

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO**

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| IN THE MATTER OF CHANGES TO THE  | ) | CAUSE NO. 1R         |
| RULES AND REGULATIONS OF THE OIL | ) |                      |
| & GAS CONSERVATION COMMISSION    | ) | DOCKET NO. 200300071 |
| OF THE STATE OF COLORADO         | ) |                      |
|                                  | ) | TYPE: RULEMAKING     |

**AFFILIATED LOCAL GOVERNMENT COALITION PRE-HEARING STATEMENT**

Boulder County, the City of Lafayette, the City and County of Broomfield, the Town of Erie, the City of Fort Collins, the City of Longmont and the Northwest Colorado Council of Governments by and through its Water Quality/Quantity Committee (NWCCOG/QQ), participating as the Affiliated Local Government Coalition (the “ALGC”), by the undersigned, submits its Pre-Hearing Statement on the 200-600 Series Rules for the above-captioned proceeding (“Mission Change Rulemaking.”)

The ALGC appreciates the Colorado Oil and Gas Conservation Commission (“COGCC”) staff’s time and attention to stakeholder input and preparation of the draft rules. Overall, the draft changes represent a significant advance in the protection of public health, safety, and welfare and the environment of Colorado.

The Mission Change Rulemaking is a massive undertaking and the ALGC believes the rules could benefit from further focused discussion on certain primary, complex issues. The straw dog and draft rules proposed to this point have made valiant efforts to define standards and processes to effectuate the delicate balance between state and local control, but the ALGC has significant remaining, conceptual concerns that cannot be adequately addressed by proposing alternate rule language. For example, the critical issue of the interplay between local control and state authority permeates the rules and is not working in its current form. This crux issue affects many of the rules, including Rules 302 and 303, the evaluation of cumulative impacts, alternative location analysis and the Comprehensive Area Plan procedures. The ALGC points out its concerns and suggestions below for these issues, but does not yet provide redlines to many of the draft rules on these matters because the conceptual changes needed must be more thoughtfully examined and discussed by stakeholders. Similarly, the rule language needed to effectuate those concepts, once agreed upon, may be extensive. Therefore, the ALGC requests more discussion with COGCC staff on these issues prior to consideration of new draft rule language.

In the second section below, the ALGC addresses more discrete matters where specific, proposed rule language is appropriate and provides those suggestions in the redlines attached.

## I. ALGC POSITION STATEMENT

### A. Overarching Issues

S.B. 19-181 sets forth a complex regulatory framework that authorizes both state and local government authority over various aspects of oil and gas development, including siting and location and surface impacts. The current draft rules attempt to implement the COGCC authority to regulate the location of oil and gas facilities while preserving local authority over siting but are ultimately unsuccessful. While S.B. 19-181 is clear that local governments have the first-in-time authority to consider the siting of oil and gas development,<sup>1</sup> several aspects of the new rules do not follow that basic principle. As an initial matter, the delicate but critical balance between these two levels of regulatory authority requires significantly more thought and input from stakeholders, particularly local governments.

The lack of clarity in the relationship of local governments and the state sets up repeated instances that impair local authority. For example, as written, the rules set up a conflicting scenario where an operator files its application for local government approval of one or more oil and gas locations and *after* the local government has reached its disposition of that application, the COGCC opens up new and broader analysis that may result in COGCC approval of locations the local government has not considered yet.

To resolve this issue, significantly more attention is needed to understanding and defining the interplay of local and state regulation. There are several nuances and critical subtleties that are overlooked in the current attempt. The ALGC is made up of both rural and more urban jurisdictions, and includes areas currently active with oil and gas development and others that are less so. This group's perspective highlights the ways in which the local-state relationship can and should be addressed.

In addition to the general local-state relationship, there are additional, high-level problems in the rules. The method for evaluating cumulative impacts is not sufficiently described in the rules; in fact, it is apparent that the concepts and goals underlying this critical analysis have not been fleshed out as they should be to meet the goals and directives of S.B. 19-181. Not only must evaluation of cumulative impacts be better understood and implemented, the way in which it interacts with local government processes needs attention.

Finally, while the ALGC supports comprehensive planning generally, the way in which the Comprehensive Area Plan (CAP) procedures are now written, they also threaten conflict with local processes.

#### 1. Interplay of Local Government and State Regulation

The March 15, 2020 Draft Statement of Basis and Purpose ("SBAP") is correct where it repeatedly states that S.B. 19-181 directed the COGCC to provide a "floor" of regulation to protect public health, safety, and welfare, and the environment, above which local governments are authorized to regulate more protectively.<sup>2</sup> At the same time, S.B. 19-181 was clear that local

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<sup>1</sup> See S.B. 19-181 Sec. 12 (amending § 34-60-106 to clarify that "no operations for the drilling of a well shall be commenced without *first*: . . . fil[ing] an application with the local government with jurisdiction to approve the siting," if it chooses to do so, and the local government reaching a disposition on the application).

