

Memorandum of Understanding between the City Council for the City of Greeley, Colorado and the Colorado Department of Natural Resources

This MEMORANDUM OF UNDERSTANDING (“MOU”) is between the City Council for the City of Greeley, Colorado (“City”) and the Colorado Department of Natural Resources (“Department”), collectively the “Parties”.

I. Introduction

The Parties value a high level of communication between the City, the Department, and the citizens at large in the regulation and management of oil and gas operations. The Parties intend to foster a balanced approach to oil and gas development that is protective of human health, safety, welfare, the environment and wildlife, while providing fair and predictable regulation of the industry. The Parties recognize that oil and gas exploration and development represents an important land use activity to the county, region and state due to energy and job creation, and that mineral rights, whether owned or leased, are a real and severable property right.

II. Purpose

This MOU is intended to memorialize the Parties’ intent to work together on regulatory matters related to oil and gas operations in the City and to, among other things, clarify the Parties’ understanding of their respective authorities.

III. Respective Authorities of the Parties

- A. As a Home Rule Municipality, the City has the right and responsibility to regulate land use matters, as enabled by Article XX of the Colorado Constitution and C.R.S. § 31-23-301, *et seq.* The City has laws in place to address common land use issues, such as storm water management, traffic, use compatibility, and landscaping consistent with local conditions and design standards, as found in Title 18 of the Greeley Municipal Code, including and in particular Chapter 18.56. City residents rely on local officials to address potential incompatibilities in land use, such as the location of traffic and extent of noise.
- B. The Department, through the Colorado Oil and Gas Conservation Commission (“Commission”) is charged with fostering the responsible and balanced development, production and utilization of oil and gas in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources. C.R.S. § 34-60-102 (I). The Commission is further charged with protecting public and private interests in oil and gas against waste. C.R.S. § 34-60-102 (II). The General Assembly granted the

Commission broad authority to carry out these statutory mandates, and the Commission has adopted rules that govern the operational aspects of oil and gas operations to implement this authority. C.R.S. §§ 34-60-105, 106; Rules of Practice and Procedure before the Colorado Oil and Gas Conservation Commission, 2 Code Colo. Regs. 404-1 (“Commission Rules”).

- C. As the Colorado Supreme Court held in *Voss v. Lundvall*, 830 P.2d 1061 (Colo. 1992), if a home rule city enacts land use regulations applicable to various aspects of oil and gas development and operations within the city, and if such regulations do not frustrate and can be harmonized with the development and production of oil and gas in a manner consistent with the stated goals of the Oil and Gas Conservation Act, the City’s regulations should be given effect.

IV. Intentions of the Parties

The Parties intend to work collaboratively on issues concerning oil and gas operations, both prior to and after the commencement of such activities, through the more effective use of the Local Government Designee (“LGD”) program as provided for under the Commission Rules.

The LGD will be given an opportunity to timely consult with the Oil and Gas Operator (“Operator”) and the Director of the Commission (“Director”) on any issue, such as the location of a proposed oil and gas site and related mitigation measures, before any permit is granted by the Commission. *Commission Rule 306.b.(1)*. The Commission and the City intend that, when desired by the City, this consultation shall include on site location assessments.

Effective August 1, 2013, the Commission Rules will require Operators to send a “Notice of Intent to Conduct Oil and Gas Operations” to all Building Unit Owners within 1,000 feet of a proposed oil and gas site before submitting an application for permit to drill or an oil and gas location assessment, Forms 2 and 2A, to the Commission. The Operator must meet with any Building Unit Owner if requested by that person or by the LGD. The meetings may be held on an individual basis, in small groups, or in larger community meetings. *Commission Rule 306.e.(1)*. The notice will include the LGD’s contact information and will give a general description of the proposed operations. The Commission Rules also require Operators to provide Building Unit Owners with a “Notice of Comment Period,” which will alert recipients of their opportunity to provide written comments to the LGD, Operator, and Director. *Commission Rule 305.c.(2)*.

While the Commission Rules require plans for traffic and access roads (*Commission Rule 604.c.*), the Commission intends to defer to the City when the City has existing plans for traffic or other land use matters that are traditionally subject to local control.

The Commission may grant variances to its setback rules where, among other things, the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable. *Commission Rule 502.b.* When considering requests for variances to setback distances within the City, the Director will confer with the City regarding land use decisions or regulations governing the variance location.

The Commission acknowledges that it has little or no authority to preclude development, such as housing, from encroaching upon preexisting oil and gas sites and such matters are historically addressed by local governments. The Commission's rules are not intended to address situations where development "comes to" the oil and gas site.

A Surface Owner or Building Unit Owner and mineral owner or mineral lessee may agree to locate future Building Units closer to existing or proposed Oil and Gas Locations than otherwise allowed under Commission Rule 604.a. pursuant to a valid Surface Use Agreement ("SUA") or site specific development plan that establishes vested property rights that expressly governs the location of Wells or Production Facilities on the surface estate. Such SUAs will be recognized in the Commission's permitting. *Commission Rule 604.b.3.*

The Director of the Colorado Oil and Gas Conservation Commission will grant an exception to the setback requirements for any SUA executed on or before August 1, 2013, and which expressly governs the location of Wells or Production Facilities on the surface estate, provided the mitigation measures will eliminate, minimize or mitigate adverse impacts to the extent that is reasonably achievable and safety requirements are satisfied. *Commission Rule 604.b.(2).*

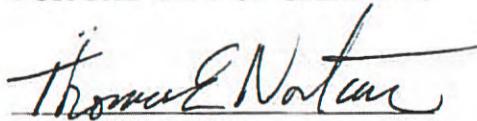
V. Miscellaneous Provisions

A. 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.*).

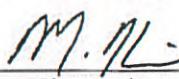
B. Similar Activities This MOU in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations, or individuals.

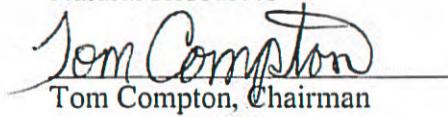
C. Obligation of Funds Nothing in this MOU shall commit either Party to obligate or transfer any funds.

FOR THE CITY OF GREELEY:


Tom Norton, Mayor

FOR THE COLORADO DEPARTMENT
OF NATURAL RESOURCES:


Mike King, Director
Colorado Department of
Natural Resources


Tom Compton, Chairman
Colorado Oil and Gas
Conservation Commission