TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 7, SERIES 2019

AN ORDINANCE APPROVING THE ADDITION OF ARTICLE 12 TO THE TIMNATH LAND USE CODE REGARDING OIL AND GAS DRILLING AND PRODUCTION

WHEREAS, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the “Charter”) and the Town’s Municipal Code (the “Code”). Pursuant to the Charter, the Code and the authority given home rule municipalities, the Town may adopt and amend ordinances; and

WHEREAS, Town has adopted the Timnath Land Use Code (the “Land Use Code”) to create a vital, cohesive, well-designed community in order to enhance the Town’s character and further the citizens’ goals as identified in the Town of Timnath Comprehensive Plan; and

WHEREAS, the Town has previously adopted Oil and Gas Drilling and Production regulations establishing requirements for oil and gas development within the Town; and

WHEREAS, in response to an increase in oil and gas development throughout the State of Colorado the Colorado General Assembly has amended the Oil and Gas Conservation Act (the “Act”) and the Oil and Gas Conservation Commission (the “COGCC”) has promulgated new rules (the “COGCC Rules”) since the Town adopted Oil and Gas Drilling and Production regulations; and

WHEREAS, the Town Council desires to revise the Land Use Code to enact new Oil and Gas Drilling and Production regulations consistent with the Act and the COGCC Rules that will allow the responsible development of oil and gas resources within the Town, consistent with and subject to, the protection of the public health, safety, and welfare of its residents and the environment; and

WHEREAS, the Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of public health, welfare, peace, safety and property and that this Ordinance is necessary for the protection of public convenience and welfare.

NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:

ARTICLE 1 –
The Town Council hereby approves the addition of Article 12 to the Town Land Use Code as shown in Exhibit A attached hereto, subject to administrative, technical, or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town’s consultants and staff.

ARTICLE 2 – SEVERABILITY
If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision,
or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 3 – EFFECTIVE DATE
This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON MAY 28, 2019, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON JULY 9, 2019, AT THE TIMNATH TOWN CENTER, 4750 SIGNAL TREE DRIVE, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 28TH DAY OF MAY 2019.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON JULY 9, 2019.

TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters-Garcia, CMC
Town Clerk
**Exhibit A**

**ARTICLE 12 – OIL AND GAS DRILLING AND PRODUCTION**

12.1 **Purpose**

The intent of these regulations is to manage the development of oil and gas resources within the Town, while mitigating potential land use conflicts between such development and existing, as well as planned, land uses. Under Colorado law, the surface and mineral estates are separate and distinct interests in land and one may be severed from the other. Owners of subsurface mineral interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests, subject to compliance with the provisions of these regulations and any applicable statutory and regulatory requirements. Municipal governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction. These regulations are intended as an exercise of this land use authority.

12.2 **Definitions**

All terms used in this Article that are defined in the Act or in Commission regulations and are not otherwise defined in this section, are defined as provided in the Act or in such regulations as of the effective date of this Article. All other words used in this Article are given their usual customary and accepted meaning and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry. When not clearly otherwise indicated by the context, the following words and phrases used in this Article have the following meanings:

**Act:** means the Oil and Gas Conservation Act of the State, as may be amended from time to time.

**Applicant:** means any person applying for a Conditional Use Permit from the Town in accordance with this Article.

**Building Unit:** means a Residential Building Unit; and every five thousand (5,000) square feet of building floor area in commercial facilities or every fifteen thousand (15,000) square feet of building floor area in warehouses that are operating and normally occupied during working hours.

**Commission or COGCC:** means the Colorado Oil and Gas Conservation Commission.

**Conditional Use Permit:** means a conditional use permit granted by the Town in accordance with this Article.

**County:** means Larimer or Weld County, Colorado whichever the case may be.

**Day:** means a calendar day.
**Dedicated Injection Well:** means any Class II wells used for the exclusive purpose of injection fluids or gas from the surface for enhanced oil recovery or the disposal of E&P wastes. A gas storage well is not a dedicated injection well.