<sup>2</sup> See, e.g., SBAP at 24.

government land use regulation of oil and gas is not preempted by state regulation in the same area,<sup>3</sup> and re-emphasized local governments' primary authority over land use issues.<sup>4</sup> Providing a floor while respecting local government authority requires a difficult balance. Current Rule 302, while a good effort to improve the straw dog version, does not get at this balance. Rather than attempting to re-draft Rule 302, the ALGC provides the following analysis and comments that should form the basis of further discussion on this critical issue among the key stakeholders.

Section 12 of S.B. 19-181 amended § 30-60-106, C.R.S. to create two obligations for COGCC: protect public health, safety, and welfare, the environment, and wildlife resources; and minimize adverse impacts to those resources.<sup>5</sup> S.B. 19-81 clarified and expanded the role of local governments in regulating oil and gas development. The Local Government Land Use Control Enabling Act ("Land Use Act") was amended to give local governments the express "authority to plan for and regulate the use of land by. . . regulating surface impacts of oil and gas operations" to address a list of matters and "to protect and minimize adverse impacts to public health, safety, and welfare and the environment." Under that authority, local governments are explicitly authorized to regulate: (i) Land use; (ii) Location and siting of oil and gas facilities and oil and gas locations; (iii) Impacts to public facilities and services; (iv) Water quality and source, noise, vibration, odor, light, dust, air emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts; (v) Financial securities, indemnification and insurance as appropriate to ensure compliance with the regulations of the local government; and (vi) Otherwise planning for and regulating the use of land so as to provide the planned and orderly use of land and protection of the environment in a manner consistent with Constitutional rights.<sup>6</sup>

Moreover, while "[l]ocal governments and state agencies . . . have regulatory authority over oil and gas development," local government regulations "may be more protective or stricter than state requirements."<sup>7</sup> Specifically, "nothing in this [Act] alters, impairs, or negates the authority of. . .[a] local government to regulate oil and gas pursuant to" the Land Use Act.<sup>8</sup>

Thus, the COGCC and local governments share the responsibility and power to protect and minimize impacts to public health, safety, welfare and the environment. Local government regulations to accomplish these objectives may be more protective or stricter than state requirements. In other words, as the SBAP recognizes, COGCC rules set the floor and the local governments may build the ceiling.

The field of matters delegated to state and local governments includes three categories: those that belong to the COGCC ("downhole"), those that belong to local governments (land use, public services and facilities, cultural resources, and traffic and transportation) and those that are shared. Of the specific areas listed in § 29-20-104, state and local governments share the authority to regulate siting of oil and gas facilities: water quality and source, noise, vibration, odor, light, dust, air emissions and air quality, reclamation procedures, emergency preparedness, emergency response coordination, and security; and both can adopt their own rules regarding financial assurances, indemnification, and insurance coverage. These two grants of authority need to be

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<sup>3</sup> S.B. 19-181 § 17 ("No land use preemption").

<sup>4</sup> *Id.*, § 4.

<sup>5</sup> "the commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations."

<sup>6</sup> S.B. 19-181 § 4.

<sup>7</sup> *Id.*, § 17.

<sup>8</sup> *Id.* § 4.

harmonized to avoid conflict; the exercise of authority must be complementary. However, while local requirements that are more protective or stricter may supplant less protective state requirements, the state shall not impose requirements that displace, alter or weaken any local requirements that equal or exceed state minimums set forth in COGCC rules.

With respect to siting, setbacks have become a talisman for protection because studies show that health impacts occur closer than 2000 feet from people. But setbacks and the location of a facility also go to the heart of land use planning. Compliance with COGCC setbacks can result in a location that is contrary to local land use plans or that creates significant impacts to locally protected resources. Thus, the following principles apply:

- Local governments can impose setbacks greater than those in the COGCC Rules.
- Local governments can allow, in a particular local permit or approval, a setback lesser than those in the COGCC Rules if and only if the local permit or approval is protective because other mitigation or site-specific conditions address the impacts the setback was designed to protect and/or the setback would have greater environmental or health impacts, and any necessary waivers have been obtained.
- If the COGCC determines in a hearing that the local government permit or approval for a facility at a location closer than the COGCC setback is not protective of public health, safety and welfare, then the COGCC may conduct an alternatives analysis to find a new location.
  - It is important to note that where the COGCC and the operator agree to a new location, the local government permit or approval may no longer be valid because local permits are based on an analysis of impacts at a particular location. Therefore, COGCC approval of an alternate location must be contingent on the local government approving the facility at the new location. For facilities on federal land, both the federal land management agency and the local government must approve of the new location.

