



OIL AND GAS LEGAL OVERVIEW

Oil and Gas Task Force

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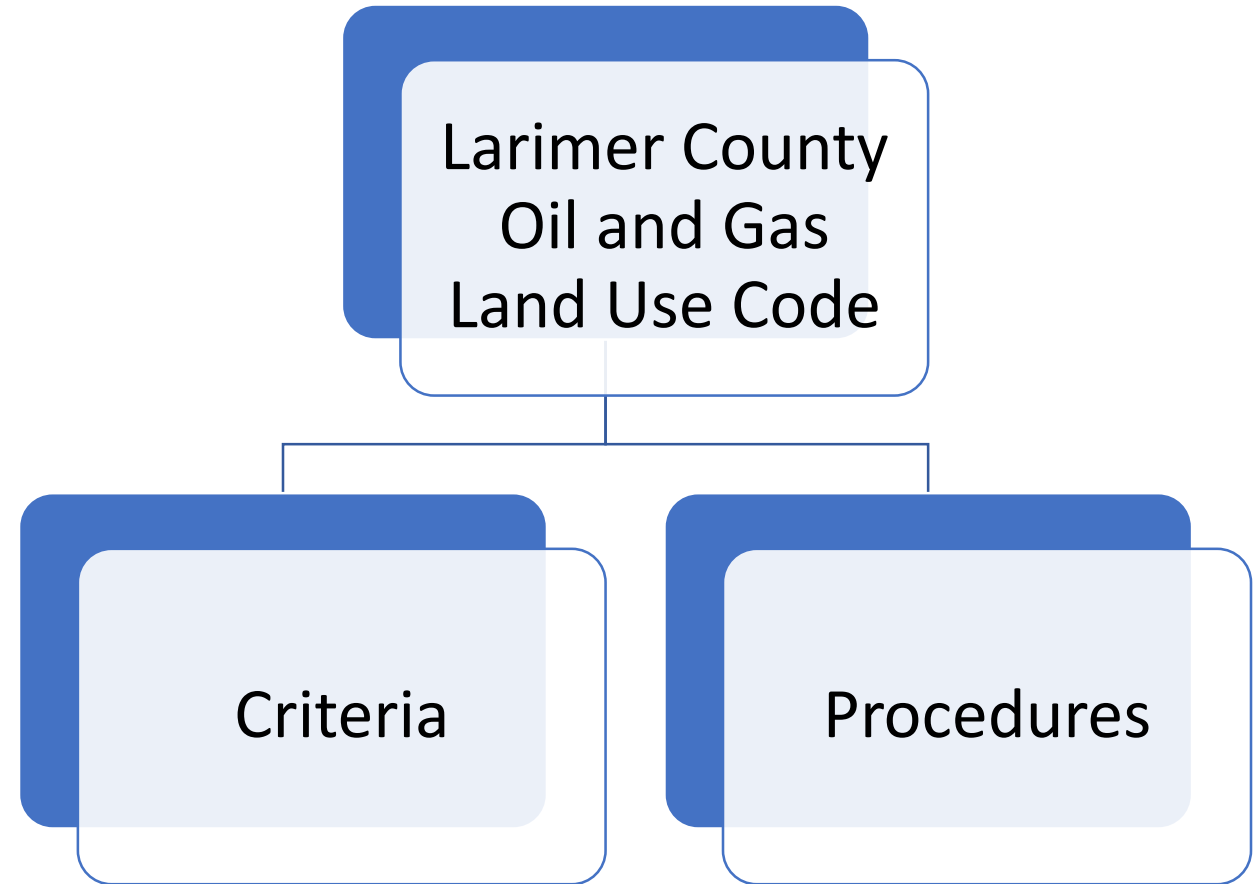
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TOPICS TO COVER

- BEGINNING AT THE END, DELIVERABLES.
- PRIVATE PROPERTY RIGHTS, PREEMPTION, AND REGULATION.
- WHAT DID SB 181 CHANGE?
- WHAT DOES THE STATE PROCESS LOOK LIKE CURRENTLY?
- CRITERIA AND PROCEDURES.
- CURRENT STANDARDS AND ENFORCEMENT.

COUNTY REGULATION DELIVERABLES

- Produce recommendations regarding what type of processes and criteria that Larimer County should adopt to regulate oil and gas.
- Many different ways to set it up, lots of options about what to regulate and at what level.



PROCEDURE

(e.g. Chapter 12 of
Land Use Code)

12.2. - DEVELOPMENT REVIEW PROCEDURES

All development review procedures are completed as expeditiously as possible. At the pre-application conference, the staff planner will establish a timeline for review of the proposal. By signing the application form, the applicant agrees to the development review schedule established for the applicable development review process.