**Director:** means the Director of the Oil and Gas Conservation Commission of the State of Colorado or any member of the Director’s staff authorized to represent the Director.

**EPA:** means the Environmental Protection Agency.

**High Occupancy Building Unit:** means (a) any operating Public School as defined in §22-7-703(4), C.R.S. Nonpublic School as defined in § 22-30.5-103.6(6.5), C.R.S., Nursing Facility as defined in § 25.5-4-103(14), C.R.S., Hospital, Life Care Institutions 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; or (b) an operating Child Care Center as defined in § 26-6-102(1.5), C.R.S.

**Inspector:** means any person designated by the Town, or by the Town’s designee, who shall have the authority to inspect Well Sites to determine compliance with this Article and other applicable ordinances of the Town.

**Oil Well:** means a well, the principal production of which at the mouth of the well is oil, as defined by the Act.

**Operating Plan:** means a general description of a Well Site or a Production Site identifying purpose, use, typical staffing, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure, travel routes of trucks and frequency of trips to the site, and any other information related to regular functioning of that facility.

**Operator:** means any person who exercises the right to control the conduct of oil and gas operations.

**Owner:** means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas produced therefrom either for such owner or other or for such owner and others, including owners of a well capable of producing oil or gas, or both.

**Production Site:** means the area surrounding proposed or existing production pits or other accessory equipment required for oil and gas production, which may also be located tanks and tank batteries, exclusive of transmission and gathering pipelines.

**Reentering:** means accessing an existing well bore for either the original or amended purpose, provided that such well has not been abandoned.

**Residential Building Unit:** means a building or structure designed for use a place of residency by a person, a family, or families. The terms includes manufactured, 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.

**State:** means the State of Colorado.
**Surface Use Agreement:** shall mean any agreement in the nature of a contract or other form of document binding on the Operator, including any lease, damage agreement, waiver, local government approval or permit, or other form of agreement, which governs the operator’s activities on the surface in relation to locating a Well, Well Site, pipeline or any other Oil and Gas Facility that supports oil and gas development located on the Owner’s property.

**Town:** means the Town of Timnath, Colorado.

**Town Code:** means the Town’s Municipal Code as may be amended from time to time.

**Twinning:** means the drilling of a well within a radius of fifty feet from an existing well bore when the well cannot be drilled to the objective depth or produced because of an engineering problem, such as a collapsed casing or formation damage.

**Well:** means an oil or gas well, and Oil Well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

**Wellhead:** means the equipment attaching the surface equipment to the wellbore equipment at the Well.

**Well Site:** means the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or Dedicated Injection Well and its associated well pad.

**12.3 Requirements and Procedures**

1. **Proposed New Wells, Redrilling Certain Wells and Other Specific Enhancements.** It shall be unlawful for any person to drill a well that has not been previously permitted under this Article, change the purpose of the Well (i.e. from a vertical well, to directional, or horizontal, or vice a versa), reactivate a plugged or abandoned Well, or perform initial installation of accessory equipment or pumping systems (in cases where a well is not being drilled) unless a Conditional Use Permit has first been granted by the Town in accordance with the procedures defined in this Article.

   a. The granting of such Conditional Use Permit shall not relieve the Operator from otherwise complying with all applicable regulatory requirements of the Act, the Town, the State, and the United States.

   b. When a Conditional Use Permit has been granted for a Well, reentry of such Well for purposes of Sidetracking, Twinning, deepening, recompleting or reworking shall not require a separate Conditional Use Permit.

   c. The Conditional Use Permit shall be limited to the current proposed facilities as shown in the approved site plan. To the extent the Applicant desires, after initial completion of a well, to place additional equipment on a tank battery or Wellhead location which was not shown in the approved site plan, the Applicant must, except in a situation where additional equipment is necessary
for a period of fourteen (14) days or less, notify the Town of installation of such additional equipment and update the site plan to reflect the changed conditions.