When reviewing an OGD, COGCC cannot substitute its own surface impact permit conditions for those imposed by a local government permit or approval provided the local permit or approval requires compliance with minimum COGCC rules to address surface impacts (and especially where the local government applies its own additional, stricter or more protective rules); however, after a hearing, the COGCC may determine that additional requirements are necessary to protect public health, safety, welfare and the environment.

Where the COGCC determines that additional requirements to address surface impacts than those imposed by a local government permit or approval are necessary, the COGCC shall not add such requirements to the permit without obtaining the local government's agreement to the additional requirements. This is to ensure that the COGCC does not add requirements that in any way "alter, impair, or negate" local authority to regulate surface impacts.<sup>9</sup>

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<sup>9</sup> C.R.S. § 34-60-105(1)(b)(V).

Of the matters listed in § 29-20-104, local governments have exclusive authority to regulate impacts to land use, public services and facilities, cultural resources, and traffic and transportation. COGCC cannot impose additional or different requirements than those imposed by a local government permit or approval in these areas. However, COGCC may supply requirements in these areas in instances where the Relevant Local Government does not regulate in these matters.

Finally, to resolve some of the issues identified above (and in the next two sections), the ALGC strongly recommends that *all* oil and gas development applications, whether to a local government or the COGCC, be preceded by a joint pre-application process. To acknowledge and facilitate the necessary balance, the COGCC should mandate and convene a joint pre-application process among the operator, the Relevant Local Government, any Proximate Local Government (unless either local government opts out), COGCC staff, other relevant state agencies, and, for facilities on federal lands, the relevant land management agencies. At this meeting, there would be a discussion of the various requirements of each agency, how the respective requirements may be harmonized, and where there might be overlap or potential conflict. Moreover, the parties would discuss the appropriateness of a CAP process rather than an OGD.

## 2. Evaluation of Cumulative Impacts

Cumulative impact analysis is both a major aspect of the protective regulatory mission set forth in S.B. 19-181 and a critical way of implementing that mission. Currently, it is not handled properly in the draft rules in three overarching ways: (i) it is treated as a checklist task rather than a comprehensive lens for looking at all oil and gas development; (ii) S.B.19-181 specifically directs the Commission to evaluate and address the potential cumulative impacts of oil and gas development “in consultation with the Department of Public Health and Environment;” and (iii) there is no structure for how a cumulative impacts analysis at the COGCC level interacts with a local government disposition on an application.

The anticipated impacts from any new oil and gas development must be considered in light of, and in combination with, existing and anticipated land uses affecting the proposed area, particularly other oil and gas operations. New oil and gas development does not occur in a vacuum – thousands of existing wells and other facilities already create air quality, noise, odor, traffic, light, and other adverse impacts that incrementally affect an area. Careful consideration of the cumulative effects is essential in protecting people and the environment.

Moreover, the way that cumulative impacts are currently handled threatens the local-state authority balance. The current rules contemplate that *after* a local government has ruled on a permit application, the operator submits cumulative impacts narratives to the Commission. It is not clear, but the implication is that the Commission will use that information in making its determination on the application before it. Yet, COGCC’s analysis (in consultation with CDPHE) may (and should) consider a broader area than the local government would have been able to if it carried out its own cumulative impacts analysis within its jurisdiction. Therefore, the COGCC may reach a conclusion on the permit that was not possible for the local government when it took its turn. This procedural conflict must be resolved by a thorough review of the state-local issue discussed above.

To ensure effective evaluation of cumulative impacts, five principles are necessary:

First, it is critical that the COGCC conduct the inquiry (or a meta-analysis of any operator submittals) in consultation with CDPHE and any other relevant agencies. The COGCC cannot rely on a cumulative impacts “evaluation” or “plan” provided by the operator to serve its own

request for approval. Rather, as the agency with the duty to regulate protectively, this is an exercise that the COGCC itself must independently conduct based on information provided by the applicant. While COGCC staff are undoubtedly experts on many of the technical aspects of oil and gas development, some of these planning principles may be more foreign to the agency. There are many models on how to evaluate cumulative impacts at various levels of government ranging from federal to local, and ALGC members have experience with such analyses and are eager to provide insight into carrying out such analyses. However, fundamentally it is imperative that the state act as a resource to collect, monitor, and analyze data related to the cumulative impacts of proposed oil and gas development. This information and analysis could help the state and local governments develop better regulations.

Second, evaluation of cumulative impacts must always be done with reference to a defined region within which the existing and future impacts will be considered. This area must be large enough to capture the accumulated effects of all land uses that may impact the people and resources in that area. The appropriate region for analysis may be different with respect to resources that cannot be contained (air quality, watersheds, traffic) as compared to impacts that are more localized (light, odor, noise). Geographic features may define some analyses, while transportation routes define others. Therefore, the analysis must be defined with respect to its goals (i.e., to consider the cumulative impacts of all air quality emissions within a defined air shed. These parameters need further elaboration by stakeholders and experts in air and water quality, land use planning, and industrial regulation.

