holds a hearing and finds that the oil and gas location and conditions of approval will provide "substantially equivalent protections" for public health, safety, welfare, the environment, and wildlife resources. Such a hearing must consider, at a minimum, the following non-exhaustive list:
    i. Director's recommendation;
    ii. Extent to which the design, BMPs, and conditions of approval avoid, minimize, and mitigate adverse impacts;
    iii. Local government's disposition of a land use permit;
    iv. An alternative location analysis;
    v. Related O&G location siting and infrastructure proposed as a component of the desired location;
    vi. How O&G facilities associated with the proposed location are designed to avoid, minimize, and mitigate impacts; or
    vii. Operator's actual and planned engagement and consultation with nearby residents and businesses about the desired location.

D. Explanation of setbacks in proposed first draft of paragraph 90-10.II.C.

Because of similarities between current chapter 90 and the State's new rules relating to minimum setbacks, staff's proposed draft begins by incorporating, and deferring to, COGCC's rule 604 setback requirements subject to four specific exceptions:

1. Informed Consent. Though COGCC staff have issued guidance, COGCC rules have not defined what is meant by "informed consent". Staff's first draft defines informed consent[15] in chapter 90 in a manner more restrictive than COGCC guidance and rules. By defining informed consent within chapter 90, this simply ensures that any setback established by deferring to a COGCC rule that requires informed consent (i.e., rule 604.a.(4) and 604.b.(1)) must have been done based on informed consent that meets the chapter 90 definition. By simply defining what is required to obtain informed consent, staff is not adding new opportunities for informed consent waivers that are not otherwise expressly stated in the COGCC rules or chapter 90.

2. Setbacks for commercial buildings and industrial buildings shall be no less than 500 feet pursuant to the first draft of proposed subparagraph 90-10.II.C.2. This setback distance can be increased on a site-specific analysis pursuant to 90-10.II.F, but it is not subject to waiver by informed consent. Therefore, the staff draft establishes a minimum setback of 500 feet for commercial buildings and industrial buildings that is more protective than COGCC's setback but relatively consistent with existing section 90-122.II.

   a. The 500-foot setback in proposed subparagraph 90-10.II.C.2 does not apply to Residential Building Units. Currently, the staff draft defers to COGCC's minimum 500 foot setback in 604.b when an off-ramp analysis is performed or 500 feet or less when informed consent exists under rule 604.a.(4).[16] Under current subsection 90-122.II, a property owner may consent to a setback of less than 500 feet between the wellhead and existing residential structures or platted building envelopes. As such, the ability to agree to a distance less than 500 feet under rule 604.a(4) was viewed by staff as relatively consistent with our current code. However, there are two differences between current section 90-122.II and 604.a.(4). First, current subsection 90-122.II measures from the wellhead and rule 604.a measures from the edge of the working pad. Accordingly, rule 604.a is more protective than the County's current standards. Since, the County's standards can no longer be less protective than the State's rules, deference to 604.a is the closest approximation to the status quo that has historically been acceptable to our community. Second, current subsection 90-122.II requires verified written consent to a lesser setback from the "affected property owner". Rule 604.a requires informed consent from

[15] The current draft of chapter 90 defines informed consent as, "agreement by a person to a proposed course of action after they have received adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of action. For an operator to obtain informed consent from a member of the public, the operator must provide the explanation in writing in the preferred language of the recipient, such explanation and consent must be contained in a form expressly used only for that purpose (it may not be combined with other information) and an adequate opportunity to consult with an attorney, COGCC staff or county staff provided. The operator should refer to and follow the 'Informed Consent Guidance' published by the COGCC, noting the additional detail required by this definition."

[16] Staff believes there is some ambiguity in the COGCC rules and an argument may exist that because a "Residential Building Unit" and a "High Occupancy Building" are presumably types of "buildings," the true minimum setback from these buildings under COGCC Rules is the 200 foot minimum setback established in Rule 604.a.(1).Of course some residential buildings would also be protected by the informed consent required in the 500 foot and 2,000 foot starting points of Rules 604.a.(4) and 604.b.(1), but these may be viewed merely as starting points that do not set a true minimum setback floor higher than the 200 feet in Rule 604.a.(1).

both the owner and tenants, once again, making the State's rules more protective than our current code provisions which do not account for tenants.