2. **As-Built Drawings.** Within thirty (30) days after completion of operations, the Applicant shall provide to the Town “as-built” drawings showing all facilities, pipelines, flow lines and gathering lines which the Applicant has installed subject to the Conditional Use Permit.

3. **Inspections.** In recognition of the potential impacts associated with oil and gas drilling and well operation in an urban setting, all wells and accessory equipment and structures may be inspected by an Inspector at reasonable times to determine compliance with applicable provisions of this Article, and all other applicable Town, County, or State health or safety standards. For the purpose of implementing and enforcing the provisions of this Article, Town personnel so designated have the right to enter upon private property after reasonable notification to the Operator.

4. **Inspection Fee.** The Town may impose inspection fees for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and the Town building code.

5. **Taxation.** All Operators must conform to applicable provisions of this Article and the Town Code relating to taxation.

6. **Application Fee.** A nonrefundable fee of one thousand dollars ($1,000) shall accompany the application for any Conditional Use Permit.

7. **Fee Agreement.** The Applicant and the Town shall enter into an “Agreement for Payment of Land Use Application Review Expenses Incurred by the Town” or a similar agreement prior to the issuance of a Conditional Use Permit.

8. **Conditional Use Review.** This is a discretionary approval process for uses which have unique or specific characteristics that could create greater than expected impacts. The process results in approvals with conditions to ensure they will not have a significant adverse impact on surrounding properties, or denials if the impacts can’t be mitigated.

   a. **Referrals.** Referrals shall be sent to all affected agencies and local governments, and specific property owners, if applicable.

   b. **Staff review and reporting.** Staff shall review the application and coordinate changes or necessary resubmittals with the applicant. Staff shall then submit a report to the Planning Commission explaining how the application is or is not consistent with the conditional use application review criteria in Section 12.18. The staff will also make a recommendation for approval, approval with conditions, or denial.

   c. **Planning Commission review of the conditional use application.** The Planning Commission shall hold a meeting to review the application and determine if the
application complies with the conditional use review criteria in Section 12.18. The Planning Commission will then recommend to the Town Council approval, approval with conditions, or denial.

d. **Town Council hearing and action on the conditional use.** The Council shall hold a public hearing on the conditional use application. Following the public hearing, the Council may, by resolution, approve, conditionally approve or deny the conditional use application based on the conditional use review criteria in Section 12.18 and the intent of this Code. A conditional use permit may be granted for a limited time period, may be granted subject to conditions as the Council may prescribe to satisfy the review criteria, and may be revoked for cause.

### 12.4 Application Elements

1. An application for a Conditional Use Permit pursuant to this Article shall be filed with the Community Development Director and shall include the following information:

   a. **Site Plan.** The site plans for a Well Site or Production Site submitted with a Conditional Use Permit application shall be submitted on one or more plats or maps, at a scale not less than one inch to fifty feet, showing the following information:

      i. The proposed location of Production Site facilities or Well Site facilities associated with the Well in the event production is established, if applicable. Future development of the oil and gas resources shall be considered in the location of the tank battery. Existing tank batteries and transmission and gathering lines within one thousand (1,000) feet of the Well Site or Production Site shall be shown.

      ii. The location of layout including, without limitation, the position of the drilling equipment and related facilities and structures, if applicable.

      iii. True north arrow.

      iv. Existing improvements, if any, within a radius of one thousand (1,000) feet of the proposed Well.

      v. Existing utility easements and other rights-of-way of record, if any, within a radius of one thousand (1,000) feet of the proposed Well.

      vi. Existing irrigation or drainage ditches within five hundred (500) feet of the Well Site or Production Site, if any.

      vii. The Applicant’s drainage and erosion control plans for the Well Site or Production Site and the area immediately adjacent to such site, if applicable.

     viii. Location of access roads.
ix. The boundaries of the Well Site or Production Site and existing lease boundaries.

x. The parcel lines and names of abutting subdivisions or the names of owners of abutting, unplatted property within one thousand (1,000) feet of the Well Site or Production Site.

xi. The name and address of the Operator and the name of the person preparing the site plan or map.