Third, the basic structure of the analysis is for the operator to supply all necessary information regarding its proposed development and existing conditions. This will include specific area information and modelling to show both baseline impact levels and expected incremental additions from the new development. However, as mentioned above, the state, in collaboration with its various agencies, could serve as an important resource to collect, monitor and analyze data at a regional level. The state is well situated to address impacts at a broader scale as S.B. 19-181 mandated.

Fourth, the list of factors for consideration currently in the draft rules must include both human health impacts and air emissions (criteria pollutants, greenhouse gases, and hazardous air pollutants).

Fifth, the rules need a structure by which cumulative impacts will continue to be considered when development plans change. A robust analysis will be both detailed and project-specific, but also consider the broader area; any but the most minor changes to the proposal will affect the analysis and conclusions drawn from it and, therefore, must be reviewed to identify the resulting cumulative impacts in the affected region.

### 3. Comprehensive Area Plans

The ALGC reiterates that it wholeheartedly prefers comprehensive planning over individual, piecemeal applications that each may impact the same area without a careful consideration of that overlap. However, the local-state authority question is implicated in the otherwise laudable Rule 314 Comprehensive Area Plan (“CAP”) rule in a similar way resulting from the current description of cumulative impacts analysis.

As written, it is unclear when and how an operator initiates a CAP. Thus, an operator may have local government approval for a specific site and then initiate a broader review through a

CAP that allows for or leads to conclusions the local government did not and could not have considered.

The ALGC has numerous thoughts on the details in current Rule 314, but rather than spending time on them, urges the COGCC to hold broad discussions encompassing the local-state authority interplay discussed above as it implicates cumulative impacts analysis and CAPs (which are consistent with the discussion of alternative location analysis below). For example, if the pre-application meeting suggested in Section A.1 above is adopted, the critical stakeholders could determine if a CAP is the appropriate vehicle for particular proposed development before any applications are filed. Then, once a CAP is developed at least conceptually, the operator can submit applications to the local government based on that plan which can, in turn be considered by the COGCC under the OGDG or a similar procedure.

More time and engaged stakeholder discussion are needed to consider how to balance local-state authority, while holistically analyzing cumulative impacts, and how both can be addressed through widespread, regular use of CAPs. These are significant issues that go to the core of the Mission Change rule-making. The ALGC looks forward to fruitful discussions on these matters.

## **B. Specific Suggestions for which Redlines are Attached**

### **1. The 200 Series**

#### **a. *Rule 201, Operator Liability***

Rule 201 should clarify that operators are responsible to ensure their contractors comply with all applicable rules and regulations. The ALGC provides suggested redlines to that effect.

#### **b. *Rules 205, 209, 210, and 218, Local Government Engagement***

For Operator Registration in Rule 205, the current draft removed an existing requirement that an operator register with a local government (prior Rule 302.c). This should be preserved. A jurisdiction deferring to COGCC regulations or without its own registration requirement should still be notified of operator registration with the COGCC. This would create a more uniform registration process for operators and be inclusive of all local governments regardless of local rules.

For Tests and Surveys, Rule 209, and Corrective Action, Rule 210, there is currently no reference to local government involvement in how issues are identified, investigated and remediated. A local government should be notified of any issues identified by the operator or COGCC and consulted on any decisions made regarding remedies.

For Transfer of Ownership in Rule 218, new proposed rules do not explicitly engage local jurisdictions. This is necessary, as local jurisdictions may have financial assurance, compliance history, emergency response, reclamation and restoration or other requirements that exceed state requirements. Approval from relevant and proximate local governments should be required before the COGCC can approve a Form 9.

*c. Rule 208, Ban on Fracking Chemicals*

The ALGC suggests moving “Table 411-2. Chemical Additives Prohibited in Hydraulic Fracturing Fluid” from Rule 411 to Rule 208 and banning these chemicals from being used in hydraulic fracturing fluids statewide. This step is necessary to ensure that highly toxic substances are no longer used in oil and gas operations in Colorado, given their inherently dangerous nature and the availability of safer alternatives.

Several local jurisdictions have already banned most or all of these chemicals and extending this ban statewide would provide consistency for operators throughout Colorado. For example, Adams County regulations include a similar list of toxic chemicals that are prohibited from being used in hydraulic fracturing fluids.<sup>10</sup> Similarly, regulations for Boulder County and City and County of Broomfield include provisions allowing the jurisdictions to prohibit chemicals harmful to human health to be used in hydraulic fracturing fluids.<sup>11</sup>

In many situations, operators in Colorado have already agreed not to use these harmful chemicals in their operations, demonstrating the ready availability of safer alternatives. For example, Aurora has Operator Agreements in place with Axis and ConocoPhillips that ban the use of specific chemicals in hydraulic fracturing fluids.<sup>12</sup> Crestone Peak has succeeded Conoco Phillips as the party to this Agreement. Extraction also agreed not to use a similar list of chemicals in its Operator Agreement with the City and County of Broomfield.<sup>13</sup>