3. Setbacks from property lines shall be no less than 500 feet pursuant to proposed subparagraph 90-10.II.C.2. This setback from property lines in the staff draft does not include a waiver through informed consent. As such, the staff draft proposes a minimum property line setback of 500 feet that is more protective than COGCC's minimum 150-foot setback from property lines[17] but is relatively consistent with existing subsection 90-122.II.
4. Flowlines and pipelines must have a minimum setback of 50 feet from Residential Building Units, High Occupancy Building Units, and commercial and industrial buildings. This distance is measured from the nearest edge of the flowline easement or the pipeline route. This setback cannot be reduced by a waiver or informed consent, but the director may increase the minimum setback[18] (or require stricter construction and operation standards) based on a risk-based engineering study.

5. Reciprocal setbacks. The staff draft proposes that the County require new development (non-O&G development) be setback from existing well sites, flowlines, and pipelines, pursuant to section 70-6. These reciprocal setbacks serve to protect O&G locations from subsequent encroachment as well as recognizing that the same public health, safety, and welfare considerations that support establishing setbacks for O&G operations also support imposing reciprocal setbacks for other developments.
   a. Well-site reciprocal setback: minimum distance of 500 feet.
   b. Flowline or pipeline reciprocal setback: minimum distance of 50 feet.

It should be noted that all setbacks in the staff's draft are stated as minimums. Pursuant to the current draft subsection 90-2.III, the County is always entitled to require compliance with standards that are stricter than the code's minimum standards on a case-by-case basis.

Staff will take an opportunity here to clarify a misunderstanding of the staff draft that has been asserted by commenters, including the San Juan Citizens Alliance (SJCA). Some commenters have pointed to staff's proposed 500-foot absolute, non-waivable minimum setback in draft section 90-10.II.C.2 to argue that the staff draft is being less protective than the COGCC's 2,000-foot setback in rule 604.b. This is a comparison between apples and oranges, and the conclusion that the County would be less protective than COGCC is simply not correct. As clearly set forth in COGCC, the 2,000 foot "setback" in rule 604.b is merely a starting point for COGCC's analysis. Staff's proposed draft incorporates and defers to this starting point of COGCC rule 604.b, except to the extent of any contradiction set forth in paragraph 90-10.II.C.[19] As such, the County's analysis of

[17] Note that the 150 feet in COGCC Rule 604.a.(2) is not actually a minimum setback from property lines but is merely a default starting position that is subject to waiver by informed consent. With appropriate informed consent, COGCC Rule 604 does not establish any minimum setback of wells, equipment, structures, or working pad surface from property lines.

[18] As noted below, the ability to increase the minimum setback here is not unique to pipelines and flowlines. This particular provision sets forth additional submittal requirements and evaluations that might justify a larger setback..

[19] And as set forth in the staff draft (subsection 90-2.IV), only local government regulations that are stricter than COGCC rules can be applied in place of COGCC rules. When state or federal law, for example, would lead to a more restrictive result, that regulation would control. The staff draft's 500-foot minimum setback would only become the

setbacks under 90-10.II.C would also begin with an assumption of a 2,000 foot setback of the working pad surface from Residential Building Units and High Occupancy Building Units unless one of the four COGCC offramps in rule 604.b are satisfied. There are four avenues under rule 604.b for an operator to obtain COGCC approval of a setback as small as 500 feet. In addition to these exceptions in 604.b., COGCC rule 604.a allows some wells and working pad surfaces to be sited less than 500 feet from a Residential Building Unit,[20] less than 150 feet from a property line,[21] and as close as 200 feet between a wellhead and buildings, public roads, above ground utility lines, and railroads.[22] Each of these applications of the COGCC rules could render a setback less than 500 feet. In those instances where commercial and industrial buildings or property lines are implicated, the 500-foot minimum setback in staff's draft 90-10.II.C would apply to override a smaller setback approved by the COGCC. In this way, the proposed staff draft is more protective than the COGCC rules. If, in other situations, application of COGCC rules would require a 750 foot or 1,500 foot or 2,000-foot setback, then the 500 foot minimum setback in staff's proposed draft would in no way undermine or supersede such a result (because the draft County code explicitly requires that a stricter State regulation apply in the place of a less restrictive County regulation). Rather, the express deference to COGCC rule 604.b as set forth in the introductory language to 90-10.II.C would mean that the County would accept the higher setback actually required by application of COGCC rules. In this way, there is nothing "less protective" about the staff draft setting a 500 foot absolute floor in instances in which a higher setback is determined necessary.