xii. The landscaping and visual abatement plans for the Well Site and/or Production Site including a visual depiction of the proposed privacy fence.


b. Vicinity Maps. The vicinity maps for a Well Site or Production Site submitted with a Conditional Use Permit application shall be to scale and submitted on one or more plats or maps showing the following information within ½ mile of the proposed improvements:

i. Location of all existing waterbodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing waterbodies and watercourses with a physically defined channel.

ii. Location of existing Oil Wells as reflected in COGCC records. This information shall be submitted on a map and shall include any and all Wells.

iii. Location of drill site. The information to be submitted shall be Commission Form 2 or as may be modified from time to time and shall include the Parcel Tax Identification Number.

c. Narrative. In addition to the site plans and the vicinity maps required in this subsection 12.4, the application shall include the following:

i. The Operator's and surface owner's names and addresses, copies of any required COGCC forms and designation of agent, if applicable.

ii. An Operating Plan

iii. A list of all permits or approvals obtained or yet to be obtained from local, State or federal agencies other than COGCC.

iv. An emergency response plan that is mutually acceptable to the Operator and the appropriate fire district(s), sheriff's office, local law enforcement, and other emergency responders that includes a list of local telephone numbers of public and private entities and individuals to be notified in the event of an emergency, the location of the Well, and provisions for access by
emergency response entities.

v. A plan for weed control at the Well Site or Production Site.

vi. A fire protection plan that is mutually acceptable to the Operator and the appropriate fire district(s) that includes planned actions for possible emergency events and any other pertinent information. Prior to application to the Town, a proposed fire protection plan and emergency response plan shall be submitted to and reviewed by the fire district.

vii. Sanitary facilities that comply with Rule 602 of the COGCC Rules and Regulations.

d. Memorandum of Understanding. The Applicant and the Town shall enter into a Memorandum of Understanding to be negotiated simultaneous with the issuance of a Conditional Use Permit.


a. Application Procedures per Section 2.9.3 of this code shall apply.

b. Notice Provisions per Section 2.9.4 of this code shall apply.

c. Public Hearings per Section 2.9.5 of this code shall apply.

d.

12.5 Notice to Proceed

1. Prior to commencement of operations for which Conditional Use Permit has been approved, a “Notice to Proceed” shall be obtained from the Community Development Director. The Community Development Director shall issue the “Notice to Proceed” upon receipt of the following:

a. A copy of the resolution approving the Conditional Use Permit for a Well.

b. A copy of the approved site plan.

c. A copy of an approved extra legal vehicle or load permit issued by the Town Engineer pursuant to this Code, if applicable.

d. Copies of any necessary State or federal permits issued for the operation, if not previously submitted.

e. Fully executed Memorandum of Understanding.

12.6 Building Permit

A Town of Tinnath Building Permit must be obtained for all aboveground structures to which
the Town Code applies.

12.7 Oil and Gas Operations Buffering

1. Oil and Gas Operations Buffer Yard Standards. The following requirements shall apply to Production Site and Well Site:

   a. Measured. The buffer yard shall be measured as either the distance from the outer edge of an Production Site or Well Site to the nearest wall or corner of any Residential Building Unit or High Occupancy Building Unit or, if any Colorado Oil and Gas Conservation Commission adopted setback measurement method applicable to a Residential Building Unit or High Occupancy Building Unit results in a greater distance between the Production Site or Well Site and the Residential Building Unit or High Occupancy Building Unit at issue, then the Colorado Oil and Gas Conservation Commission setback measurement method shall be used.

   b. Minimum Buffer Distances. The following minimum buffer distances shall apply:

      i. Residential Building Unit. The minimum buffer between a Residential Building Unit and any Production Site or Well Site shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater.

      ii. High Occupancy Building Units. The minimum buffer between a High Occupancy Building Unit and any Production Site or Well Site shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater.

      iii. The minimum buffer between public playgrounds, parks, recreational fields, or community gathering spaces and any oil and gas location shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater.