In the SBAP, Staff stated “in Rule 411.e.(3), the Commission prohibited certain chemical additives within the intermediate buffer zone and for any locations permitted within the internal buffer zone. The Commission considered prohibiting these chemicals in all SWSA zones, but determined that 1,500 feet provided a more appropriate buffer.”<sup>14</sup> Staff does not elaborate on why 1,500 feet is an appropriate buffer, however. Indeed, the ALGC maintains that not only is 1,500 feet an inadequate buffer from Surface Water Supply Areas (SWSAs), but that the COGCC should prohibit the use of these toxic chemicals from all locations. A spill of toxic chemicals not only poses a risk to SWSAs, as recognized in the draft rules, but can also pose a risk to wildlife and the public, especially if not promptly remediated. Spills can occur at any location, not just ones located in Surface Water Supply Areas. To minimize the risk of exposure to the public and wildlife posed by the spill of a toxic chemical, and to ensure regulations that protect and minimize adverse impacts to public health and wildlife, we suggest a statewide ban on the toxic chemical additives listed in Table 411-2.

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<sup>10</sup> Adams County Development Standards and Regulations, Section 4-10-02-03-03-03, <http://www.adcogov.org/sites/default/files/development-standards-and-regulations.pdf>

<sup>11</sup> Boulder County, 12-701, <https://assets.bouldercounty.org/wp-content/uploads/2017/02/land-use-code-article-12.pdf>; City and County of Broomfield Municipal Code, 17-54-100, [https://library.municode.com/co/broomfield/codes/municipal\\_code?nodeId=TIT17ZO\\_CH17-54OIGALOUSRE](https://library.municode.com/co/broomfield/codes/municipal_code?nodeId=TIT17ZO_CH17-54OIGALOUSRE)

<sup>12</sup> ConocoPhillips Oil and Gas Operator Agreement, Exhibit C, BMP 7 (June 5, 2019), [https://www.auroragov.org/UserFiles/Servers/Server\\_1881137/File/Residents/Oil%20and%20Gas%20Drilling/ConocoPhillips%20Oil%20and%20Gas%20Operator%20Agreement%20FINAL.pdf](https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/Residents/Oil%20and%20Gas%20Drilling/ConocoPhillips%20Oil%20and%20Gas%20Operator%20Agreement%20FINAL.pdf); Axis Oil and Gas Operator Agreement, Exhibit B, BMP 8 (July 24, 2019), [https://www.auroragov.org/UserFiles/Servers/Server\\_1881137/File/Residents/Oil%20and%20Gas%20Drilling/Axis%20Exploration%20LLC\\_%20FINAL%20Oil%20and%20Gas%20Agreement.pdf](https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/Residents/Oil%20and%20Gas%20Drilling/Axis%20Exploration%20LLC_%20FINAL%20Oil%20and%20Gas%20Agreement.pdf)

<sup>13</sup> Resolution No. 2017-186, Ex. B., BMP 13, <https://www.broomfield.org/DocumentCenter/View/25064/Resolution-2017-186-and-Agreement>

<sup>14</sup> COGCC Draft Statement of Basis and Purpose, p. 42 (Mar. 15, 2020), <https://drive.google.com/drive/u/0/folders/1bzgz4bY3RA7dthTgFADtEtlzU9VQlezu>



## 2. The 300 Series

### *a. Rule 304, Alternative Location Analysis*

The location of oil and gas facilities defines most of the impacts they will cause. Determining the most protective site, if there is one, is therefore a crucial part of regulating in a manner that protects public health, safety, and welfare, and the environment and wildlife. While alternative location analysis (“ALA”) is a primary function of local governments, in those cases where local governments do not regulate oil and gas development, or where the COGCC determines that a local government permit or approval falls below the protective floor set by COGCC regulations, the COGCC must critically analyze the location of oil and gas development, using ALA to determine whether a location exists that is adequately protective. Current draft Rule 304.b.(2) describing ALA needs improvement as discussed here and demonstrated in the attached redline proposal.

First, like cumulative impacts analysis, and for the same reasons, COGCC needs to conduct any ALA required by its rules, not the operator. The operator should provide (i) the proposed locations; (ii) all necessary information about each site; and (iii) its rationale for selecting its preferred site. The COGCC should then consider the appropriateness of the proposed site, whether any of the alternative sites are more protective, and, if none of the considered sites are adequately protective, require the operator to come back with additional proposals. Members of the ALGC conduct such analyses routinely for various types of development proposals and have substantial specific guidance on designing this process, once the primary principles have been agreed on. While operators may find it most convenient to propose sites where they believe the landowner will be friendly or access will be easy, S.B. 19-181 both directs and allows COGCC to prioritize protection of public health, safety, welfare, and the environment and wildlife over such considerations. ALA should be in consultation with all federal, state and local agencies with relevant expertise, as well as any outside contractors COGCC requires. Ultimately ALA should be conducted to pick the optimal site or sites for an area with careful scrutiny of the surroundings, not just the first ones selected by an operator.