III. RELEVANT SETBACK CONCEPTS AND COMPARISONS

A. Issue 1 – 500-foot setback from residential?

As noted above, currently drafted subparagraph 90-10.II.C.2 does not create a 500-foot minimum setback from residential buildings. With respect to residential buildings, the staff's draft would defer to COGCC's starting point of 2,000 feet in rule 604.b, which could be reduced to 500 feet by informed consent in rule 604.b.(1) and to below 500 feet by informed consent in rule 604.a.(4). Some members of the public have argued that the County should do more with respect to setbacks, with particular focus on residential uses. If the 500-foot setback from property lines in proposed 90-10.II.C.2 is left in place, the only residential buildings that could potentially have new OGLs placed within 500 feet would be residences that exist on the same parcel as the proposed new OGL.

Staff believes that the following are the most apparent options (though public comments and briefing may identify others):

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actual setback in circumstances in which (a) application of COGCC rules would result in a setback smaller than 500 feet (which is possible under COGCC rules as explained above) and (b) application of the County's site-specific analysis would not require increasing the setback above the County's minimum.

[20] Rule 604.a.(4). Note that in this rule, there is no actual floor set when informed consent is obtained. The only real floors are set by Rules 604.a.(1) and 604.a.(2).

[21] Rule 604.a.(2).

[22] Rule 604.a.(1).

1. The County establishes a minimum setback of 500 feet from all property lines, commercial buildings, and industrial buildings. This 500-foot setback creates an absolute, non-waivable floor below which even the COGCC cannot approve a location. [Staff believes that this option best characterizes the first draft of chapter 90.]
2. The County adds "residential buildings" (or "dwelling unit" or other variations as appropriate) into the 500-foot minimum setback in draft subparagraph 90-10.II.C.2.
3. The County establishes a new minimum setback unique to residential buildings (or dwelling units or other variations as appropriate) that is higher or lower than the 500-foot setback in draft subparagraph 90-10.II.C.2.

	PROS	**CONS**
CURRENT DRAFT 90-10.II.C.2 (500 FEET FROM PROPERTY LINES, COMMERCIAL BUILDINGS, AND INDUSTRIAL BUILDINGS)	• Allows some flexibility for existing residents on the same parcel as a proposed OGL to give informed consent under COGCC rules. • Maintains some consistency with COGCC rules • Maintains substantial consistency with past and current practices in La Plata County.	• Allows new O&G to come within a distance less than 500 feet of existing residential buildings on the same parcel as the OGL. • Does not give the occupants of residential buildings on the same parcel the same level of protection as occupants of commercial and industrial buildings. • Allows a single, current residential owner/occupant to give informed consent to a distance less than 500 feet. All future owners/occupants must live with such waiver. • Treats owners of existing residences differently (can give informed consent and waive to less than 500 feet) than owners of future residences (have a non-waivable 500-foot reciprocal setback under 70-6).
ADD RESIDENTIAL BUILDING TO 500 FOOT SETBACK IN DRAFT 90-10.II.C.2	• Gives occupants of residential buildings the same level of protection as occupants of commercial and industrial buildings. • Treats owners of existing and future residential buildings the same. • Creates a more protective County minimum setback	• Removes some property owner/occupant authority to waive pursuant to informed consent. • Reduces available land for future residential development within the County (until the well has been property P&A and reclaimed, after which the County's reciprocal setback

	than COGCC's setback in rule 604.a.(4). • Prevents a single, current owner or occupant from making a waiver of setbacks below 500 feet that binds all future owners and occupants.	would be removed and new development could encroach into previously protected areas). • More difficult for industry to have unique County standards in addition to COGCC standards.
CREATE A UNIQUE COUNTY MINIMUM SETBACK FOR RESIDENTIAL	• Provides maximum local control over the appropriate setback distance between O&G and residential uses. • Can be more protective than COGCC if the County desires.	• More difficult for industry to have unique County standards in addition to COGCC standards.