Time needed for a final decision may be extended due to a request by the applicant; action or inaction by the applicant; or the county's need to obtain a recommendation from a referral agency. A delay caused by the applicant or a time extension for a referral agency will not result in the approval of a project by default.

12.2.1. - Informal project discussion.

A prospective applicant should contact the planning staff to discuss general information concerning this Code as it applies to a specific site. No appointment is necessary for this step. The applicant should be able to describe the location of the property and the proposal's general concept. This is an informal procedure intended to help the applicant decide if the project should be pursued further. The applicant will be advised if the property is in a designated growth management area (GMA) or cooperative planning area (CPA). These designations may require special procedural requirements, such as filing of annexation petition forms, reports or studies as may be outlined in intergovernmental agreements and associated growth management area regulations of Larimer County.

12.2.2. - Pre-application conference.

- A. A pre-application conference is required for all procedures except the rural land use process. This conference is a meeting between the applicant, a member of the county planning staff and other county staff. The purpose is to discuss the various procedures, standards and submittal requirements of the Code. The applicant will also be provided with the application materials that must be submitted.
- B. The applicant should call the planning department to schedule a meeting with a staff person. For most applications, the applicant should bring a written legal description of the site and a sketch of the proposal to the pre-application conference. If specific questions are raised during the conference, the staff person will refer the applicant to the appropriate agency to discuss issues that may affect the application. The staff person will help the applicant identify key issues and concerns regarding the project so the applicant may address them in the application.
- C. Any comments or commitments made by a staff person during the pre-application conference are preliminary in nature and may change significantly as the project is more clearly defined in later stages of the development review process.

12.2.3. - Sketch plan review.

- A. Sketch plan review is required for rezoning, special review, subdivision, planned land division and conservation development. Sketch plan review is regularly scheduled with a submittal deadline once a month and a specific list of submittal requirements, which are contained in the technical supplement to this Code. The planning department will provide a schedule and a checklist for this procedure. The applicant should also address the issues identified in the pre-application conference.
- B. Upon receipt of a complete application, the planning department will refer appropriate application materials to property owners in the vicinity of the proposal (neighbors), to the appropriate agencies (utilities, fire department, county health, county engineer, school district, etc.) and schedule the sketch plan review meeting. The staff person assigned to the case will compile the responses from neighbors and agencies and will review the application for compliance with all provisions of this Code. A written staff report will be presented at the meeting.
- C. The goal of this review is to:

CRITERIA

(e.g. Chapter 4 and
8 of Land Use Code)

4.5.3. - Review criteria for special review applications.

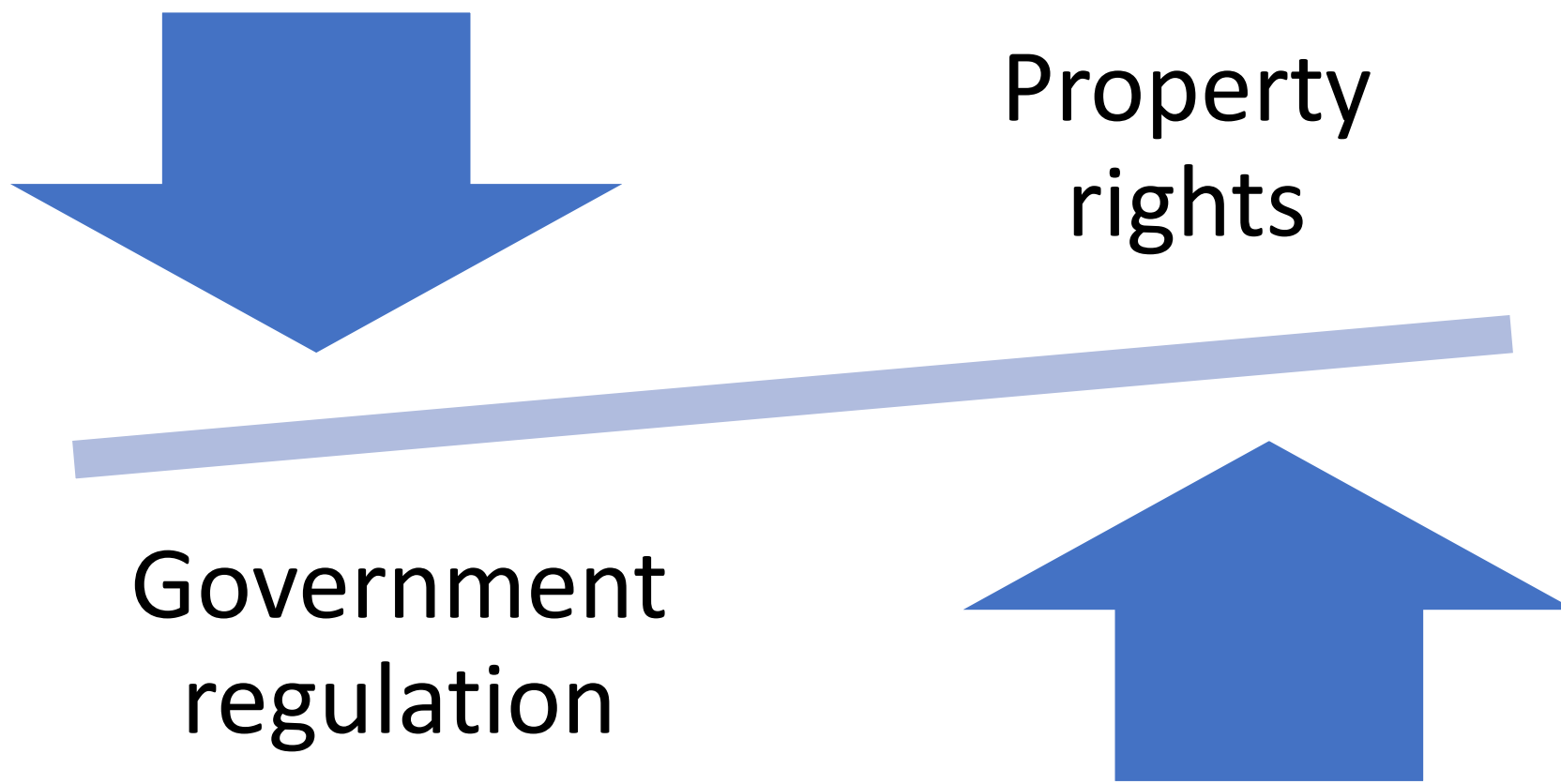
To approve a special review application, the county commissioners must consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