Buffer Yard Requirements

<table>
<thead>
<tr>
<th>Type – Base Standard (plants per 100 linear feet along affected property line)*</th>
<th>Option Width</th>
<th>Plant Multiplier**</th>
<th>Option: Add 6’ Wall</th>
<th>Option: Add 3’ Berm or 6’ Fence</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 feet</td>
<td>1.25</td>
<td></td>
<td></td>
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<tr>
<td>525 feet</td>
<td>1.00</td>
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<tr>
<td>550 feet</td>
<td>0.90</td>
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<tr>
<td>6 Shade Trees</td>
<td>575 feet</td>
<td>0.80</td>
<td>0.75</td>
<td>0.85</td>
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<tr>
<td>7 Ornamental Trees or Type 2 Shrubs ***</td>
<td>600 feet</td>
<td>0.70</td>
<td></td>
<td></td>
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<tr>
<td>5 Evergreen Trees</td>
<td>625 feet</td>
<td>0.60</td>
<td></td>
<td></td>
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<tr>
<td>35 Shrubs (Type 2)</td>
<td>650 feet</td>
<td>0.50</td>
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</tbody>
</table>
"Base standard" for each type of buffer yard is that width which has a plant multiplier.

"Plant multipliers" are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

Shrub types: Type 1: 4' -8' High Type 2: Over 8' High

c. Alternative compliance buffer reduction from plugged and abandoned wells. Upon Applicant request, the decision maker may approve a reduced buffer distance from a plugged and abandoned well for which reclamation has been completed, all of the aforementioned in accordance with Colorado Oil and Gas Conservation Commission regulations, in lieu of the minimum buffer distances set forth in the immediately preceding Subsection (b), provided that the approved reduced buffer is no less than 150 feet from the permanently abandoned Well and meets the requirements specified below.

i. Procedure. To request alternative compliance, an alternative compliance buffer reduction plan shall be prepared and submitted in accordance with the submittal requirements established by the Director. At a minimum, the plan must:

a. Clearly identify and discuss the proposed buffer reduction and the ways in which the plan will equally well or better eliminate or minimize the nuisances and reduce the adverse effects referenced in the purpose of this Article than would a plan which complies with the separation and spacing standards of this Article.

b. Include information regarding environmental testing and monitoring for the Well Site. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the Well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this Article is required prior to sampling occurring and such plan shall include, but is not limited to, the following:

i. Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.
ii. Documentation of plugging activities, abandonment and any subsequent inspections.

iii. Soil sampling, including soil gas testing.

iv. Groundwater sampling.

v. Installation of permanent groundwater wells for future site investigations.

vi. A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.

c. Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations and that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may specify an appropriate buffer distance or require that the following actions be completed by a qualified professional before development may occur, including but not limited to:

i. Remediation of environmental contamination to background levels.

ii. Well repair or re-plugging of a previously abandoned well.

ii. Review Criteria. To approve an alternative compliance buffer reduction plan, the decision maker must first find that the proposed alternative plan eliminates or minimizes the nuisances and reduces the adverse effects referenced in the purpose of this Section equally well or better than would a plan which complies with the separation and spacing standards of this Section.

iii. Disclosure. If any Residential Building Unit, or High Occupancy Building Unit is proposed to be located within one thousand (1,000) feet of an Production Site or Well Site, the following requirements shall apply:

1. At such time as the property to be developed is platted or replatted, the plat shall show the one-thousand-foot radius on the property from such Production Site or Well Site and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an Production Site or Well Site.

2. For residential developments requiring a declaration pursuant to the
Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within such residential development upon which dwellings may be constructed that are within one thousand (1,000) feet of an Production Site or Well Site. The approved plat for such residential development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within one thousand feet of an Production Site or Well Site.

iv. **Fencing.** If any residential development is proposed to be located within five hundred (500) feet of an oil and gas location, and if an existing fence does not surround the oil and gas location, the developer must erect a 6’ privacy fence that restricts public access to the Production Site or Well Site along the property boundary between the Production Site and Well Site and the development.

