MINERAL NOTICE– FAQ's

What is Mineral Notice?

A notification to the owners of a mineral estate, when the surface estate is undergoing an "application for development".

Why is it required?

Legislation, effective July 1, 2001, was passed to require surface estate owner(s) to notify mineral estate owner(s) of their intention to develop the land overlying the mineral estates.

What is a "mineral estate"?

A "mineral estate" is an interest in real property that is less than full fee title and includes mineral rights as shown in the real estate records of the County. Colorado law requires recognition that surface and mineral estates are separate and distinct interests in land, and that they may be severed from each other. It is not uncommon for partial mineral rights to be retained by a seller, which can be bought and sold as real property.

How do I know if there are mineral estates applicable to my property?

Generally the existence of mineral estate will be depicted in the owners Title Insurance Policy or Commitment. Other ways to determine this information is through:

- *Recorded instruments such as Deeds at the Clerk and Recorders Office*
- *Recorded Notification forms filed at the Clerk and Recorders Office*
- *A recorded instrument such as certificates of location, maps or other documents as may be required to record a claim to minerals*

Where can I find the mineral owners?

Generally, the recorded document regarding a mineral estate will include the name and address of the estate owner.

When is Mineral Notice required?

Mineral Notice is required prior to the "initial public hearing" when the surface estate is undergoing an "application for development". For purpose of this notice the following applications are considered "applications for development".

1. *Preliminary or Final Plat for subdivision*
2. *Minor Subdivision*
3. *Vacation and Replat where new lot(s) are proposed*
4. *Planned Unit Development or similar land use designation*
5. *Zoning/Rezoning*
6. *Sketch Plan*
7. *Special Use, Variance of Use, Approval of Location*
8. *Amendments of the above actions where new development is occurring where not previously identified.*
9. *Other??*

To: Carl, Cole
Sheila
6/3

Who is responsible for notice?

According to the Statute, the applicant is required to perform the notice actions.

When does the notice occur?

The notice to the mineral estate owner must occur not less than 30 days prior to the "initial public hearing". Initial public hearing is generally considered to be the Planning Commission hearing. A second notice is not required for those applications being scheduled for Board of County Commissioners action.

How do I know when to notice?

Explanations, checklists, and even a sample of the notice are included within application submittal packages available from the County. County staff will either not schedule an application for the "initial public hearing", or if the application is scheduled but notice has not occurred the Planning Commission will be instructed that they can deny or continue the application. The Project Manager/Planner will advise you as to the need to perform the notice concurrently with the scheduling of the application for public hearing.

What needs to be on the notice?

A sample notice is included within the application package. The following information shall be included in the notice:

- *Time and place of initial public hearing*
- *Nature of hearing*
- *Location of the property which is the subject of the hearing*
- *Name of applicant*

How does the County know I sent the notice?

The applicant is required to certify to the local government that he/she has sent the notice of the hearing to the mineral estate owner of record no less than 30 days prior to the hearing. If there are no mineral estate owners, the applicant is required to verify this on a checklist as part of their application.

If I did the notice with a preliminary application do I have to complete it again?

Yes, applications are considered separate "applications for development".

DRAFT

What if I did my notice, and the application was not scheduled for hearing?

Because of the wording of the State Statute, a new notice complying with the 30 day requirement is necessary.

What if I did my notice, but the application was continued by the Planning Commission?

If the application was called up for hearing and the notice was properly completed, compliance with the statute has occurred.

What is the effect of not providing notice?

If the surface owner fails to notify the mineral estate owner, the mineral estate owner could commence a legal action in the court and be awarded *compensatory monetary damages from the surface owner.*

What if I cannot find the owners of the mineral rights?

If there is not an address on the deed for the mineral rights or the Notice is returned without a forwarding address, the applicant may wish to check the phone book or Assessors Office for a new address. Remember the burden for notice, and the penalties for non-compliance, fall entirely on the surface owner, therefore judicious efforts to contact he mineral owner(s) should be pursued.

Can the mineral estate owner waive notice?

Yes, in writing to the applicant, who should provide the verification of the waiver to the County.

Disclaimer: This product is informational only and designed to answer the most common questions associated with the process. Nothing within this sheet guarantees County support or approval of a submitted application. 6/3/2004

Mark Gebhart

From: Shelia Booth
Sent: Wednesday, May 26, 2004 8:48 AM
To: Carl Schueler; Mark Gebhart
Cc: Barry Holmes; Dennis Cripps; Jan Fetrow
Subject: RE: mineral rights notice

Also - exactly how does a notice to the mineral rights have to be worded. can they simply use a letter of intent or do they need to reference the mineral rights portion of the notification requirements.

-----Original Message-----
From: Carl Schueler
Sent: Tuesday, May 25, 2004 6:28 PM
To: Mark Gebhart
Cc: LNU; Dennis Cripps
Subject: mineral rights notice

Mark,

There is quite a bit of non-clarity up here on 5 related to handling mineral rights notices per requirements of 24-65.5-101. Can you please draft up a set of criteria we can use. You and/or Cole may have done some to this prior, but I am confident it is not all in one place.

*List of applications where we initially require compliance (form to be filled out, and potential notice) versus those that we do not

*Guidance as to whether a prior form or notice suffices or does not
-example: applicant met requirements for Preliminary Plan and comes in 2 months later for first filing final plat; do they need to comply again? If so does it matter if there were no separate mineral rights owners the first time?

*Guidance as to situations where further action by applicant is required
-is compliance required if there is a patent versus severed mineral rights?

*Guidance as to normal sources to determine if there are separate mineral rights

*Guidance as to the acceptable level of further action and due diligence where there is a separate mineral rights owner, but there is no current contact information, and or contact can not be made
-notice in paper?
-affidavit provided that reasonable attempts to contact were made

Thanks

Carl

El Paso County
Office of the County Attorney
Civil Division

Michael A. Lucas, County Attorney

Assistant County Attorneys
John N. Franklin
M. Cole Emmons
William H. Louis
Jay A. Lauer
Shad L. Brown

LEGAL MEMORANDUM

To: Ken Rowberg, Planning Director

CC: Michael Lucas, County Attorney
William H. Louis, Assistant County Attorney

From: M. Cole Emmons, Assistant County Attorney
Kristine Beatty, Paralegal

Subject: Notice to Mineral Owners of Surface Development Statute

Date: May 10, 2002

THE STATUTE

The State Legislature passed legislation, which became effective on July 1, 2001, to protect mineral estate owners by requiring surface estate owner(s) to notify mineral estate owner(s) of their intention to develop the land overlying the mineral estates. (See §24-65.5-101, et seq., C.R.S.) ("the Statute"). The Statute defines a surface estate as an interest in real property that is less than full fee title and does not include mineral rights, and defines a mineral estate as an interest in real property that is less than full fee title and includes mineral rights as shown by the real estate records of the County. Pursuant to §30-28-133(10), C.R.S., the Counties are mandated by the legislature to recognize that surface and mineral estates are separate and distinct interests in land, that they may be severed from each other, and that the mineral estate owner is entitled to notice and has the same rights and privileges as the surface owner.

The Statute places the responsibility of notification upon the surface estate owner(s) to inform both the mineral estate owner(s) and the local governments in writing of their intention to develop the surface estate. Section 24-65.5-103, C.R.S., provides that this written notification shall be sent by first class mail to the mineral estate owner and to the County not less than thirty (30) days prior to the date of an initial public hearing scheduled before the County on an application for development.

The Applicant shall identify the mineral estate owner by examining records of the Clerk and Recorder's Office. The Statute states that notice shall be sent to the mineral estate owner if the records establish the following:

a) identity of the owner of the mineral estate; or
b) the mineral estate owner has filed a proper notification form; or
c) the mineral estate owner has recorded an instrument satisfying an applicable dormant mineral interest act.

§24-65.5-103(2)(a)(I)-(III), C.R.S.

If the records do not identify any mineral estate owners, the applicant shall be deemed to have acted in good faith, is not required to do anything further, and shall not be liable for any errors or omissions in such records. §24-65.5-104(2)(III)(b), C.R.S.

Should the Applicant determine that a mineral estate owner exists, then the Notice shall be sent to the mineral estate owner and shall include:

a) time and place of initial public hearing
b) nature of hearing
c) location of property/subject of hearing
d) name of applicant

§24-65.5-103(1)(a), C.R.S.

In addition, a copy of the Notice shall also be sent to the local government at the same time notification is sent to the mineral estate owner and shall include:

a) name & address of mineral estate owner.

§24-65.5-103(1)(b), C.R.S.

If the mineral estate owner has failed to file a notification form in the office of the county clerk and recorder, the surface owner may rely on a listing of mineral estate owners prepared by an attorney, a title insurance company, or a title insurance agent, all licensed in the State of Colorado. If the surface owner provides the required notice of a hearing in no less than thirty (30) days of the initial public hearing, to a party named in such listing or whose identity is disclosed in a request for notification, at the address of such party as it appears in such listing, such party shall be deemed to have constructively received the required notice, and the surface owner shall be deemed to have otherwise complied with the notice requirements. (See, §24-65.5-104(2), C.R.S.).

Under Section 24-65.5-103(4), C.R.S., the Applicant is required to certify to the local government as a condition of approval that he/she has sent a notice of the hearing to the mineral estate owner of record in no less than thirty (30) days prior to the hearing. The local government entity cannot approve this application for development without this condition being met unless the mineral estate owner has submitted in writing that he/she waives his/her right to Notice. Section 24-65.5-103(5), C.R.S., states that a mineral estate owner may waive the right to notice under this section in writing to the Applicant.

If the surface owner fails to notify the mineral estate owner, the mineral estate owner could commence a legal action in the court and be awarded compensatory monetary damages from the surface estate owner for not receiving proper notice for an application for development. §24-65.5-104(2)(b)(I), C.R.S. If the surface owner certifies to the government entity that he/she has complied with the notice requirements, and the mineral estate owner fails to file a written objection, no approved development shall be rescinded, curtailed, abrogated, or otherwise restricted. §24-65.5-104(3), C.R.S.

While it is the State Legislature's intention that this notification process includes local governments, this notification process will not subject the County to incur liability for the failure of the surface estate owner to comply with the provisions of this statute. §24-65.5-101, et seq., C.R.S. The burden/responsibility for notification falls entirely upon the surface owner.

PRACTICAL APPLICATION

The notice requirements are triggered when an initial public hearing on an application for development is approaching. §24-65.5-102, C.R.S., identifies an "application for development" as:

1) a preliminary or final plat for a subdivision;
2) a planned unit development; or
3) any other similar land use designation;
4) zoning/rezoning;
5) general development plans; and
6) special use permits involving new surface development.