Second, as with cumulative impacts analysis, criteria by which the alternative locations will be analyzed are necessary to guide the analysis itself and notify applicants and stakeholders what the expectations are. These criteria need to be purpose-driven rather than merely quantitative. With such purposes in mind, rather than a list of checkbox items, COGCC can be guided in its analysis. A list of proposed criteria is presented in the attached redline of the draft rule.

Third, the ALGC recommends an overhaul of Rule 302. Therefore, the references in Rule 304.b.(2) to the criteria in Rule 302.b.(4) would need to change and some of the specific criteria in that list might change. Importantly, to the extent those factors are retained, ALGC believes that ALA should be conducted for any proposed oil and gas development within 1,500’ of *any number* of Building Units rather than only where there are 10 or more. Residents of 1-9 homes deserve as much protection as their counterparts with an additional unit nearby. By excepting more dispersed Building Units from the additional protection of an ALA, the draft rules leave much of rural Colorado out of that framework and, of course, rural parts of the state are where the bulk of oil and gas development occurs. There is no principled reason to leave nine families without the assurances of a robust consideration of all possible locations when ten families are protected.

Fourth, the sites considered in an ALA must be sufficiently distanced and different from each other to make the exercise meaningful. Under the COGCC's new mission, the purpose of an ALA is to determine the most protective location possible in light of topography, surface features, residences, and the like. Any analysis that is based on three almost identical sites in close proximity gives only lip service to this important function. However, because geography and important surface considerations differ dramatically, a blanket rule (such as the alternative sites must be 1,000' apart) will not serve. Rather, the COGCC must apply planning principles to determine whether, in the particular case, the proposed locations are sufficiently diverse.

### 3. The 400 Series

#### *a. Rule 422, State Floor and Local Ceiling*

Current Rule 422 does not adequately state the intent outlined in the SBAP. In fact, in its current state, it can be interpreted to mean virtually the opposite of what was intended. The SBAP specifically states that Rule 422 "recognizes that local governments have authority to regulate these nuisance-type effects, while also being clear that the Commission's requirements remain a floor that all operators must comply with, statewide." The ALGC agrees that this is the framework S.B. 19-181 created. However, that is not what the current rule language says.

The draft Rule says operators must comply with local regulations *including* those that are stricter than the COGCC's. Use of the word "including" implies that operators must also comply with local regulations that are less strict than the COGCC's. The SBAP makes it clear that this is not how the COGCC interprets S.B. 19-181, and the ALGC firmly agrees with COGCC's interpretation. Therefore, alternate proposed language is included in the attached redline to conform Rule 422 to what the SBAP says was intended and what S.B. 19-181 requires.

#### *b. Rule 423, Noise*

The ALGC appreciates the improvements that Staff has made to Rule 423 and generally support the rule as providing a protective and comprehensive state floor to protect against adverse impacts from noise. We suggest the following improvements to ensure COGCC obtains comprehensive and reliable information regarding potential and actual noise impacts:

(1) Require the Operator provide detailed information to explain the basis for the estimates of noise levels from the facility. Specifically, we suggest the Operator's estimate of noise levels by stage of operation is accompanied by detailed information regarding the methods, procedures, reference information and results underlying the estimates. This is to ensure the COGCC has sufficient information to ensure the permit protects and minimizes adverse impacts to public health and the environment when reviewing the OGD.

(2) Require the Operator to update its estimate of noise impacts whenever equipment is changed or replaced. Operators routinely change out equipment, including compressors that can be a significant source of noise. Anytime this occurs Operators must update their noise mitigation plan so COGCC can ensure that current operations meet its rules and permit conditions.

The ALGC supports the maximum permissible noise levels in Rule 423.b.(1). We note that the current draft requires noise monitoring both at the oil and gas facility and at nearby receptors, if any residential building units are within 2,000 feet of the facility. We request COGCC clarify that the applicable maximum permissible noise level at a residential building unit is the level applicable to the land use designation that applies to that building unit. This means that if an oil and gas facility is located in an area zoned industrial but there is a home within 2,000 feet of the facility, the operator must comply with the residential noise levels when measured at the home. Otherwise, homes that are located on the edge of industrial or light industrial zone districts will be subject to unacceptable noise levels that disturb sleep and impact people's health and wellbeing.

The ALGC objects to, and has suggested deletion, of the exception in Rule 423.b.(2) that allows for an increase in noise levels during pre-production activities in Residential/Rural or Commercial/Agricultural areas. Pre-production activities are the noisiest activities at an oil and gas facility and in order to protect public health and welfare it is essential that noise levels do not exceed the maximum permissible levels in the table in Rule 423 during this time.