2. **Exceptions.**

   a. **Existing Oil and Gas Locations.** The location and setback requirements may be waived if an exception has been granted by the Director pursuant to COGCC Rule 604.

   b. **Existing Surface Use Agreement or Site Specific Development Plan.** An Owner or Applicant may agree to locate future Building Units closer to existing or proposed Oil Well than otherwise allowed under COGCC Rule 604 pursuant to a valid Surface Use Agreement or site specific development plan (as defined in § 24-68-103, C.R.S., that establishes vested property rights as defined in § 24-68-103, C.R.S.) that expressly governs the location of Wells or Production Facilities on the surface estate.

**12.8 Compliance with State Environmental Requirements**

The approval of a Conditional Use Permit shall not relieve the Operators from complying with all current applicable State and federal regulations and standards concerning air quality, water quality, and waste disposal.

**12.9 Noise Regulation and Special Mitigation Measures**

1. The application of a Conditional Use Permit shall not relieve an Operator from complying with all applicable State laws and regulations concerning noise.

2. Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented in a direction away from all occupied buildings to the extent practicable.

3. Where a Well and Well Site or Production Site do not comply with the required setback
or other requirements of this Article or where the Well and Well Site or Production Site are in an area of particular noise sensitivity, additional noise mitigation may be required. An area of particular noise sensitivity includes but is not limited to the following: hospitals, dwelling units, nursing homes, hotels, churches and designated wildlife preserves. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:

a. Nature, proximity, location and type of adjacent development;

b. Prevailing weather patterns, including wind directions;

c. Vegetative cover on or adjacent to the site; or

d. Topography.

4. The level of required noise mitigation may increase with the proximity of the Well and Well Site or Production Site to areas of particular noise sensitivity or the level of noise emitted by the Well and Well Site or Production Site. One or more of the following additional noise abatement measures may be required:

a. Acoustically insulated housing or cover enclosing the motor or engine;

b. Noise management plan identifying hours of maximum noise emissions, type, frequency and level of noise to be emitted, and proposed mitigation measures; or

c. Any abatement measures required by the Commission for high-density areas, if applicable.

12.10 Visual Impact/Aesthetics Regulation and Special Impact Measures


a. To the maximum extent practicable, oil and gas facilities shall be located away from prominent natural features, such as distinctive rock and land forms, vegetative patterns, ditch crossings, Town or County approved open space areas and other approved landmarks to abate the visual impacts of oil and gas facilities.

b. To the maximum extent practicable, oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting.

c. To the maximum extent practicable, the Applicant shall use structures of minimal size to satisfy present and future functional requirements.

d. To the maximum extent practicable, when clearing trees and vegetation for construction of oil and gas facilities, the Applicant shall feather and thin edges of vegetation. The Applicant shall replant cleared trees and vegetation to screen facilities to the maximum extent practicable.
e. To the maximum extent practicable, the Applicant shall locate facilities at the base of slopes to provide a background of topography and/or natural cover.

f. The Applicant shall replace earth adjacent to water crossings at slopes less than the normal angle of repose with the soil type of the site.

g. To the maximum extent practicable, the Applicant shall align access roads to follow existing grades and minimize cuts and fills.

i. Facilities shall be painted as follows:

1. Uniform, noncontrasting, nonreflective color tones.

2. Color matched to land, not sky, slightly darker than adjacent landscape.

3. Exposed concrete colored to match soil color.

2. Special Mitigation Measures: Visual. Where a Well, Well Site, or Production Site does not comply with the requirements of this Article, or in areas of increased visual sensitivity as determined by the Town in its sole discretion, such as a location near to and/or visible from a residential area, the Applicant shall submit a visual mitigation plan including one or more of the following standards, as appropriate:

a. To the maximum extent practicable, exterior lighting shall be directed away from residential areas, or shielded from said areas to eliminate glare.

b. One or more of the following landscaping practices may be required, where practicable, on a site specific basis:

i. Establishment and proper maintenance of ground covers, shrubs and trees.

ii. Shaping cuts and fills to appear as natural forms

iii. Cutting rock areas to create irregular forms.

iv. Designing the facility to utilize natural screens.

v. Construction of fences for use with of landscaping and or berming.