It is helpful to understand in what context the legislature may have considered an "initial" public hearing. According to Webster's II New College Dictionary, initial is defined as: "Happening or beginning at the very beginning: First." Therefore, if the public hearing concerning the application for development is being heard for the first time, then the surface estate owner should be prepared to certify that he/she has complied with the notification to mineral estate owners requirements of §24-65.5-101, et seq., C.R.S.

All applications for development matters are initially heard at a public hearing before the Planning Commission, which Commission approves or denies the application for development, and its recommendations are then presented to the Board of County Commissioners for its consideration. All applications for development, as identified herein, shall be considered to be initially heard for the first time at the Planning Commission public hearing. Since the Statute is not clear, a conservative interpretation would be that the Applicant notify and certify for the initial hearing on both preliminary plans and final plats for a particular subdivision. Therefore, all surface estate owners with applications for development should be prepared to notify at least thirty (30) days prior to the Planning Commission hearing. Notice may be actual or constructive. As a condition of approval, the Applicant has to certify to the Planning Commission that notice has been provided pursuant to the Statute. If the Applicant has identified mineral estate owners, certification can be provided by using the attached form. While the Statute doesn't require it, as a practical matter, if the Applicant searches and does not find mineral estate owners, he should indicate the same in writing to the Planning Department. This notification enables the mineral estate owner to protect his/her rights, and if he/she so chooses, he/she may file a written notice setting forth the nature of any objection, which the Planning Commission can consider during its deliberative process.

A mineral estate owner may waive right to a notice. If the mineral estate owner waives his/her right to notice in writing to the Applicant, the Applicant may submit this waiver to the local government and will not be required to send notice of any applications for development on the surface estate to the mineral estate owner. In this instance, the local government can find approval without the notification requirement being met providing the mineral estate owner has waived his/her right to notice.

It appears there are three ways for the mineral owner to be identified as having an interest in a mineral estate: 1) from a recorded instrument such as a Deed identifying the mineral estate owner; 2) a notification form specifically intended to satisfy this Statute that the mineral estate owner or his/her agent may file in the Clerk and Recorder's Office which: a) identifies the mineral estate owner's mineral estate; b) identifies the corresponding surface estate by parcel number and by section, township and range numbers; and 3) from a recorded instrument satisfying a dormant mineral interest act. As to the latter, this would constitute the certificates of location, maps and other documents as may be required to record a claim to minerals.

If a surface owner complies with the statute and finds a deed indicating the name of a mineral estate owner and his/her address, a Notice of an initial public hearing before the Planning Commission, the nature of the hearing, the location of the hearing, the location of the property that is the subject of the hearing, and the name of the applicant must, as a matter of law, be mailed to the mineral estate owner no less than thirty (30) days prior to the hearing. At the same time, a copy of the notice must be sent to the Planning Department. In considering computation of time, the day of the act (in this case, mailing the written notification to the mineral estate owner and the government entity) from which the thirty (30) day period of time begins to run shall not be included. In other words, the first day of computation begins the day following the act. If there is not an address on the deed or the Notice is returned without a forwarding address, the Applicant may wish to check the phone book or the Assessor's Office for a new address. This due diligence is above and beyond what the Statute requires. If any address is found, Notice <u>must</u> be mailed in order for the applicant to comply with the statute. If no such address is available, the surface owner can state that they have acted in good faith and can certify to the Planning Commission that they complied with the Statute but did not find any known mineral estate owners. The surface estate owner will not be liable for any errors or omissions in the Clerk and Recorder's records providing they take the necessary steps to attempt notification as indicated in the Statute.

A surface estate owner who has searched the Clerk and Recorder's records, who did not find a notification form or deeds or other recording instrument indicating ownership of mineral rights is considered to have complied with the specific intent of the law and should be able to certify to the Planning Commission that they have complied with the statute and attempted to establish who all known mineral estate owners of record were in order to notify them of the pending development action. If it is determined that a surface estate owner has not complied with the notification requirements, the Planning Commission is placed in an awkward position regarding approval of the application for development at the initial hearing. There are a couple of alternatives to resolve this situation. First, the Planning Director can make an administrative decision to not schedule the application for hearing by the Planning Commission until the Applicant has conducted the proper research/notification/certification of mineral estate owners to ensure that the rights of the mineral estate owners are protected. Second, if the applicant insists on proceeding to hearing, the applicant could proceed with the hearing at their own risk, understanding that they may be subject to litigation and may have to pay compensatory monetary damages, in addition to having the outcome of the matter reversed by the Court. In such case, the Planning Commission would have to be instructed that they could take testimony and either deny or continue the matter, but that they could not approve until the applicant has complied with the mineral notice requirements. The hearing could be continued to a definite date (which would have to allow time for the Applicant to meet the thirty (30) day notice requirement) to enable the applicant to comply with the law and preserve other existing notices.

There are two final issues that need to be addressed. The first is how this notice requirement relates to PUDs. The Land Development Code, Chapter IV-Section 2, Zoning Procedures, Para. A. 7.d. requires all adjoining property owners to be notified by certified mail no less than twenty-one days and not more than thirty days prior to the meeting of a pending petition. Chapter IV- Section 16, PUD Planned Unit Development District, Para. E., requires written notice of the public hearing to be delivered or mailed to adjoining landowners, at least fifteen (15) days prior to the public hearing date. In addition to these requirements, the surface estate owner will now have to ensure that he/she has also sent proper notification to the mineral estate owners of the subject property (<u>not</u> mineral estate owners of adjoining properties) no less than thirty (30) days prior to the public hearing of an application for development.

The second is how the statutory notice requirement can be reconciled with the Planning Department's practice of not setting Planning Commission Agendas until twenty-one (21) days prior to the Planning Commission hearing. This 21 day date was reached as a compromise between staff and the developers as part of the Development Streamline Team process, and was approved by the Board of County Commissioners in its Resolution suspending the Planning Commission cycle. While the Resolution could be amended to change the agenda scheduling date, a more practical solution is simply to shift the burden of how to comply with the Statute to the Applicant. In other words, the Applicant has a Planning Commission hearing date in mind for when he thinks his Application will be ready for hearing. At least thirty (30) days prior to that date, the Applicant notifies mineral estate owners and certifies the same pursuant to Statute. At the Agenda setting date, twenty-one (21) days prior to hearing, if the Planning Department determines that the application is <u>not</u> ready to go to hearing, they notify the Applicant. The Applicant then re-notifies and re-certifies for the next Planning Commission date. This cycle is repeated until the application for development is ready for hearing. While this causes additional work and expense for the Applicant, it is in keeping with the intent of the Statute—namely, that it is the Applicant's burden, and not the County's, to comply with the notification Statute. It also removes the County from getting involved with having to make predictions for the Applicant as to when the application will be ready for hearing or when the applicant should send notice.

Should you have any questions or require further assistance, please do not hesitate to contact us.

Notice to Mineral Estate Owners
§24-65.5-101, <u>et seq.,</u> C.R.S – Checklist

An examination of the records of the Clerk and Recorder's Office established the following:

______ identity of the owner(s) of mineral estate

______ the mineral estate owner(s) has filed a proper notification form

______ the mineral estate owner(s) has recorded an instrument satisfying an applicable dormant mineral interest act

______ no mineral estate owner(s) was found

______ mineral owner(s) waived the right to notice in writing to the Applicant.

If a mineral estate owner(s) exists, a Notice shall be sent to the mineral estate owner no less than thirty (30) days prior to the initial public hearing. The Notice shall include:

______ time and place of initial public hearing

______ nature of hearing

______ location of property/subject of hearing

______ name of applicant

______ notice was sent to mineral estate owner(s) no less than thirty (30) days prior to initial public hearing (do not count day of mailing in thirty (30) day calculation).

If a mineral estate owner(s) exists, a copy of the Notice shall be sent to the local government at the same time as notice is mailed to the mineral owner(s) and no less than thirty (30) days prior to the initial public hearing. The Notice shall include:

______ time and place of initial public hearing

______ nature of hearing

______ location of property/subject of hearing

______ name of applicant

______ name and address of mineral estate owner

______ notice was sent to El Paso County Planning Department no less than thirty (30) days prior to initial public hearing (do not count day of mailing in thirty (30) day calculation).

I ____ researched the records of the El Paso County Clerk and Recorder and established that there was/was not a mineral estate owner(s) on the real property known as ______________________________. An initial public hearing on ____, which is the subject of the hearing, is scheduled for _________________________, 200____.

Pursuant to §24-65.5-103(4), C.R.S., I certify that a Notice of an initial public hearing was mailed to the mineral estate owner(s) (if established above) and a copy was mailed to the El Paso County Planning Department on _____________________, 200____ , which was no less than thirty (30) days prior to the initial public hearing.

Dated this _______ day of ______________________, 200____.

____

STATE OF COLORADO)
) s.s.
COUNTY OF EL PASO)

The foregoing certification was acknowledged before me this ___day of _________________, 200____, by ____.

Witness my hand and official seal.

My Commission Expires:_______________

____

Notary Public

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

4/6 sent to governor

4/14/05

An Act

SENATE BILL 05-080

BY SENATOR(S) Lamborn, Dyer, Hanna, Jones, Kester, May R., McElhany, Sandoval, Tapia, Taylor, Teck, and Tupa;
also REPRESENTATIVE(S) Merrifield, Frangas, Hodge, Schultheis, and Todd.

CONCERNING NOTIFICATION TO MILITARY INSTALLATIONS BY LOCAL GOVERNMENTS OF CERTAIN LAND USE CHANGES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 2 of article 1 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

29-1-207. Notification to military installations by local governments of land use changes - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT IT IS DESIRABLE FOR LOCAL GOVERNMENTS IN THE STATE TO COOPERATE WITH MILITARY INSTALLATIONS LOCATED WITHIN THE STATE IN ORDER TO ENCOURAGE COMPATIBLE LAND USE, HELP PREVENT INCOMPATIBLE URBAN ENCROACHMENT UPON MILITARY INSTALLATIONS, AND FACILITATE THE CONTINUED PRESENCE OF MAJOR MILITARY INSTALLATIONS WITHIN THE STATE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "LOCAL GOVERNMENT" MEANS A COUNTY, HOME RULE OR STATUTORY CITY, TOWN, TERRITORIAL CHARTER CITY, CITY AND COUNTY, OR A METROPOLITAN DISTRICT CREATED PURSUANT TO TITLE 32, C.R.S.