B. Issue 2 – To Defer to COGCC or Not to Defer?

With respect to policy issue 2, the focus is on the extent to which the County should defer to COGCC analysis and implementation of the standards and procedures in its rule 604.b or, in the alternative, whether the County should engage in its own local analysis of the appropriate setback under the rule 604.b off-ramps. Staff believes that the following are the most apparent options (though public comments and briefing may identify others):

1. The County completely defers to the COGCC's process and standards for establishing a setback between 500 feet and 2,000 feet that complies with rule 604.b. Although the COGCC engages in the analysis and decision-making under Rule 604.b, in no event could a COGCC accepted setback be less than the County minimums established in proposed subparagraphs 90-10.II.C.2 or 3. [Staff believes that this option best characterizes the first draft of chapter 90 in which the County generally defers to COGCC setback process but establishes its own floor that is more restrictive than COGCC rules and below which even the COGCC cannot go.]
2. The County defers to all the standards set forth in rule 604.b for determining the exact distance of a setback between 500 feet and 2,000 feet, but the County's decision-making body (either staff or the Board depending on permit type) engages in the analysis of what setback complies with those rule standards.
3. The County defers to some, or all of the standards set forth in rule 604.b for determining the exact distance of a setback between 500 feet and 2,000 feet, but the County adds some of its own standards as well as engaging in the analysis of what setback complies with those standards.
4. The County establishes its own process and standards for determining the exact distance of a setback that is at least as protective as the COGCC's rule 604.b.

	PROS	**CONS**
COMPLETE DEFERENCE BY COUNTY TO COGCC	• Setbacks were largely based on highly technical data and analysis. COGCC staff may	• Loss of local voice and control when decisions about context made by COGCC.

	have better expertise at evaluating the extent to which mitigation techniques are substantially equivalent as a higher setback distance. • COGCC process and standards already debated and adopted following robust public input. • More uniformity for industry, especially for operators engaged in multiple counties (not just in La Plata County). • Easier to administer at County level. • Allows more flexibility about how concurrent processes can flow with less risk of duplicative hearings and analysis. • Proposed first draft has still established some minimum setbacks below which no COGCC process can go.	• Reliance on an approved Comprehensive Area Plan in rule 604.b.(2) may require labor intensive staff resources to monitor and intervene in State process if a CAP is proposed with specific locations with setbacks less than 2,000 feet. However, the use of a CAP in the county is considered remote due to existing development and the SUIT Reservation • Ambiguity about what is substantially equivalent for purposes of 604.b.(4).
MIXTURE OF COUNTY AND COGCC STANDARDS AND PROCESS	• Allows County flexibility to create specific standards appropriate for local community. • Allows County to maintain COGCC standards that are appropriate for local community without re-inventing the wheel. • Potentially allows more local voice and control if County uses local planning process to establish setbacks.	• Adds complexity to industry's compliance with distinct state and local regulations, especially for operators engaged in multiple counties (not just in La Plata County). • Adds more burden on County staff and decision-making bodies to administer. • Risk of needing complete analysis and hearing process at both County and State levels.
UNIQUE COUNTY PROCESS AND STANDARDS FOR SETBACKS	• Allows County flexibility to create specific standards appropriate for local community. • Allows more local voice and control through use of local planning process to establish setbacks.	• Loses efficiency of relying upon a COGCC process and standards that have been thoroughly vetted by a lengthy public process. • Adds complexity to industry's compliance with distinct State and local regulations, especially for operators with facilities outside of the County.

		• Adds more burden on County staff and decision-making bodies to administer. • Risk of needing complete analysis and hearing process at both County and State levels.

C. Issue 3 – What standards and process should the County use?

With respect to policy issue 3, if the County will not defer to the COGCC establishing a setback in compliance with rule 604.b, then the focus must be on directing staff towards what standards and processes should guide the County's establishment of such setbacks.

For example, is informed consent enough under the COGCC rules that rely upon it? Obtaining informed consent represents a snapshot of current owners, occupants, tenants, etc., but relying on such informed consent may cause a difficult or unappealing situation that is binding on all future owners, occupants, tenants, etc. who did not participate in the giving of informed consent (and who did not receive any benefit that may have been given in exchange for receiving such informed consent). If minimum setbacks are presumably established based on competent evidence that they are necessary to protect public health, safety, welfare, the environment, or wildlife resources, is informed consent enough to overcome the policy decision that supported establishing them in the first place?

Is reliance on a comprehensive area plan approved by the COGCC an acceptable route to reduce the default of 2,000 feet in rule 604.b at the time of an actual permit for siting a specific location? Staff believes use of a comprehensive area plan in the county is remote due to existing development and the SUIT Reservation. However, if a comprehensive area plan is used within the analysis, then County staff would likely need to actively intervene and engage in the comprehensive area plan process to ensure the County's voice is heard at that time. Moreover, comprehensive area plans almost by definition require broader speculation and forecasting by the operator about intended future activities. As a result, comprehensive areas plans are given an inherently longer vesting period (six years under rule 314.c), which can be extended even longer. If sites are essentially pre-approved as part of a comprehensive area plan, other developments that encroach around each of the approved sites within the comprehensive area plan may result in unintended proximity between these developments (unless the County's proposed reciprocal setbacks are revised to include sites approved by a comprehensive area plan but not yet permitted). The long vesting period for up to six years or more even if the operator never actually moves forward with a County permit for each such approved site within the plan risks disrupting (or being disrupted by) surrounding development efforts. If a comprehensive area plan is not the appropriate time to establish specific setbacks for specific locations, then determining the appropriate setback at the time of the county issued permit would avoid that strain on staff to participate in the comprehensive area plan process.