3. Other Special Mitigation Measures. The Applicant shall keep the Town and public and private streets or roads reasonably free of mud or other materials during drilling and completion operations and during well operations. The Applicant shall use its best efforts to keep the Well Site or Production Site free of trash, litter and other refuse during and at the completion of drilling and shall not in any case bury said trash. The Operator shall construct and manage pits in accordance with applicable State and federal regulations.
12.11 Abandonment and Plugging of Wells

The approval of a Conditional Use Permit shall not relieve the Operator from complying with all Commission rules with respect to abandonment and plugging of Wells. The Operator shall provide the Town with any Commission plugging and/or abandonment application at the time that it is filed with the Commission. The Applicant shall abandon flowlines in accordance with applicable State rules and regulations.

12.12 Seismic Operations

The approval of Conditional Use Permit shall not relieve the Operator from complying with all Commission rules and regulations with respect to seismic operations. All notices which an Operator is required to file with the Commission with respect to seismic operations shall be filed with the Town on a timely basis. The Town shall comply with the same confidentiality requirements which bind the Commission.

12.13 Signage

The approval of a Conditional Use Permit shall not relieve the Operator from complying with all Commission rules with respect to signs and signage. In addition, the Operator shall maintain in good, readable condition all signs required by the Land Use Code.

12.14 Reclamation

The approval of a Conditional Use Permit shall not relieve the Operator from complying with all Commission rules and regulations with respect to site reclamation.

12.15 Geologic Hazard, Floodplain, Floodway Location Restrictions

All equipment at Well Sites and Production Sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence and to the extent necessary to comply with the Federal Emergency Management Act.

12.16 Access Roads

1. All private roads used to maintain access to the tank batteries or the Well Site or Production Site shall be improved and maintained according to the following standards:

   a. Tank battery access roads. Access roads to tank batteries shall be subject to review by the Town Engineer in accordance with the following minimum standards:

      i. A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six inches thick compacted to a minimum density of ninety-five percent of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, Aggregate Base Course as specified for aggregate base course materials in the Colorado Department of

ii. Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways (such as roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Town Engineer.

iii. Maintained so as to provide a passable roadway free of ruts and snow at all times.

b. Wellhead access roads. Access roads to Wellheads shall be subject to review by the Town's Engineer in accordance with the following minimum standards:

i. A graded, dirt roadway compacted to a minimum density of ninety-five percent of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures and approved by the Town Engineer.

ii. Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval by the Town Engineer.

iii. Maintained so as to provide a passable roadway generally free of ruts and snow at all times.

c. Public access roads. An extra-legal vehicle or load permit shall be required for all extra-legal vehicles or loads as defined in §§ 42-4-401 through 42-4-411, C.R.S., which use Town streets. Said permit, if required, shall be obtained from the Town Engineer prior to such use. The Applicant shall comply with all Town and State regulations regarding weight limitations on streets within the Town, and the Applicant shall minimize extra-legal truck traffic on streets within the Town and provide accessible roads free of ruts and snow.

12.17 Wildlife Impact Mitigation

1. Wildlife. When a Well Site or Production Site is located within a designated Sensitive Wildlife Habitat as shown on a map prepared by the Colorado Parks & Wildlife, the Applicant shall consult with Colorado Parks & Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. The Operator shall implement such mitigation procedures as are recommended by Colorado Parks & Wildlife after consultation with the Town.