(b) "MILITARY INSTALLATION" MEANS A BASE, CAMP, POST, STATION, AIRFIELD, YARD, CENTER, OR ANY OTHER LAND AREA UNDER THE JURISDICTION OF THE UNITED STATES DEPARTMENT OF DEFENSE, INCLUDING ANY LEASED FACILITY, THE TOTAL ACREAGE OF WHICH INSTALLATION IS IN EXCESS OF ONE THOUSAND ACRES. "MILITARY INSTALLATION" DOES NOT INCLUDE THE ROCKY MOUNTAIN ARSENAL NOR ANY FACILITY USED PRIMARILY FOR CIVIL WORKS, RIVER PROJECTS, OR FLOOD CONTROL PROJECTS.

(3) EACH LOCAL GOVERNMENT WITHIN WHOSE TERRITORIAL BOUNDARIES IS LOCATED ALL OR ANY PORTION OF A MILITARY INSTALLATION SHALL TIMELY PROVIDE TO THE COMMANDING OFFICER OF THAT INSTALLATION, OR HIS OR HER DESIGNEE, INFORMATION RELATING TO PROPOSED CHANGES TO THE LOCAL GOVERNMENT'S COMPREHENSIVE PLAN, AMENDMENTS TO THE PLAN, OR LAND DEVELOPMENT REGULATIONS THAT, IF APPROVED, WOULD SIGNIFICANTLY AFFECT THE INTENSITY, DENSITY, OR USE OF ANY AREA WITHIN THE TERRITORIAL BOUNDARIES OF THE LOCAL GOVERNMENT THAT IS WITHIN TWO MILES OF THE MILITARY INSTALLATION. NOTHING IN THIS SUBSECTION (3) IS INTENDED TO REQUIRE SUBMISSION OF ANY INFORMATION IN CONNECTION WITH A SITE-SPECIFIC DEVELOPMENT APPLICATION UNDER CONSIDERATION BY THE LOCAL GOVERNMENT. vesting

(4) UPON SUBMISSION OF THE INFORMATION REQUIRED TO BE PROVIDED PURSUANT TO SUBSECTION (3) OF THIS SECTION, THE LOCAL GOVERNMENT SHALL PROVIDE THE MILITARY INSTALLATION AN OPPORTUNITY TO REVIEW THE INFORMATION AND COMMENT ON THE IMPACT THE PROPOSED CHANGES MAY HAVE ON THE MISSION OF THE MILITARY INSTALLATION. SUCH COMMENTS MAY INCLUDE:

(a) IF THE MILITARY INSTALLATION HAS AN AIRFIELD, WHETHER THE PROPOSED CHANGES WILL BE COMPATIBLE WITH THE SAFETY AND NOISE STANDARDS CONTAINED IN THE AIR INSTALLATION COMPATIBLE USE ZONE ADOPTED BY THE MILITARY INSTALLATION FOR THAT AIRFIELD;

(b) WHETHER THE PROPOSED CHANGES ARE COMPATIBLE WITH THE INSTALLATION ENVIRONMENTAL NOISE MANAGEMENT PROGRAM OF THE UNITED STATES ARMY;

(c) WHETHER THE PROPOSED CHANGES ARE COMPATIBLE WITH ANY JOINT LAND USE STUDY FOR THE AREA WITHIN WHICH THE CHANGES ARE TO TAKE PLACE, IF SUCH STUDY HAS BEEN COMPLETED; OR

(d) WHETHER THE MILITARY INSTALLATION'S MISSION WILL BE ADVERSELY AFFECTED BY THE PROPOSED CHANGES.

(5) THE LOCAL GOVERNMENT SHALL REVIEW ANY COMMENTS RECEIVED FROM THE COMMANDING OFFICER OR HIS OR HER DESIGNEE PURSUANT TO SUBSECTION (4) OF THIS SECTION WHEN CONSIDERING APPROVAL OF A COMPREHENSIVE PLAN, AMENDMENTS TO THE PLAN, OR ITS LAND DEVELOPMENT REGULATIONS. THE LOCAL GOVERNMENT SHALL FORWARD A COPY OF ANY SUCH COMMENTS RECEIVED TO THE OFFICE OF SMART GROWTH CREATED IN SECTION 24-32-3203 (1) (a), C.R.S.

SECTION 2. 30-28-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

30-28-106. Adoption of master plan - contents. (6) THE MASTER PLAN OF ANY COUNTY ADOPTED OR AMENDED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6) SHALL SATISFY THE REQUIREMENTS OF SECTION 29-1-207, C.R.S., AS APPLICABLE.

SECTION 3. 31-23-206, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

31-23-206. Master plan. (6) THE MASTER PLAN OF ANY MUNICIPALITY ADOPTED OR AMENDED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6) SHALL SATISFY THE REQUIREMENTS OF SECTION 29-1-207, C.R.S., AS APPLICABLE.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to any change to a local

government's comprehensive plan, amendments to the plan, or to the local government's land development regulations submitted for the approval of the local government on or after the applicable effective date of this act.

Joan Fitz-Gerald PRESIDENT OF THE SENATE	Andrew Romanoff SPEAKER OF THE HOUSE OF REPRESENTATIVES
Karen Goldman SECRETARY OF THE SENATE	Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED_______________________________

Bill Owens
GOVERNOR OF THE STATE OF COLORADO

First Regular Session
Sixty-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 01-0425.02 Thomas Morris **HOUSE BILL 01-1088**

HOUSE SPONSORSHIP

Rippy

SENATE SPONSORSHIP

Dyer (Durango)

House Committees
Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

CONCERNING NOTIFICATIONS REGARDING SEVERED MINERAL RIGHTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires title companies to provide surface owners with written notice at the time of closing or the issuance of a title commitment that the mineral estate has been severed from the surface estate. Requires surface owners to provide mineral estate owners with written notice 30 days prior to the time of any necessary public hearing regarding impending surface development, zoning changes, and subdivision. Allows surface owners to rely on real estate and appraiser's records.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 10 Article 11 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-11-123. Notification of severed mineral estates. (1) FOR PURPOSES OF THIS SECTION:

(a) "MINERAL ESTATE" MEANS A MINERAL INTEREST IN REAL PROPERTY, HOWEVER CREATED AND REGARDLESS OF FORM, WHETHER ABSOLUTE OR FRACTIONAL, DIVIDED OR UNDIVIDED, CORPOREAL OR INCORPOREAL, INCLUDING A FEE SIMPLE OR ANY LESSER INTEREST OR ANY KIND OF ROYALTY, PRODUCTION PAYMENT, EXECUTIVE RIGHT, NONEXECUTIVE RIGHT, LEASEHOLD, OR LIEN, IN MINERALS, REGARDLESS OF CHARACTER.

(b) "SEVERED" MEANS THAT THE SURFACE OWNER DOES NOT OWN ALL OR ANY PART OF THE MINERAL ESTATE.

(c) "SURFACE ESTATE" MEANS AN INTEREST IN REAL PROPERTY THAT DOES NOT INCLUDE THE FULL MINERAL ESTATE AS SHOWN BY THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED.

(d) "SURFACE OWNER" MEANS THE OWNER OF THE SURFACE ESTATE AND ANY PERSON WITH RIGHTS UNDER A CONTRACT TO PURCHASE ALL OR PART OF THE SURFACE ESTATE.

Need to define commitment as regards, no opinion

(2) AT OR PRIOR TO THE TIME OF A TITLE INSURANCE COMPANY'S PROVISION OF CLOSING AND SETTLEMENT SERVICES OR THE ISSUANCE OF A TITLE COMMITMENT WITH REGARD TO A SURFACE ESTATE, THE COMPANY SHALL PROVIDE WRITTEN NOTIFICATION TO THE NEW SURFACE OWNER OF THE FOLLOWING:

(a) THAT THE MINERAL ESTATE HAS BEEN SEVERED FROM THE

SURFACE ESTATE AND THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT A THIRD PARTY HOLDS SOME OR ALL INTEREST IN OIL, GAS, OTHER MINERALS, OR GEOTHERMAL ENERGY IN THE PROPERTY; AND

(b) THAT SUCH MINERAL ESTATE MAY INCLUDE THE RIGHT TO ENTER AND USE THE PROPERTY WITHOUT THE SURFACE OWNER'S PERMISSION.

(3) IN DETERMINING COMPLIANCE WITH THIS SECTION, TITLE COMPANIES MAY RELY ON THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED AND SHALL NOT BE LIABLE FOR ANY ERRORS OR OMISSIONS IN SUCH RECORDS.

SECTION 20 Title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 65.5

Notification of Surface Development

24-65.5-101. Legislative declaration - intent. THE GENERAL ASSEMBLY RECOGNIZES THAT THE SURFACE ESTATE AND THE MINERAL ESTATE ARE SEPARATE AND DISTINCT INTERESTS IN REAL PROPERTY AND THAT ONE MAY BE SEVERED FROM THE OTHER. THE GENERAL ASSEMBLY FURTHER RECOGNIZES THAT IF THE SURFACE ESTATE AND MINERAL ESTATE ARE SEVERED, THE OWNERS OF THESE ESTATES MAY BE ENTITLED TO THE NOTICE SPECIFIED IN SECTION 31-23-215 OR 34-60-106 (14), C.R.S. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS ARTICLE PROVIDE A STREAMLINED PROCEDURE FOR PROVIDING NOTICE TO OWNERS OF MINERAL INTERESTS CONCERNING IMPENDING SURFACE DEVELOPMENT. FURTHER, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO INCLUDE LOCAL GOVERNMENTS IN THE NOTIFICATION PROCESS WITHOUT CREATING ADDITIONAL LIABILITIES FOR LOCAL GOVERNMENTS.

24-65.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "APPLICANT" MEANS A PERSON WHO SUBMITS AN APPLICATION FOR DEVELOPMENT TO A LOCAL GOVERNMENT.

(2) "APPLICATION FOR DEVELOPMENT" MEANS AN APPLICATION FOR A PRELIMINARY OR FINAL PLAT FOR A SUBDIVISION, A PLANNED UNIT DEVELOPMENT, OR ANY OTHER SIMILAR LAND USE DESIGNATION THAT IS USED BY A LOCAL GOVERNMENT. "APPLICATION FOR DEVELOPMENT" INCLUDES APPLICATIONS FOR ZONING, REZONING, AND SPECIAL USE PERMITS WHERE SUCH APPLICATIONS ARE IN ANTICIPATION OF NEW SURFACE DEVELOPMENT, BUT DOES NOT INCLUDE BUILDING PERMIT APPLICATIONS.

(3) "LOCAL GOVERNMENT" MEANS A COUNTY; A HOME RULE OR STATUTORY CITY, TOWN, OR CITY AND COUNTY; OR A TERRITORIAL CHARTER CITY.