How should the County decision-making body evaluate "substantially equivalent" protections? Should concepts of voluntary BMPs and other forms of mitigation be

considered capable of compensating for smaller setback distances? Are there any useable criteria or considerations from the County's framework for evaluating compatibility under section 70-5 of the land use code that may be useful in evaluating substantially equivalent protections? As was discussed in the joint work session with the Board of County Commissioners and Planning Commission, the compatibility framework in current chapter 90 had been removed from the current staff draft and this removal, at least at that stage, had been supported by the decision-makers. Although the entirety of the compatibility analysis in section 70-5 need not necessarily be applicable, adoption of some or many components may render a similar analysis and outcome.

Staff believes that selection among one or more of the following are the most apparent options (though public comments and briefing may identify others):

1. The County establishes its own standards that identify, among other items, that informed consent is necessary but not sufficient to site less than 2,000 feet.
2. The County establishes its own standards that identify, among other items, that consideration of an approved comprehensive area plan is not a suitable off-ramp to the default 2,000-foot setback as COGCC's rule 604.b.
3. The County establishes its own definition, criteria, and/or standards of "substantially equivalent" to create a process and standard at least as protective as COGCC's rule 604.b.4. The County would need to define/describe what criteria it would use to arrive at the conclusion if the County should make its own finding rather than deferring to the COGCC.
4. The County establishes its own standards that identify, among other items, that factors considered within compatibility in the County Land Use code under section 70-5 are used to evaluate whether proposed mitigation renders the closer location "substantially equivalent" to one that meets the 2,000-foot setback.

	PROS	**CONS**
MAKE INFORMED CONSENT NECESSARY BUT NOT SUFFICIENT	• Adds consistency with other areas of the draft chapter 90 in which informed consent of the current owner/occupant is not necessarily binding on the County (because the County has broader community-wide considerations of public health, safety, and welfare that need not be bound by the decisions of a single property owner or occupant). • Still gives a voice to property owners and occupants, even if not dispositive. • Allows the County to be more protective than COGCC since the COGCC automatically defers to property	• Decreases the level of control or influence of a property owner or occupant. • Requires that other standards be developed in evaluating the appropriateness of relying on informed consent.

	owners/occupants when informed consent is present.	
REMOVE CONSIDERATION OF AN APPROVED COMPREHENSIVE AREA PLAN AS AN OFF-RAMP TO THE DEFAULT 2,000 FOOT SETBACK	• Relieves the County of the burden of monitoring, intervening, and participating in the siting decisions at the State level related to a proposed CAP. • Ensures that setback decisions will be made at a local level within the context of a site-specific development proposal. • Avoid potential conflicts and disruptions between speculative future OGLs with long vesting periods approved by a comprehensive area plan and other new surrounding development.	• Weakens the incentive for operators to voluntarily develop CAPs. • Prevents the potential efficiency of addressing siting and setback requirements for multiple sites all in one CAP process.
DEFINE THE CRITERIA AND PROCESS THE COUNTY SHOULD USE TO EVALUATE WHAT IS OR IS NOT "SUBSTANTIALLY EQUIVALENT")	• Clarity can add predictability for industry and community. • Defined criteria and procedural clarity can reduce subjectivity and make it easier for staff and decision-making bodies to have more consistency/uniformity in their analysis and decisions. • Asserts more local voice and control over what is acceptably "substantially equivalent" compared to deferring to COGCC determination.	• Clarity may remove flexibility that might otherwise exist when a term or standard is ambiguous.
RELY UPON COMPATIBILITY IN 70-5 TO HELP EVALUATE "SUBSTANTIALLY EQUIVALENT"	• Increases consistency of land use approach to other developments in the County • Draws upon County's long history of evaluating compatibility	• Not all aspects of 70-5 will be appropriate. Will require some work to isolate portions that can be applicable to the required analysis.