We also object to, and suggest deletion of, the exception in Rule 423.b.(6) that allows operators to increase noise levels by a 10 db(A) increment for a 15-minute period in an hour. 10 db(A) is a substantial increase in noise levels and is utterly unacceptable, particularly for those living, working or recreating nearby.

The ALGC also objects to the allowable 5 and 7 db(A) and (C) incremental increases above ambient levels in Rule 423.d.(2) for those facilities permitted in areas where ambient noise levels already meet or exceed the maximum permissible noise levels in Rule 423.b.(1). We support an allowable incremental increase of up to 4 decibels, but only for db(A). We do not believe there is any room for an increase in db(C) levels above those permitted in Rule 423.b.(1), unless there are no receptors located within a radius that could be affected by the increased noise. This is because an increase in db(C) over 65 can cause disturbances including vibrations and window rattling that are likely to cause sleep disturbances.<sup>15</sup> An operator whose operations are likely to cause an increase in noise levels above the permissible levels must use best management practices to reduce the anticipated noise to no more than the levels allowed by Rule 423.d.(2).

### *c. Rule 424, Lighting*

The ALGC is concerned that the lighting standards in Rule 424 may not be protective enough of public health, safety, and welfare or the environment and wildlife. Moreover, protection of night sky views is essential. However, the ALGC has not had time to obtain expert analysis of the proper lighting measures and distances to achieve such protections. Therefore, we have recommended certain changes to improve the protectiveness of the rules and request to see COGCC staff's basis for the numbers and measurements it has chosen with which to evaluate remaining portions.

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<sup>15</sup> Acoustical Society of America, ANSI S12.9-2005/Part 4, Quantities and Procedures for Description And Measurement Of Environmental Sound - Part 4: Noise Assessment And Prediction Of Long-Term Community Response (2005);

#### 4. The 500 Series

##### *a. Rule 502, Variances*

In its Supplemental Preliminary Party Input, the ALGC submitted comments on the Rule 502 variance process. With the June 26 draft of Rule 502, the ALGC's concerns are met and the ALGC is happy to support staff's draft rule.

##### *b. Rule 503, Evidence of Mineral Rights*

In its Supplemental Preliminary Part Input, the ALGC included comments regarding evidentiary practices related to applicants' mineral rights ownership. On further consideration, the ALGC recognizes that this issue is not directly related to the S.B. 19-181 change of mission and reserves these comments for a later proceeding.

##### *c. Rule 525, Penalty Calculation*

Rule 525.c.(4) maintains the existing exception allowing operators who engage in rule violations of long duration to see reduced daily fines. This provision should be eliminated. The daily fine matrix takes into account the severity of a violation; assuming the matrix is well-designed (a matter the ALGC does not take up here), the daily penalties are therefore matched to the damage or impacts likely to result from the violation. If a violation continues over time, that pre-determined degree of damage or impact does not fall; in fact it likely increases, such as in the case of a long-standing leak or release that increasingly contaminates soil, water, or air. There is no logical reason to *reduce* the daily penalty when a violation continues. The daily fine amount already set should remain in place (or even go up if the duration of the violation is due to negligence or worse conduct). This policy of lowering the daily fine as a violation continues impairs all the goals of the fine program: it weakens the deterrent value, it lessens the recovery of incurred costs or restitution value, and it impinges on the logical relationship between the violation and the consequence. The ALGC recommends eliminating 525.c.(4).

#### 5. The 600 Series

##### *a. Rule 604, Setbacks*

In order to ensure the COGCC meets its mandate to protect and minimize adverse impacts to public health, we suggest the state adopt a 2,000-foot setback from a residential Building Unit or a High Occupancy Building Unit. We suggest this apply in lieu of the proposed 1,500-foot setback from 10 or more residential Building Units or 1 High Occupancy Building Unit, R. 604.c.(2).

2,000 feet is a more appropriate minimum setback than 1,500 feet based on the information contained in the 2019 Colorado Department of Public Health and Environment study.<sup>16</sup> This CDPHE study found health impacts to persons living within 2,000 feet of an oil and gas facility.<sup>17</sup> We note that this study's findings are conservative in that it is based on emissions from a single facility. In many instances, people living near oil and gas facilities are impacted by emissions from more than one single facility. Thus, in instances where a live within 2,000 feet of multiple oil and gas facilities, they may be exposed to greater concentrations of unhealthy air emissions.

The City and County of Broomfield has adopted a 2,000-foot setback from athletic fields, amphitheaters, auditoriums, child care and correctional facilities, dwelling units, event centers, hospitals, life care institutions, nursing homes and facilities, recreational facilities, schools or undeveloped residential lots.<sup>18</sup> This setback provides precedent for a greater state setback than has been proposed.