(4) "MINERAL ESTATE" MEANS AN INTEREST IN REAL PROPERTY THAT IS LESS THAN FULL FEE TITLE AND THAT INCLUDES MINERAL RIGHTS AS SHOWN BY THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED.

(5) "MINERAL ESTATE OWNER" MEANS THE OWNER OF A MINERAL ESTATE UNDERNEATH A SURFACE ESTATE THAT IS SUBJECT TO AN APPLICATION FOR DEVELOPMENT.

(6) "SURFACE ESTATE" MEANS AN INTEREST IN REAL PROPERTY THAT IS LESS THAN FULL FEE TITLE AND THAT DOES NOT INCLUDE MINERAL RIGHTS AS SHOWN BY THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED.

(7) "SURFACE OWNER" MEANS THE OWNER OF THE SURFACE

ESTATE AND ANY PERSON WITH RIGHTS UNDER A RECORDED CONTRACT TO PURCHASE ALL OR PART OF THE SURFACE ESTATE.

24-65.5-103. Notice requirements. (1) NOT LESS THAN THIRTY DAYS BEFORE THE DATE SCHEDULED FOR THE INITIAL PUBLIC HEARING BY A LOCAL GOVERNMENT ON AN APPLICATION FOR DEVELOPMENT, THE APPLICANT SHALL SEND NOTICE, BY FIRST CLASS MAIL, TO:

(a) THE MINERAL ESTATE OWNER. SUCH NOTICE SHALL CONTAIN THE TIME AND PLACE OF THE INITIAL PUBLIC HEARING, THE NATURE OF THE HEARING, THE LOCATION OF THE PROPERTY THAT IS THE SUBJECT OF THE HEARING, AND THE NAME OF THE APPLICANT.

(b) THE LOCAL GOVERNMENT CONSIDERING THE APPLICATION FOR DEVELOPMENT. SUCH NOTICE SHALL CONTAIN THE NAME AND ADDRESS OF THE MINERAL ESTATE OWNER.

(2) THE APPLICANT SHALL IDENTIFY THE MINERAL ESTATE OWNER BY EXAMINING THE RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED. IF SUCH RECORDS DO NOT IDENTIFY ANY MINERAL ESTATE OWNERS, THE APPLICANT SHALL BE DEEMED TO HAVE ACTED IN GOOD FAITH AND SHALL NOT BE SUBJECT TO FURTHER OBLIGATIONS UNDER THIS ARTICLE. THE APPLICANT SHALL BE ENTITLED TO RELY UPON THE TAX RECORDS OF THE OFFICE OF THE COUNTY ASSESSOR OF THE COUNTY WHERE THE REAL PROPERTY IS LOCATED FOR THE IDENTIFICATION OF THE MOST RECENT ADDRESSES OF THE MINERAL ESTATE OWNER, AND THE APPLICANT SHALL NOT BE LIABLE FOR ANY ERRORS OR OMISSIONS IN SUCH RECORDS.

(3) A MINERAL ESTATE OWNER MAY WAIVE THE RIGHT TO NOTICE UNDER THIS SECTION IN WRITING TO THE APPLICANT.

(4) LOCAL GOVERNMENTS SHALL, AS A CONDITION OF APPROVAL

OF AN APPLICATION FOR DEVELOPMENT, REQUIRE THE APPLICANT TO CERTIFY THAT NOTICE HAS BEEN PROVIDED TO THE MINERAL ESTATE OWNER PURSUANT TO SUBSECTION (1) OF THIS SECTION OR THAT THE MINERAL ESTATE OWNER HAS WAIVED THE RIGHT TO SUCH NOTICE PURSUANT TO SUBSECTION (3) OF THIS SECTION.

24-65.5-104. Enforcement. MINERAL ESTATE OWNERS AND SURFACE OWNERS WHO ARE ENTITLED TO NOTICE PURSUANT TO SECTION 24-65.5-103, 31-23-215 (1), OR 34-60-106 (14), C.R.S., SHALL HAVE STANDING TO ENFORCE THE PROVISIONS OF THOSE SECTIONS AND TO MAKE CLAIMS AS MAY BE AVAILABLE AT LAW OR EQUITY FOR NONCOMPLIANCE.

SECTION 30 24-67-107 (4), Colorado Revised Statutes, is amended to read:

24-67-107. Application and construction of article. (4) Nothing in this article shall be construed to waive the requirements for substantial compliance by counties and municipalities with the subdivision requirements of part 1 of article 28 of title 30 and part 2 of article 23 of title 31, C.R.S., respectively, and appropriate regulations promulgated thereunder. COUNTIES AND MUNICIPALITIES, INCLUDING HOME RULE CITIES, SHALL COMPLY WITH THE REQUIREMENTS OF ARTICLE 65.5 OF THIS TITLE. Subdivision regulations applicable to planned unit developments may differ from those otherwise applicable. In order to facilitate processing of applications, however, a county or municipality, pursuant to resolution or ordinance, may provide for concurrent or simultaneous processing of planned unit development and subdivision applications.

SECTION 40 30-28-133 (10), Colorado Revised Statutes, is amended to read:

30-28-133. Subdivision regulations. (10) It is recognized that surface and mineral estates are separate and distinct interests in land and that one may be severed from the other and that the owners of subsurface mineral interests and their lessees, if any, are entitled to the notice specified in section 31-23-215, C.R.S., AND SECTION 24-65.5-103, C.R.S., and shall be recognized by the commission as having the same rights and privileges as surface owners.

SECTION 50 31-23-215 (1), Colorado Revised Statutes, is amended to read:

31-23-215. Procedure - legal effect. (1) The commission shall approve or disapprove a plat within thirty days after said plat has been submitted to it; otherwise such plat shall be deemed approved and a certificate to that effect shall be issued by the commission on demand unless the applicant for the commission's approval waives this requirement and consents to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the commission shall have submitted with it the names and addresses of all surface owners, mineral owners, and lessees of mineral owners to whom notices of a hearing shall be sent as their names may appear upon the plats or records in the county clerk and recorder's office and as their most recent addresses may appear in a telephone or other directory of general use in the area of the property or on the tax records of the municipality or county. No plat shall be acted on by the commission without affording a hearing thereon. Notice of the time and place of such hearing shall be sent to said persons by registered mail not less than ~~five~~ THIRTY days before the date fixed therefor IN ACCORDANCE WITH ARTICLE 65.5 OF TITLE 24, C.R.S.

SECTION 60 34-60-106 (14), Colorado Revised Statutes, is amended to read:

34-60-106. Additional powers of the commission. (14) The commission shall provide a means for giving reasonable advance notice of the commencement of oil and gas operations to the appropriate local government and surface owners whose lands will be affected thereby. IN DETERMINING THE IDENTITIES OF SURFACE OWNERS, OPERATORS MAY RELY ON THE REAL ESTATE RECORDS OF THE CLERK AND RECORDER OF THE COUNTY WHERE THE LANDS ARE SITUATED, AND IN DETERMINING THE ADDRESSES OF SURFACE OWNERS, OPERATORS MAY RELY ON THE TAX RECORDS OF THE ASSESSOR OF THE COUNTY WHERE THE LANDS ARE SITUATED.

SECTION 70 Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

HB01-1088

Colorado Legislative Council Staff

NO FISCAL IMPACT

Drafting Number:	LLS 01-0425	**Date:**	January 9, 2001
Prime Sponsor(s):	Rep. Rippy Sen. Dyer (Durango)	**Bill Status:**	House Agriculture
		Fiscal Analyst:	Steve Tammeus (303-866-2756)

TITLE: CONCERNING NOTIFICATIONS REGARDING SEVERED MINERAL RIGHTS.

Summary of Assessment

This bill creates new statutes governing notification of surface development to provide a procedure for providing notice to owners of mineral interests concerning impending surface development. The bill specifies the process by which an applicant for development must send notice to the mineral estate owner and the appropriate local government. Local governments are to require the applicant to certify that notice has been provided to the mineral estate owner or that the mineral estate owner has waived the right to notice. The bill requires counties and municipalities, including home rule cities, to comply with the notification requirements.

The bill allows operators to rely upon the records of the county clerk and recorder and the county assessor to determine the identities and addresses of surface owners. The bill will become effective upon signature of the Governor.

This bill will not affect state or local government revenue or expenditures.

Departments Contacted

Local Affairs Natural Resources

Summarized History for Bill Number HB01-1088

(The date the bill passed to the committee of the whole reflects the date the bill passed out of committee.)

01/10/2001 Introduced In House - Assigned to Agriculture, Livestock, & Natural Resources

This information is prepared as an informational service only and should not be relied upon as an official record of action taken by the Colorado General Assembly.

(A) The provisions of section 24-65.5-103 or 31-23-215, C.R.S., require notice to have been sent to such mineral estate owner; and

(B) The required notice was not sent to such mineral estate owner in compliance with the requirements of section 24-65.5-103 or 31-23-215, C.R.S.

(III) If the mineral estate owner commences such an action in a court of competent jurisdiction on or before the last day described in subparagraph (I) of this paragraph (b), such mineral estate owner may seek to recover compensatory monetary damages in connection with the failure of the surface owner to provide the notice required by section 24-65.5-103 or 31-23-215, C.R.S., but such mineral estate owner shall not be entitled to recover special, punitive, or other extraordinary damages, nor shall such mineral estate owner be entitled to any equitable remedy or relief. A finding by such court that the allegations of such mineral estate owner described in subparagraph (II) of this paragraph (b) are accurate and materially complete shall be a condition precedent to the recovery of any such compensatory monetary damages by such mineral estate owner.

(2.5) With respect to any application that was granted on or after August 7, 2002, for a change of use for an existing structure, a boundary adjustment, the platting of an additional single lot, a lot site plan, or with respect to electric lines, natural gas pipelines, steam pipelines, chilled and other water pipelines, or appurtenances to said lines or pipelines:

(a) A mineral estate holder who claims entitlement to notice pursuant to section 24-65.5-103 but who alleges that the applicant failed to provide such notice shall be limited to only the remedy set forth in paragraph (b) of subsection (2) of this section; and

(b) No failure as alleged in paragraph (a) of this subsection (2.5) shall rescind, curtail, abrogate, or otherwise restrict any final approval of an application specified in this subsection (2.5).

(3) If a surface owner certifies to the local government that such surface owner has complied with the notice requirements of section 24-65.5-103 or 31-23-215, C.R.S., and no mineral estate owner has provided the written notice required by paragraph (a) of subsection (2) of this section to the surface owner and to the local government, no development or related activities contemplated by the application for development, no permit or other approval by such local government, and no permit or other approval by any other local government or agency that approves or permits such development or related activities or any aspect thereof shall, subsequent to the final approval of such application, be rescinded, curtailed, abrogated, or otherwise restricted in connection with any purported noncompliance with the notice requirements of section 24-65.5-103 or 31-23-215, C.R.S., that may be alleged by any party.