- A. The proposed use will be compatible with existing and allowed uses in the surrounding area and be in harmony with the neighborhood;
- B. Outside a GMA district, the proposed use is consistent with the county master plan. Within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district, or if none, with the county master plan or county adopted sub-area plan;
- C. The applicant has demonstrated that this project can and will comply with all applicable requirements of this code;
- D. The proposed use will not result in a substantial adverse impact on property in the vicinity of the subject property; and
- E. The recommendations of referral agencies have been considered.
- F. The applicant has demonstrated that this project can meet applicable additional criteria listed in the section 4.3 use descriptions.

(Res. No. 06172003R009, 6-17-2003; Res. No. 05022006R001, 5-2-2006; Res. No. 06032008R003, Exh. A, 6-3-2008)

PRIVATE PROPERTY RIGHTS, PREEMPTION, AND REGULATION

- County has general ability to regulate for the “health, safety, and welfare” of the community.
- Mineral owners have property rights with the general ability to utilize and benefit from their property ownership.
- Pleading the fifth- “nor shall private property be taken for public use, without just compensation.”
- “Preemption” is a matter of which governmental regulations control.

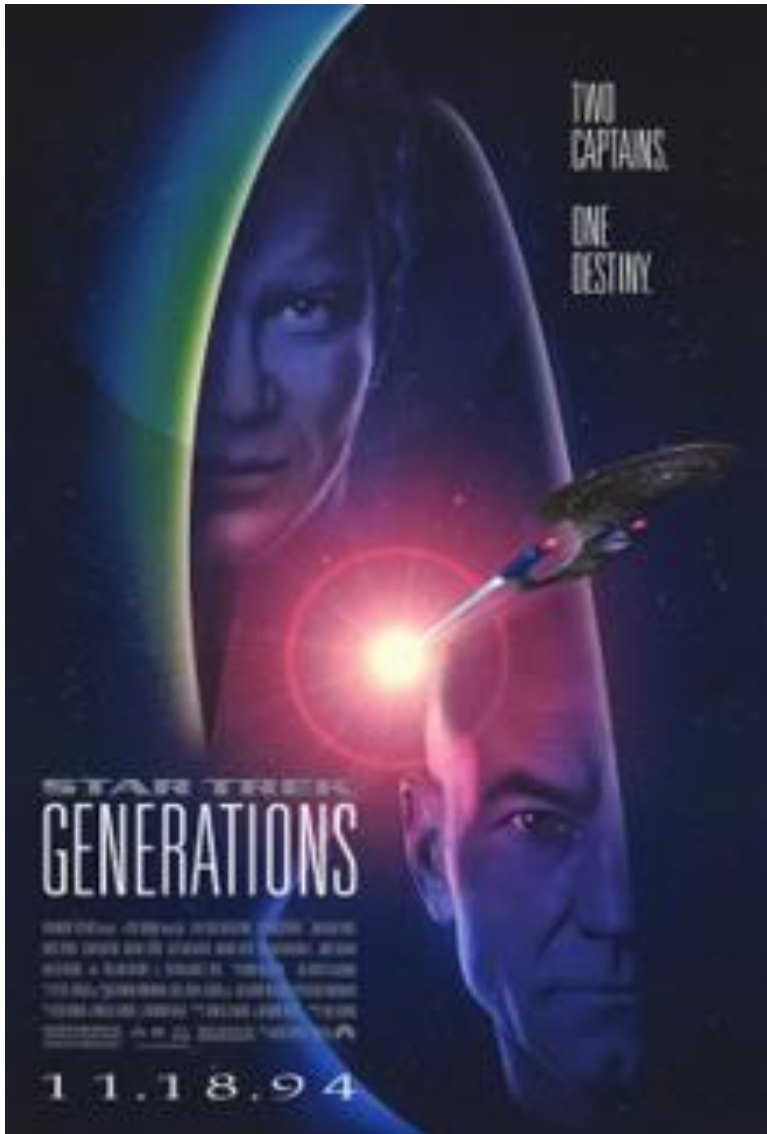


Government
regulation

Property
rights

NEXUS

- ““essential nexus” exists between a legitimate state interest and the permit condition”



PREEMPTION



Federal Law



State Law



Local Law

PREEMPTION

- When there are conflicting aspects of governmental regulation, one or the other may be preempted.
- This means that if the federal government has law regarding, for instance, labor relations, the states can't regulate contrary to the National Labor Relations Act.
- Used to be that the State of Colorado preempted most of the regulation of oil and gas. SB 181 changes the landscape.

COLORADO OIL AND GAS CONSERVATION COMMISSION

- Regulatory agency that until SB 181 was to “foster” and now is to “regulate” Oil and Gas.
- Must undergo rulemaking and they currently doing that.
- Rulemaking is state level administrative process, not legislation, agency rules.
- Rulemaking will likely take about a year, but won’t change the text of SB 181, which states that local jurisdictions have authority to regulate.

Surface vs. Downhole

Form 2A

- Oil and Gas Location Assessment
- Land Use
- Surface uses

Form 2

- Drilling Permit
- Depth, casing, etc.
- Downhole uses

SB-181

- Prior to SB 181, the state preempted regulations relating to many aspects of oil and gas.