2. Endangered Species. The Applicant shall not engage in activities which, in the opinion of the Colorado Parks & Wildlife, threaten endangered species.
12.18 Review Criteria

1. Staff and the Planning Commission shall review and make recommendations to the Town Council who shall then approve a Conditional Use Permit application if the application submitted by the Applicant conforms to the following requirements:

a. The site plans for a Well Site or Production Site application comply with the requirements of Section 12.4 of this Article.

b. The vicinity maps for a Well Site or Production Site application comply with the requirements of Section 12.4 of this Article.

c. The narrative for a Well Site or Production Site application complies with the requirements of Section 12.4 of this Article.

d. The Well location and setbacks comply with the requirements of Section 12.7 of this Article.

e. When applicable, compliance with the provisions for mitigation of noise required in Section 12.09 of this Article.

f. When applicable, compliance with the provisions for visual special mitigation required in Section 12.10 of this Article.

g. When applicable, compliance with the provisions for geologic hazards, floodplains or floodway required in Section 12.15 of this Article.

h. When applicable, compliance with the provisions for wildlife mitigation procedures required in Section 12.17 of this Article.

i. The Applicant and the Town have entered into a Memorandum of Understanding as required by Section 12.4 of this Article.

2. The Council decision shall be based upon evidence presented in the application, submitted as part of the public record, and at the public hearing. Following the conclusion of the public hearing, the Council may proceed to render its provisional decision orally on the application, or it may take the matter under advisement until the next regularly scheduled Town Council meeting, at which time it shall orally render its decision. In the event that an application is granted with conditions the Applicant may, within fourteen (14) days of the Council decision, request a rehearing to demonstrate that removal or modification of one or more of the conditions is necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits or that the decision is otherwise inconsistent with State laws and regulations. Following the Council’s oral announcement of its decision, and any subsequent rehearing, a written resolution shall be adopted as its final action or decision on the application. This written resolution shall set forth findings of the Council. The Town Attorney shall prepare the written resolution for Council consideration within fourteen (14) days of the
oral decision, or any subsequent rehearing. Such written resolution shall be adopted within twenty-one (21) days of the announcement of the Council’s oral decision, unless the Applicant requests rehearing, in which case the written resolution shall be adopted within thirty (30) days of the oral decision. For the purposes of judicial review, the Council’s final action or decision on an application shall be deemed to have been made as of the date upon which the Council executes the written resolution, which shall constitute the final decision of the Council.

12.19 Emergency Response Costs

The Operator shall reimburse the Town or the fire district for any emergency response costs incurred by the Town or the fire district in connection with activity at the Well Site or Production Site, except that the Operator shall not be required to pay for emergency response costs where the response was precipitated by an error of the Town.

12.20 Violation and Enforcement

1. **Unlawful to Construct or Install Unapproved Oil and Gas Facilities.** Except as otherwise provided in this Article, it is unlawful to construct, install or cause to be constructed or installed any oil and gas facility within the Town unless approval has been granted by the Council. The unlawful drilling or redrilling of any Well or the production therefrom is a violation of this Article.

2. **Penalty.** Any person, firm, corporation or legal entity that constructs, installs or uses, or which causes to be constructed, installed or used, any oil, gas or Injection Well, Well Site or Production Site or commits any act or omission in violation of any provision of this Article or of the conditions and requirements of a Conditional Use Permit may be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. Each Day of such unlawful operation constitutes a separate violation.

3. **Civil Action.** In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of any provision of this Article or the conditions and requirements of the Conditional Use Permit, the Town Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

4. **False or Inaccurate Information.** The Council may revoke a Conditional Use Permit if it is determined after an administrative hearing held on at least ten (10) days' notice to the Applicant, that the Applicant provided information and/or documentation upon which approval was based, which the Applicant, its agents, servants or employees, knew, or reasonably should have known, was materially false, misleading, deceptive or inaccurate.

5. **Prospective Application.** Unless specifically provided otherwise, this Article shall apply only to Wells which are drilled in the Town on and after the date that this Article is
adopted. The Reentering of a Well in existence prior to the date of adoption of this Article for purposes of deepening, recompleting or reworking shall not require approval of a Conditional Use Permit.

6. **Recovery of Fees.** Should the Town prevail in any action for legal or equitable relief for a violation of the provisions of this Article, in addition to any other penalties or remedies which may be available, the Town shall be entitled to recover any damages, costs of action, expert witness fees and reasonable attorney’s fees incurred.

12.21 Reserve