Source: L. 2001: Entire article added, p. 488, § 2, effective July 1. **L. 2002:** IP(2) amended, p. 892, § 3, effective August 7. **L. 2003:** (1) amended and (2.5) added, p. 4, § 2, effective February 26.

Document 1 of 1

Source:
Colorado Statutes/TITLE 24 GOVERNMENT - STATE/PLANNING - STATE/ARTICLE 65.5 NOTIFICATION OF SURFACE DEVELOPMENT/24-65.5-104. Enforcement.

24-65.5-104. Enforcement.

(1) Mineral estate owners entitled to notice pursuant to section 24-65.5-103 or 31-23-215, C.R.S., shall have standing to enforce the notice requirements of those sections and, subject to the provisions of subsections (2) and (2.5) of this section, to make claims as may be available at law or equity for noncompliance.

(2) If no mineral estate owner or agent has filed a request for notification form pursuant to section 24-65.5-103 (3), in determining those mineral estate owners entitled to notice pursuant to section 24-65.5-103 or 31-23-215, C.R.S., any surface owner required to provide such notice shall be entitled to rely on a listing of such parties prepared by an attorney licensed to practice law in the state of Colorado, a title insurance company licensed to do business in the state of Colorado, a certified professional landman certified by the American association of professional landmen, or a title insurance agent licensed in such capacity by the state of Colorado. The provisions of any law to the contrary notwithstanding, if a surface owner provides the required notice in a timely manner to a party named in such listing or whose identity is disclosed in a request filed pursuant to section 24-65.5-103 (3) at the address of such party as that address appears in such listing, such party shall be deemed to have constructively received the required notice, and the surface owner shall be deemed to have otherwise complied with the notice requirements of sections 24-65.5-103 and 31-23-215, C.R.S. In such event, the surface owner shall not have any liability to any mineral estate owner or other party deemed to have constructively received such notice for any legal or equitable remedy or relief arising from, in connection with, or otherwise relating to the application for development, any development activities commenced on the surface of the real property, any inability or impediment or other hindrance to drilling operations or other development of the mineral estate or any portion thereof, or any actual failure to receive any notice required by section 24-65.5-103 or 31-23-215, C.R.S., unless:

(a) Prior to final approval of the application for development by the local government, a mineral estate owner provides written notice to the surface owner and to such local government setting forth the nature of any objection such mineral estate owner may have to the approval of such development application, in which event such mineral estate owner and all other parties may seek any legal or equitable remedy or relief that may be available to such parties; or

(b) (I) A mineral estate owner commences an action in a court of competent jurisdiction seeking compensatory monetary damages prior to the later of the following to occur:

(A) One year after the final approval of the application for development by the local government; or

(B) Sixty days after the earliest to occur of the commencement of development activities with heavy equipment or the posting of the surface of the real property with notice that the local government has given final approval of the application for development, which posting shall be made in the manner that would be required by the local government to provide notice of an application for a change in zoning classification, but, in all events, which posting shall be made facing, and reasonably visible from, all public roads abutting the surface of the real property.

(II) Such action shall allege, at a minimum, that:

IE STOPPERS seeks help in locating fugitives

:ak Area Crime Stoppers is asking for your assistance in locating the following als for whom felony arrest warrants have been issued:

)anks

lelson

Montano

Parton

CHRISTOPHER DANKS is a white male, 40 years old, 5'8" tall, and 150 lbs., with brown hair and blue eyes. **DANKS** is wanted for **FORGERY.**

ABBIGAIL E. NELSON is a white female, 22 years old, 5'8" tall, and 110 lbs., with brown hair and green eyes. **NELSON** is wanted for **DISTRIBUTION OF METHAMPHETAMINES AND CONSPIRACY.**

AUGUSTINE N. MONTANO is a Hispanic male, 19 years old, 5'5" tall, and 120 lbs., with brown hair and brown eyes. MONTANO is wanted for **FIRST DEGREE MURDER.**

SETH E. PARTON is a white male, 22 years old, 5'9" tall, and 136 lbs., with black hair and brown eyes. **PARTON** is wanted for **DISTRIBUTION OF METHAMPHETAMINES AND CONSPIRACY.**

Warrants **VERIFIED 09/23/05**

If you have information regarding these fugitives or any serious crime, call **CRIME STOPPERS at 634-STOP** in Colorado Springs or **542-STOP** in Pueblo. You do not have to give your name and could earn up to $1,000 in CASH for information given to **CRIME STOPPERS.**

nt list of featured fugitives wanted in the Pikes Peak region can be found on the Stoppers website: www.crimestop.net.

iestic violence conference to educate
npact of family violence on the community

:rding to the U.S. Department of Justice, about one third of female murder : and about three to four percent of male murder victims in recent years were by an intimate partner (spouse, ex-spouse, boyfriend/girlfriend). An estimated illion women in the U.S. are abused by their intimate partners on an annual The abuse ends in death for approximately three women every day. In Colorado, sons were murdered by intimate partners in 2004.

4th Judicial District in conjunction with LifeSpan Foundation and the 3ook Project will host the 4th Annual Pikes Peak Region Domestic Violence it Conference on Oct. 20 - 21, at the Sheraton Hotel in Colorado Springs. The ence will cover a wide range of topics related to domestic violence, including ty and risk assessment, female offenders, and batterers as parents. Participants arn about the effectiveness of various criminal justice system approaches to tic violence, including mandatory arrest policies and statewide treatment rds. The keynote speakers are David Mandel, co-founding partner of the Non- ice Alliance, an organization specializing in batterer intervention, and Doris . founder of Running Creek Counseling Services, an outpatient program with :s for alcohol/drug users, DUI offenders, and domestic violence perpetrators.

Summit is open to the public at a cost of $120 for both days, including lunch registration deadline is September 23). For more information or to register for 05 Pikes Peak Region Domestic Violence Summit, call Dr. Henry Sontheimer 9) 520-7498.

o Visitation Center at CJC closes temporarily

› renovations taking place on September 29 and 30, the Video Visitation Center : closed for personal and professional visits. Professional visits will need to be iled to take place in the CJC facility and personal visits will resume on October ting October 1, visitors will be required to pre-schedule all visitations. Visitors structed to telephone register two days in advance of the day they wish to visit. :s whose last names begin with the letters A-L will be allowed visits on odd :red days. Inmates with last names beginning with the letters M-Z will be :d visits on even numbered days. Visitation hours will be 8:30 a.m. to 1:10 p.m. 00 p.m. to 9:30 p.m. To register for visits, call 719-390-2373 between the hours 00 a.m. and 2:00 p.m. daily. More information about visiting inmates at the El County Criminal Justice Center can be found on the Sheriff's Office website at 'shr.elpasoco.com/Visiting.asp.

:cident sends minors to hospital

:e minors were taken to the hospital following an auto accident in Security last lay, September 20.

rding to police, a vehicle collided with a guardrail near the intersection of :ey Road and Wageman Road after the driver, a 17-year-old male, lost control of ehicle. After impacting the guardrail, the vehicle rolled one-half times. Of the people inside the vehicle, only one was able to get out of the vehicle on his own. other three, including the driver, had to be extricated by the fire department, later i to the hospital for their injuries.

is time, the accident is still under investigation, a spokesman with the Colorado Patrol said.

United States Postal Service
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Full Name	Complete Mailing Address

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The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:
☐ Has Not Changed During Preceding 12 Months
☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

PS Form 3526, October 1999 (See Instructions on Reverse)

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a. Total Number of Copies (Net press run)		1,710	1,725
b. Paid and/or Requested Circulation	(1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (Include advertiser's proof and exchange copies)	98	90
	(2) Paid In-County Subscriptions Stated on Form 3541 (Include advertiser's proof and exchange copies)	555	565
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c. Total Paid and/or Requested Circulation [Sum of 15b. (1), (2), (3), and (4)]		1,568	1,581
d. Free Distribution by Mail (Samples, complimentary, and other free)	(1) Outside-County as Stated on Form 3541	11	15
	(2) In-County as Stated on Form 3541	19	19
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e. Free Distribution Outside the Mail (Carriers or other means)		0	0
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16. Publication of Statement of Ownership
☒ Publication required. Will be printed in the 9-28-2005 issue of this publication. ☐ Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner: Kathryn A. Wiese Publisher/Owner
Date: 9-27-2005

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

Notice to Mineral Estate Owners
§24-65.5-101, <u>et seq.,</u> C.R.S – Checklist

An examination of the records of the Clerk and Recorder's Office established the following:

_______ identity of the owner(s) of mineral estate

_______ the mineral estate owner(s) has filed a proper notification form

_______ the mineral estate owner(s) has recorded an instrument satisfying an applicable dormant mineral interest act

_______ no mineral estate owner(s) was found

_______ mineral owner(s) waived the right to notice in writing to the Applicant.

If a mineral estate owner(s) exists, a Notice shall be sent to the mineral estate owner no less than thirty (30) days prior to the initial public hearing. The Notice shall include:

_______ time and place of initial public hearing

_______ nature of hearing

_______ location of property/subject of hearing

_______ name of applicant

_______ notice was sent to mineral estate owner(s) no less than thirty (30) days prior to initial public hearing (do not count day of mailing in thirty (30) day calculation).

If a mineral estate owner(s) exists, a copy of the Notice shall be sent to the local government at the same time as notice is mailed to the mineral owner(s) and no less than thirty (30) days prior to the initial public hearing. The Notice shall include:

_______ time and place of initial public hearing

_______ nature of hearing

_______ location of property/subject of hearing

_______ name of applicant

______ name and address of mineral estate owner

______ notice was sent to El Paso County Planning Department no less than thirty (30) days prior to initial public hearing (do not count day of mailing in thirty (30) day calculation).

I ____ researched the records of the El Paso County Clerk and Recorder and established that there was/was not a mineral estate owner(s) on the real property known as ______________________________. An initial public hearing on ____, which is the subject of the hearing, is scheduled for __________________________, 20____.

Pursuant to §24-65.5-103(4), C.R.S., I certify that a Notice of an initial public hearing was mailed to the mineral estate owner(s) (if established above) and a copy was mailed to the El Paso County Planning Department on _____________________, 200____ , which was no less than thirty (30) days prior to the initial public hearing.

Dated this _______ day of ______________________, 20_____.

____

STATE OF COLORADO)
) s.s.
COUNTY OF EL PASO)

The foregoing certification was acknowledged before me this _____day of

__________________, 20____, by __________________________________.

Witness my hand and official seal.