- Local jurisdictions had limited ability to regulate things like setbacks, financial assurance, noise, etc.
- Used to be that the state set the general standard, and the local jurisdiction could basically regulate things that did not interfere with state.
- Can regulate SURFACE impacts in a manner that is NECESSARY AND REASONABLE.

SB 181

- Land Use
- Location and Siting
- Water Quality
- Odor
- Noise
- Light
- Dust
- Reclamation
- Financial Assurance
- Traffic
- Emergency Response
- And
- “All other nuisance-type effects of oil and gas development”

DECISION POINTS FOR COUNTY

What oil and gas uses are allowed where and pursuant to what process?

What information must an application include?

What criteria should staff and the BOCC consider when reviewing application?

What regulations are appropriate and how are those tied to public health, safety, and welfare?

PROCEDURES

- USE--In determining what process to follow, need to know whether use is by right, by special review, by minor special review, etc. In other words, in order to have some particular use on a parcel, what process do you need to go through, if any?
- ZONING--How does the zoning of the parcel effect the use? A residentially zoned parcel may be subject to different process than industrially zoned parcel.
- TIMELINES—How long to get process completed.
- ADMINISTRATIVE V. PUBLIC HEARING—Paper review with public comment but no hearing vs. public hearing.
- NOTICING—How far out to go.

EXAMPLES

- GRAVEL PIT—Special Review, usually takes about 9 months, public hearings, planning commission hearing, neighborhood meeting, sketch plan, construction plan, etc.
- INTERIOR DOG BOARDING FACILITY—Minor Special Review, usually takes about 4-6 months, no planning commission.
- GAS STATION—Site plan on a commercial property, usually takes 2-4 months, administrative review, must comply with standards.
- INTERGOVERNMENTAL AGREEMENT OR MEMORANDUM OF UNDERSTANDING.

CRITERIA/STANDARDS

- Review Criteria v. Application Criteria.
- Criteria are the standards that the County uses to determine whether a certain use should be allowed in a certain area. If it meets criteria then must approve.
- Examples:
 - Limitations on the size, bulk and location of buildings
 - Limitations on the intensity and extent of the proposed use
 - Standards for landscaping, buffering, and lighting
 - Adequate ingress and egress;
 - A specific, limited time period to complete the project; and
 - Limitations on hours of operation.
 - Standards for noise, light, odor, etc.
- Compatibility.

Who is in charge of what related to oil and gas?

- See handout.