My Commission Expires:_______________

____
Notary Public

Notice to Mineral Estate Owners
§24-65.5-101, et seq., C.R.S. – Checklist and Certification

An examination of the records of the Clerk and Recorder's Office established the following:

Checklist

________ identity of the owner(s) of mineral estate
________ the mineral estate owner(s) has filed a proper notification form
________ the mineral estate owner(s) has recorded an instrument satisfying an applicable dormant mineral interest act
________ no mineral estate owner(s) was found
________ mineral owner(s) waived the right to notice in writing to the Applicant.

If a mineral estate owner(s) exists, a Notice shall be sent to the mineral estate owner no less than thirty (30) days prior to the initial public hearing. The Notice shall include:

________ time and place of initial public hearing
________ nature of hearing
________ location of property/subject of hearing
________ name of applicant
________ notice was sent to mineral estate owner(s) no less than thirty (30) days prior to initial public hearing (do not count day of mailing in thirty (30) day calculation).

If a mineral estate owner(s) exists, a copy of the Notice shall be sent to the local government at the same time as notice s mailed to the mineral owner(s) and no less than thirty (30) days prior to the initial public hearing. The Notice shall include:

________ time and place of initial public hearing
________ nature of hearing
________ location of property/subject of hearing
________ name of applicant
________ name and address of mineral estate owner
________ notice was sent to El Paso County Planning Department no less than thirty (30) days prior to initial public hearing (do not count day of mailing in thirty (30) day calculation).

CERTIFICATION:

I____researched the records of the El Paso County Clerk and Recorder and established that there was/was not a mineral estate owner(s) on the real property known as ____. An initial public hearing on____________________, which is the subject of the hearing, is schedules for________________________________, 2000____.

Pursuant to §24-65.5-103(4), C.R.S., I certify that a Notice of an initial public hearing was mailed to the mineral estate owner(s) (if established above) and a copy was mailed to the El Paso County Planning Department on ________________________, 200____.

Dated this ______day of__________________, 200____.

STATE OF COLORADO)
) s.s.
COUNTY OF EL PASO)

The foregoing certification was acknowledged before me this____day of_________________, 200____, by____.

Witness my hand and official seal.

My Commission Expires:____________________

____
Notary Public

Source: L. 21: p. 571, § 4. **C.L.** § 5395. **L. 23:** p. 406, § 5. **CSA:** C. 130, § 4. **CRS 53:** § 109-1-4. **C.R.S. 1963:** § 109-1-4. **L. 94:** Entire section repealed, p. 1689, § 3, effective January 19, 1995.

Cross references: For publication requirements for constitutional amendments and initiated and referred measures, see § 1-40-124.

24-70-105. Proof of publication. Proof of the publication of any such legal notice or advertisement may be made by the affidavit of the printer, editor, publisher, or proprietor of the newspaper in which the publication is made or by any other competent person who has personal knowledge of the essential facts, which affidavit, in addition to the other matters required by law to be set forth therein, shall state that such notice or advertisement was published in a newspaper duly qualified for that purpose.

Source: L. 21: p. 572, § 6. **C.L.** § 5397. **L. 23:** p. 406, § 6. **CSA:** C. 130, § 5. **CRS 53:** § 109-1-5. **C.R.S. 1963:** § 109-1-5.

Am. Jur.2d. See 58 Am. Jur.2d, Notice, § § 17, 29.

C.J.S. See 66 C.J.S., Notice, § 32.

Affidavit of publication of notice of tax sale to conform to statutory requirements. The affidavit of the publication of the notice of a tax sale, required of the publisher by § 39-11-104, must contain not only what is specified in that section, but also the statement required by this section. A tax deed issued pursuant to a sale, the notice of the publication of which is not shown in the manner required by statute, is void. Gilbreath v. Doe, 24 Colo. App. 205, 132 P. 1146 (1913).

Deeds issued on treasurer's own volition are void. Where the publisher's affidavit showing publication of a delinquent tax list and notice of sale does not meet the requirements of this section, deeds to the county issued thereon by the treasurer on his own volition without request from the county commissioners are void. Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960).

Insufficient proof of publication may be corrected. Where an affidavit does not show that the affiant is either a printer, editor, publisher, or proprietor of a newspaper, or that he is competent to state the essential facts, as required by this section, nor does it state that the notice or advertisement was published in a qualified newspaper, the insufficiency of this proof of publication may be corrected by the filing of an amended affidavit, because, like other matters of record, it may always be corrected to speak the truth. Wilson v. Carroll, 80 Colo. 234, 250 P. 555 (1926).

24-70-106. Competency of newspapers - publication periods construed. (1) Except as otherwise provided by law in express terms or by necessary implication, daily, weekly, semiweekly, and triweekly newspapers shall all be equally competent as the media for the publication of all legal notices and advertisements. Except where the publication of any such legal notice or advertisement at intervals of less than one week is required by law, publication once each week on the same weekday in any such daily, weekly, semiweekly, or triweekly newspaper for the required number of times shall constitute publication in accordance with the law.

(2) For the purpose of defining and clarifying ambiguities in the various statutes requiring the publication of legal notices and advertisements, but not for the purpose of increasing any period of publication or the number of publications required by any statute, the meaning and intent of any law governing the publication of legal notices and advertisements, except as otherwise expressly provided, is declared to be as follows, where publication is required for:

(a) Ten days, publication once each week for three successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(b) Two weeks, publication once each week for three successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(c) Three weeks, publication once each week for four successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(d) Four weeks, publication once each week for five successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(e) Five weeks, publication once each week for six successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(f) Thirty days, publication once each week for six successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

Legal Publication

(g) More than thirty days or five weeks, publication once each week in any daily, weekly, semiweekly, or triweekly newspaper for a period such that the interval elapsing between the first and last publication shall be equal to the period of publication prescribed by law shall be sufficient.

Source: L. 21: p. 572, § 7. **C.L.** § 5398. **L. 23:** p. 407, § 7. **CSA:** C. 130, § 6. **CRS 53:** § 109-1-6. **C.R.S. 1963:** § 109-1-6.

Am. Jur.2d. See 58 Am. Jur.2d, Notice, § § 23, 38.

C.J.S. See 66 C.J.S., Notice, § 32.

Law reviews. For article, "Foreclosure by Sale by Public Trustee of Deeds of Trust in Colorado", see 14 Dicta 5 (1936). For article, "How Many Times", see 19 Dicta 231 (1942). For article, "Again—How Many Times?", see 21 Dicta 62 (1944). For article, "Rules Committee Proposes Changes in Civil Procedure", see 21 Dicta 159 (1944). For article, "Foreclosure by Sale by Public Trustee of Deeds of Trust in Colorado", see 28 Dicta 437 (1951).

Term "publication for ten days" denotes duration. Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950).

24-70-107. Rates for legal publications. (1) (a) On or after January 1, 1993, for all publicly supported legal notices or advertisements published in newspapers, the rate paid for the first insertion of such notice shall not exceed forty-four cents for each single-column line of six-point type and shall not exceed thirty-two cents per line for each subsequent insertion. If the notice is set in larger type, the rate shall be prorated. Regardless of the size of type the notice is set in, the rates specified in this paragraph (a) are based on a single column measuring ten pica ems wide. If the column width is either wider or narrower for a single column, the rate per line shall be prorated on the ten pica em width.

(b) All emblems, display headings, rule work, and necessary blank space shall be considered to be solid type. For the purpose of calculating the charge for the items enumerated in this paragraph (b) only, the rate shall not exceed the line rate charge figured at twelve lines per inch for each column inch or a proportional amount for fractions of an inch.

(2) (a) On or after January 1, 1993, for all privately supported legal notices or advertisements, the rate paid shall not exceed the newspaper's local classified display line rate which is offered to commercial customers and shall include the same frequency and volume discounts. The legal publication rate shall be published in the newspaper's rate card.

(b) Notwithstanding any statute to the contrary, if any local government fee set by statute is too low to permit the local government to recover the full cost of publishing a privately supported legal notice or advertisement, the local government may adjust the fee by the actual dollar amount necessary to recover the full cost of the publication.

(3) Any contract providing for payment of a notice at a lesser sum than is provided in this section shall be valid.

(4) Upon request by the party placing a legal publication, the newspaper shall minimize the space required for publication of a valid and readable notice, but in no case shall the type be less than six points.

Source: L. 21: p. 576, § 9. **C.L.** § 5400. **L. 35:** p. 688, § 2. **CSA:** C. 130, § 7. **L. 45:** p. 514, § 1. **L. 52:** p. 133, § 1. **CRS 53:** § 109-1-7. **L. 63:** p. 738, § 1. **C.R.S. 1963:** § 109-1-7. **L. 71:** p. 1072, § 1. **L. 77:** Entire section R&RE, p. 1242, § 1, effective January 1, 1978. **L. 84:** (1) and (2) R&RE, p. 730, § 1, effective January 1, 1985. **L. 92:** Entire section R&RE, p. 1052, § 2, effective January 1, 1993.

Section held inapplicable to publication of list of nominations under 1891 election law. Board of Comm'rs v. Price, 10 Colo. App. 519, 51 P. 1011 (1898).

Publication shall be obtained at a reasonable cost to the people, and any flagrant departure from that construction is in violation of a sound public policy. Oliver v. Wilder, 27 Colo. App. 337, 149 P. 275 (1915).

Compensation must be upon prescribed basis. Whatever may be the size of type, or length of line used, the compensation must be upon the prescribed basis. Board of Comm'rs v. Advocate Publishing Co., 64 Colo. 578, 173 P. 398 (1918).

This section permits county, by contract, to stipulate for a lesser price. Board of County Comm'rs v. Frederick, 50 Colo. 464, 115 P. 514 (1911).

An agreement stipulating maximum rate, without attempting to secure lesser rate, voids contract. Oliver v. Wilder, 27 Colo. App. 337, 149 P. 275 (1915).

Full price withheld where matter suppressed after first publication. A publisher is not entitled to the full price where certain names and descriptions are suppressed after the first publication. Board of Comm'rs v. Advocate Publishing Co., 64 Colo. 578, 173 P. 398 (1918).

Mark Gebhart

From: Paul Tice [PTice@springsgov.com]

Sent: Thursday, August 14, 2003 5:17 PM

To: 'Mark Gebhart'

Cc: Rick O'Connor

Subject: RE: City Posting requirements/regulation of building construction in the 60 DNL noise contour

Mark ...no changes under consideration regarding our posting procedures. We are however, modifying our mailing procedures to have our office mail all notices of pending development applications to surrounding property owners in a post card format. We will be requiring applicant's to reimburse us for the cost of the postage and post card printing.
As for the airport noise regulation we are requiring a new residential development that is proposed near Troy Hill Rd.just outside of the 65Ldn to mitigate aircraft noise through additional insulation, double-pane windows and air conditioning.. However, these conditions are being imposed as conditions of the rezoning and development plan approval on a case by case basis.

We are aware that the airport would like to revise the land use regulations associated with land uses surrounding the airport and will be collaborating with them in the near future on some new type of regulatory approach. It will be important that County Planning be involved in that project as well as the airport regulations should be consistent in both of our land use codes. I am sure that either Rick or someone from the Airport staff will be in contact with your office when the airport is ready to move this effort forward.

-----Original Message-----
From: Mark Gebhart [mailto:MarkGebhart@elpasoco.com]
Sent: Tuesday, August 12, 2003 9:06 AM
To: 'Paul Tice'
Subject: City Posting requirements/regulation of building construction in the 60 DNL noise contour

Someone suggested to me that the City was considering changing the applicant requirement to post properties for hearings. If this true, what are the reasons behind this change. We want to go to applicant posting and want to be aware of any pitfalls.

We also want to make our Airport regulations more consistent with the City. Dave London last week indicated that you were looking at building standards for the area between 60 and 65 DNL to accomplish noise reduction. In a meeting earlier last week, Rick O'Connor did not think you were going that direction.

Thanks for the help/

Staff/customer survey

% Adjoining that respond ?

% adjoining that appear

% case that have opposition

% who complain Notice Not effective

- Update neighborhood org. list
- dedicated form for web info.

Adjoining Owner Notice

tracking generate list →

Std.

Distance

300 ft.

100 ft

Adjoing

1500 ft - mining landfill, towers

County do Adj. → at submittal

when scheduled.

Applic Post.

6. **Notice.**
   a. **Purpose.** Notice of public hearings allow for community input and due process (the opportunity to be heard) for the applicant and neighbors. Accordingly, nothing herein shall prohibit the Director from providing public notice beyond that legally required, at the applicant's cost.
   b. **Published Notice.**
      (1) Unless otherwise provided in this section a notice setting forth the date, time, place and purpose of such a public hearing, the name of the applicant and identification of the subject property must be published at least once. The Director shall be responsible for giving notice.
      (2) In computing notice time, the day of the hearing shall be excluded.
      (3) The applicant shall either provide the information for the notice, or pay the City to prepare the information.
   c. **Mailed Notice of Public Hearing.**
      (1) The Director must mail notice of a public hearing, as required in Table 2.2, by first class U.S. Mail at the applicant's cost to each owner at the address on file with the Mesa County, Colorado Assessor.
      (2) At the applicant's cost, the Director shall also give notice to each person who attended any required neighborhood meeting.
      (3) Mailed notice shall state the date, time and place of the hearing, a general description of the proposal, the location of the project, a statement explaining that any person will be heard at the public hearing and other such requirements. Newspaper clippings of the published notice shall not be used for mailed notice. Notice shall be delivered by first class U.S. mail.

Table 2.2
PUBLIC HEARING NOTICE PROVISIONS

Type of Submittal or Request	Published Notice When Published (1) (minimum calendar days before hearing)	Mailed Notice First Class Mail (2)	Sign Notice Required (3) (4)
Growth Plan Map Amendment	7 Days	Owners within 500 ft.	Yes
Growth Plan Text Amendment	7 Days	Not Applicable	No

Table 2.2 Continued

Type of Submittal or Request	Published Notice When Published [1] (minimum calendar days before hearing)	Mailed Notice First Class Mail [2]	Sign Notice Required [3] [4]
Subdivision Preliminary Plat	7 days	Owners within 500 ft.	Yes
Planned Development ODP Preliminary Plan	 7 days 7 days	 Owners within 500 ft. Owners within 500 ft.	 Yes Yes
Rezoning & Map Amendment	7 days	Owners within 500 ft.	Yes
Code Text Amendment	7 days	Not Applicable	No
Zoning of Annexation	7 days	Owners within 500 ft.	Yes
Conditional Use	7 days	Owners within 500 ft.	Yes
Historic Preservation	7 days	Owners within 500 ft.	No
Variance – ZBOA	7 days	Owners within 500 ft.	Yes
Variance – Council	Not Applicable	Not Applicable	No
Vacation – Easement/Right-of-way	7 days	Owners within 500 ft. Including Utilities	Yes
Major street plan Amendment	7 days	Not Applicable	No
Revocable Permit	Not Applicable	Not Applicable	No
Vested Rights	Once within 10 days of approval	Owners within 500 ft.	No

Footnotes:

(1) All published notice shall be published in a local newspaper of general circulation recognized by the City.

(2) All mailed notice must be postmarked no less than ten (10) days before a Public Hearing and must include each homeowner's associations (HOAs) or other group registered with the Community Development Department within 1,000 feet.

(3) Signs must be posted at least ten (10) calendar days before the initial Public Hearing and remain posted until the day after the final hearing.

(4) One sign per street frontage is required for zones of annexation of multiple parcels.

PART 3 APPENDICES

SECTION 200 NOTICE AND NOTIFICATION

3-201 PUBLIC NOTICE REQUIREMENTS – SIGN AND MAIL NOTIFICATION

- The following list outlines and describes the requirements for public noticing of development proposals. Read each section carefully to follow these requirements. At the time an item is scheduled for public hearing the Planning Division office will mail to you these requirements with specific information regarding individual proposals. Please contact the Planning Division office with any questions. These requirements are the responsibility of the applicant or the applicant's representative. Errors in posting will postpone a public hearing so accuracy is crucial.

3-202 SIGN POSTING

- Posting of property for public hearings shall be the responsibility of the applicant.
- Sign posting is required on the following applications: Location and Extent, Use by Special Review, Preliminary Development Plans (and Amendments), Final Development Plans (and Amendments), Master Development Plans and Roadway Vacations.

3-201.01 SIGN REQUIREMENTS

- Staff will inform you of the location and number of signs required for each proposal.
- All signs must be posted ***at least 14 days*** ***prior to the scheduled public hearing.***
- The applicant must take a legible photograph of the sign and submit it immediately upon posting the property to the Planning Case Manager.
- He must also present the "Certificate of Posting" form, with photo, to the Case Manager no later than noon (12:00) on the Monday prior to the hearing. FAILURE TO PRESENT "CERTIFICATE OF POSTING" FORM WILL RESULT IN RESCHEDULING.

3-201.02 SIGN SPECIFICATIONS

- A sign not less than 3 feet x 4 feet erected on posts no lower than 4 feet above natural grade and legible from the nearest dedicated public right-of-way.

- Title of sign (Notice of ... etc.) and Case No. must be in 4-inch letters in red. (Balance of sign must be 2-inch black letters on white background.) Please advise your printer that the signs must read exactly as shown on the instruction sheet; otherwise, the Planning Division cannot accept the signs as proper posting.
- Said sign shall be removed within two (2) weeks of the conclusion of all public hearings.
- The sign shall be posted on the property upon which the proposal is requested for a period of ***at least 14 days*** prior to hearing. Such sign shall read as follows:

NOTICE OF PUBLIC HEARING FOR (Project Type)

(CASE NUMBER)

Notice is hereby given that the property upon which this sign is posted shall be considered for a **(type of case)** to the **(project name)** pursuant to the Arapahoe County Zoning Regulations. Further information concerning this proposal may be obtained by calling the DSIM Office at (303) 795-4450.

The hearing is to be held before the Planning Commission on the ____day of **(Month)**, **(Year)**, in the County Administration Building, 10730 E. Briarwood Ave., Suite 100 Centennial, Colorado, at **7:00 p.m.**, or as soon thereafter as possible.

OR

A hearing is to be held before the Board of County Commissioners on the ____ day of **(Month)**, **(Year)**, in the County Administration Building, 5334 South Prince Street, Littleton, Colorado, at **9:00 a.m.** or as soon thereafter as possible.

3-203 MAIL NOTIFICATION

3-203.01 INSTRUCTIONS FOR MAIL NOTIFICATION PROVISIONS

- Pursuant to Resolution #787-95A (effective June 19, 1995), the Board of County Commissioners adopted revisions to the County Zoning Regulations which include a "mail notification" requirement for all land development procedures requiring public hearings.

- Mail Notification for public hearings shall be the responsibility of the applicant.
- Mail Notification is required on the following applications: Location and Extent, Use by Special Review, Preliminary Development Plans (and amendments), Final Development Plans (and amendments), Master Development Plans and Roadway Vacations.

3-203.02 REQUIREMENTS

- Applicants are to mail, First Class, a Notice of Public Hearing to the Owner(s) of Record, at the time of application, of property located adjacent to the subject property.
- Adjacent is to include those properties separated from the subject property by public right-of-way.
- The Planning Division may expand or contract the notification boundary as appropriate to ensure adequate notice.
- The Notice shall be ***mailed no later than fourteen (14) days prior to the Public Hearing***.

3-203.03 INSTRUCTIONS FOR PREPARING THE MAIL NOTIFICATION ARE AS FOLLOWS:

3-203.03.01

- Concurrent with the formal submittal of an application, obtain and submit a list of surrounding property owners to the Planning office. (Property information may be obtained from the Arapahoe County Assessor's Office). This list is to include in its title a reference to the name of the proposal and type of application being requested. Two sets of information are to be included in the list: First, the full name and mailing address for each surrounding property owner. Second, the Assessor's Schedule Number for each property owner's parcel of ground.

3-203.03.02

- Acquire a copy of the County Assessor's Map(s) which depicts the subject property (copies can be purchased in the Mapping Division). Graphically highlight all parcels of ground for which the owners of record are to receive mail notification. Include a copy of this map, no larger than 11" x 17" in size, when you submit the mailing list. (Note: A copy of the map will help the Assessor's Office assist you in compiling a mailing list).

3-203.03.03

- After your application has been accepted, staff will review the mailing list and area of notification for adequacy. You will promptly be notified if any changes are required. After your case has been scheduled for a public hearing, staff will mail you the format for the letter notifying surrounding property owners.
- Submit a signed copy of the mailed letter to our Department no later than noon (12:00) on Monday prior to the hearing.
- Attach to the letter, the following notarized certification:

I hereby certify under oath that the attached letter was mailed to all property owners, on ___________, (Year), as described in the mailing list included with this application and on file with the Planning Division.

____

Signature

____

Date

State of Colorado)

) ss.

County of ___________)

Subscribed and sworn before me this __________day of _____20___by___________.

SAMPLE LETTER

Notice of Public Hearing

[INSERT DATE]

[INSERT ADDRESSEE]

RE: Case:

Location:

Please be advised that (applicant) on behalf of (owner), has made application to Arapahoe County for a **(project type)** on the above referenced property. (Planning Staff will detail the requirements of each individual proposal.)

[DESCRIBE THE PROPOSAL] *(Include a detailed description of the site and the use(s) proposed. 1) Use plain English.* ***DO NOT*** *use unexplained abbreviations (i.e., FAR, GSF, etc.). The goal is to explain your development in plain and simple terms. 2) Include all "negative" aspects of the development. Failure to accurately describe the impact of your development on neighboring owners will risk a determination by the Board of County Commissioners that the notice was inadequate, which will delay action on your case.)*

A public hearing will be conducted on the referenced application at:

Time:

Date:

Location: **Arapahoe Room, Arapahoe County DSIM Offices**
10730 E. Briarwood Ave., Suite 100 Centennial, CO 80112

As a neighboring landowner and member of the public you are encouraged to attend this public hearing. For particularity as to the content of this application, contact ____________________, at (Firm Name) at (Phone Number) or (Planner), Planning Division, DSIM Department, Arapahoe County Government, at (303) 795-4450.

Sincerely,

[INSERT NAME]
(*Include Representative Capacity*)

Chapter 17.61 Public Notice Requirements
Section 17.610 Purpose
A. All land use applications that require a public hearing before the planning commission, city council or board of adjustment shall be subject to the requirements contained in
this section. It is intended to provide for adequate notification ensuring the opportunity for
public participation of land use proposals within the city.
Section 17.611 Responsibility
A. It is the responsibility of the applicant to meet these requirements prior to the established hearing date. The planning commission, city council, or board of adjustment may
continue the hearing to a date certain and may keep the hearing open to take additional information to the point a final decision is made. No further notice of a continued hearing need
be pursued by the applicant unless a period of six (6) weeks or more elapses between the hearing
dates, before the same board. In situations where this time period has passed, the applicant shall
be required to publish the "notice of public hearings" again.
B. These public notice requirements apply to all land within the jurisdiction of the city.
C. No public hearing shall commence, nor testimony taken until these procedures are met by the applicant.
Section 17.612 Public Notice Procedures
A. At least fifteen (15) days prior to a public hearing, a notice shall be published at least one time in the legal notice section of a general circulation newspaper within the City of Fountain. A publisher's affidavit shall be submitted to the Zoning Administrator prior to the
hearing date to verify the publication of the required notice.
B. At least fifteen (15) days prior to a public hearing, a notice shall be posted on the property for which the land use application is made. The notice shall consist of at least one (1)
sign facing each adjacent public right-of-way. In the case of a variance request only one (1) sign
shall be posted on site in the general vicinity the variance is being considered. These notices
shall be in the form of signs measuring not less than twenty-four inches by twenty-eight inches
(24" X 28"), with lettering a minimum of one-half inch (1/2") high and on posts no less than four
feet (4') above the ground.
C. Notice of the public hearing shall be given by first-class mail to the record owners of property within four hundred feet (400') of the property in question at least fifteen (15) days in
advance of the public hearing.
D. The content and wording of all notices of public hearing shall be as specified by city

administrative guidelines.

Mineral Estate Notice

24-65.5-103 - Notice requirements.

(1) Not less than thirty days before the date scheduled for the initial public hearing by a local government on an application for development, the applicant shall send notice, by first class mail, to:

(a) The **mineral estate** owner. Such notice shall contain the time and place of the initial public hearing, the nature of the hearing, the location of the property that is the subject of the hearing, and the name of the applicant.

(b) The local government considering the application for development. Such notice shall contain the name and address of the **mineral estate** owner.

(2) (a) The applicant shall identify the **mineral estate** owner by examining the records in the office of the county clerk and recorder of the county in which the real property is located. Notice shall be sent to the **mineral estate** owner if the records in the office of the county clerk and recorder establish:

(I) The identity of the owner of the **mineral estate**; or

(II) That an applicable request for notification form pursuant to subsection (3) of this section is of record; or

(III) That the **mineral estate** owner has recorded an instrument satisfying any applicable dormant mineral interest act.

(b) If such records do not identify any **mineral estate** owners, the applicant shall be deemed to have acted in good faith and shall not be subject to further obligations under this article. The applicant shall not be liable for any errors or omissions in such records.

(3) A **mineral estate** owner or **mineral estate** owner's agent may file in the office of the county clerk and recorder of the county in which the real property is located a request for notification form that identifies the **mineral estate** owner's **mineral estate** and the corresponding surface estate by parcel number and by section, township, and range numbers. The clerk and recorder shall file request for notification forms in the real estate records for the county and shall also keep an index of request for notification forms.

(4) Local governments shall, as a condition of approval of an application for development, require the applicant to certify that notice has been provided to the **mineral estate** owner pursuant to subsection (1) of this section.

(5) A **mineral estate** owner may waive the right to notice under this section in writing to the applicant.

Source: L. 2001: Entire article added, p. 487, § 2, effective July 1.

24-65.5-102 - Definitions.

As used in this article, unless the context otherwise requires:

(1) "Applicant" means a person who submits an application for development to a local government.

(2) "Application for development" means an application for a preliminary or final plat for a subdivision, a planned unit development, or any other similar land use designation that is used by a local government. "Application for development" includes applications for zoning, rezoning, general development plans, and special use permits where such applications are in anticipation of new surface development, but does not include building permit applications.

(3) "Local government" means a county; a home rule or statutory city, town, or city and county; or a territorial charter city.

(4) "Mineral estate" means an interest in real property that is less than full fee title and that includes mineral rights as shown by the real estate records of the county in which the real property is situated.

(5) "Mineral estate owner" means the owner or lessee of a mineral estate underneath a surface estate that is subject to an application for development.

(6) "Surface estate" means an interest in real property that is less than full fee title and that does not include mineral rights as shown by the real estate records of the county in which the real property is situated.

(7) "Surface owner" means the owner of the surface estate and any person with rights under a recorded contract to purchase all or part of the surface estate.

Source: L. 2001: Entire article added, p. 486, § 2, effective July 1.

24-65.5-104 - Enforcement.

(1) Mineral estate owners entitled to notice pursuant to section 24-65.5-103 or 31-23-215, C.R.S., shall have standing to enforce the notice requirements of those sections and, subject to the provisions of subsection (2) of this section, to make claims as may be available at law or equity for noncompliance.

(2) If no mineral estate owner or agent has filed a request for notification form pursuant to section 24-65.5-103 (3), in determining those mineral estate owners entitled to notice pursuant to section 24-65.5-103 or 31-23-215, C.R.S., any surface owner required to provide such notice shall be entitled to rely on a listing of such parties prepared by an attorney licensed to practice law in the state of Colorado, a title insurance company licensed to do business in the state of Colorado, or a title insurance agent licensed in such capacity by the state of Colorado. The provisions of any law to the contrary notwithstanding, if a surface owner provides the required notice in a timely manner to a party named in such listing or whose identity is disclosed in a request filed pursuant to section 24-65.5-103 (3) at the address of such party as that address appears in such listing, such party shall be deemed to have constructively received the required notice, and the surface owner shall be deemed to have otherwise complied with the notice requirements of sections 24-65.5-103 and 31-23-215, C.R.S. In such event, the surface owner shall not have any liability to any mineral estate owner or other party deemed to have constructively received such notice for any legal or equitable remedy or relief arising from, in connection with, or otherwise relating to the application for development, any development activities commenced on the surface of the real property, any inability or impediment or other hindrance to drilling operations or other development of the mineral estate or any portion thereof, or any actual failure to receive any notice required by section 24-65.5-103 or 31-23-215, C.R.S., unless:

(a) Prior to final approval of the application for development by the local government, a mineral estate owner provides written notice to the surface owner and to such local government setting forth the nature of any objection such mineral estate owner may have to the approval of such development application, in which event such mineral estate owner and all other parties may seek any legal or equitable remedy or relief that may be available to such parties; or

(b) (I) A mineral estate owner commences an action in a court of competent jurisdiction seeking compensatory monetary damages prior to the later of the following to occur:

(A) One year after the final approval of the application for development by the local government; or

(B) Sixty days after the earliest to occur of the commencement of development activities with heavy equipment or the posting of the surface of the real property with notice that the local government has given final approval of the application for development, which posting shall be made in the manner that would be required by the local government to provide notice of an application for a change in zoning classification, but, in all events, which posting shall be made facing, and reasonably visible from, all public roads abutting the surface of the real property.

(II) Such action shall allege, at a minimum, that:

(A) The provisions of section 24-65.5-103 or 31-23-215, C.R.S., require notice to have been sent to such mineral estate owner; and

(B) The required notice was not sent to such mineral estate owner in compliance with the requirements of section 24-65.5-103 or 31-23-215, C.R.S.

(III) If the mineral estate owner commences such an action in a court of competent jurisdiction on or before the last day described in subparagraph (I) of this paragraph (b), such mineral estate owner may seek to recover compensatory monetary damages in connection with the failure of the surface owner to provide the notice required by section 24-65.5-103 or 31-23-215, C.R.S., but such mineral estate owner shall not be entitled to recover special, punitive, or other extraordinary damages, nor shall such mineral estate owner be entitled to any equitable remedy or relief. A finding by such court that the allegations of such mineral estate owner described in subparagraph (II) of this paragraph (b) are accurate and materially complete shall be a condition precedent to the recovery of any such compensatory monetary damages by such mineral estate owner.

(3) If a surface owner certifies to the local government that such surface owner has complied with the notice requirements of section 24-65.5-103 or 31-23-215, C.R.S., and no mineral estate owner has provided the written notice required by paragraph (a) of subsection (2) of this section to the surface owner and to the local government, no development or related activities contemplated by the application for development, no permit or other approval by such local government, and no permit or other approval by any other local government or agency that approves or permits such development or related activities or any aspect thereof shall, subsequent to the final approval of such application, be rescinded, curtailed, abrogated, or otherwise restricted in connection with any purported noncompliance with the notice requirements of section 24-65.5-103 or 31-23-215, C.R.S., that may be alleged by any party.

Source: L. 2001: Entire article added, p. 488, § 2, effective July 1.

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24-65.5-101 - Legislative declaration - intent.

The general assembly recognizes that the surface estate and the mineral estate are separate and distinct interests in real property and that one may be severed from the other. The general assembly further recognizes that if the surface estate and mineral estate are severed, the owners of these estates shall be entitled to the notice specified in section 31-23-215 or 34-60-106 (14), C.R.S. It is the intent of the general assembly that this article provide a streamlined procedure for providing notice to owners of mineral interests concerning impending surface development. Further, it is the intent of the general assembly to include local governments in the notification process without creating additional liabilities for local governments.

Source: L. 2001: Entire article added, p. 486, § 2, effective July 1.

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