## **II. OPEN LEGAL ISSUES**

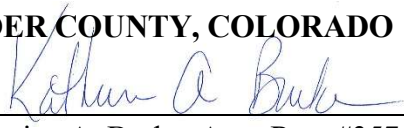
The ALGC is not aware of any open legal issues for consideration at the hearings in this matter, other than the various parties' disputed positions on particular rules.

## **III. RELIEF REQUESTED**

The ALGC requests that the Commission direct its staff to continue working on the rules related to local government authority and evaluation of cumulative impacts, provide the information on lighting standards requested here and in the attached, and adopt the other proposed rules with the modifications suggested by the ALGC.

**RESPECTFULLY SUBMITTED** this 13th day of July, 2020.

**BOULDER COUNTY, COLORADO**

By:   
Katherine A. Burke, Atty. Reg. #35716  
Assistant County Attorney

*Attorney for Boulder County, Colorado*


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<sup>16</sup> CDPHE, State health department publishes oil and gas health risk study, <https://www.colorado.gov/pacific/cdphe/news/oil-and-gas-health-risk-study>.

<sup>17</sup> Id.

<sup>18</sup> City and County of Broomfield Municipal Code, 17-54-070, [https://library.municode.com/co/broomfield/codes/municipal\\_code?nodeId=TIT17ZO\\_CH17-54OIGALAUSTR](https://library.municode.com/co/broomfield/codes/municipal_code?nodeId=TIT17ZO_CH17-54OIGALAUSTR)

By: \_\_\_\_\_

  
Kimberly Sanchez  
Deputy Director – Planning and LGD  
Boulder County

**CITY OF LAFAYETTE, COLORADO**

By: /s/ Elizabeth Paranhos

Elizabeth Paranhos, Atty. Reg. #39634  
deLone Law, Inc.

*Attorney for City and County of Broomfield,  
Colorado*

**CITY AND COUNTY OF BROOMFIELD,  
COLORADO**

By: /s/ Elizabeth Paranhos

Elizabeth Paranhos, Atty. Reg. #39634  
deLone Law, Inc.

*Attorney for City and County of Broomfield,  
Colorado*

**CITY OF FORT COLLINS**

By: /s/ Kelly Smith

Kelly Smith, PLA  
Senior Environmental Planner  
City of Fort Collins

**TOWN OF ERIE**

By: /s/ Barbara Green

Barbara Green  
Sullivan Green Seavy

*Attorney for Town of Erie*

**CITY OF LONGMONT**

By: /s/ Brad Schol  
Brad Schol  
Special Projects Manager

**NWCCOG/QQ**

By: /s/ Barbara Green  
Barbara Green  
Sullivan Green Seavy

*Attorney for NWCCOG/QQ*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **AFFILIATED LOCAL GOVERNMENTS' PRE-HEARING STATEMENT** was served electronically, this 13th day of July, 2020, to the following:

[DNR\\_COGCC.Rulemaking@state.co.us](mailto:DNR_COGCC.Rulemaking@state.co.us)

/s/ Stephanie Adamson  
**Stephanie Adamson**

**200 SERIES  
GENERAL PROVISIONS**

**201. EFFECTIVE SCOPE OF RULES AND REGULATIONS**

- a. The Commission's rules are promulgated to regulate Oil and Gas Operations in a manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment and wildlife resources, and to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations. Except as set forth in Rule 201.d, these Rules are effective throughout the State of Colorado and are in force in all pools and fields unless the Commission amends, modifies, alters or enlarges them through Orders or Rules that apply to specific individual pools or fields.
- b. **Compliance.** The Operator of any Oil and Gas Location, Oil and Gas Facility, Well, or any seismic, core, or other exploratory holes, whether cased or uncased, will comply with all applicable Commission Rules and ~~will ensure~~ is responsible for compliance by their contractors and subcontractors.

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**205. OPERATOR REGISTRATION**

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- c. **Operator Registration with Local Governments for Advance Planning.** All operators that have filed a Form 1 with the Commission shall register with each municipal local jurisdiction and county in which it has an approved drilling unit or a pending or approved Development Plan, Form 2 or Form 2A. An operator registers by complying with the local registration process established by the municipal local jurisdiction or county. If a local registration process does not exist, an operator may comply by delivering current copies of its Form 1 and Form 1A to the Local Governmental Designee ("LGD") in jurisdictions that have designated an LGD, and to the planning department in jurisdictions that do not have an LGD.

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**208. CHEMICAL DISCLOSURE.**

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- c. **Hydraulic Fracturing Chemical Disclosure.**

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(4) The following chemicals listed in Table 208-1 are prohibited as additives in Hydraulic Fracturing Fluid. This prohibition does not prevent Operators from recycling or reusing produced water that may have trace amounts of chemicals listed in Table 208-1 as Hydraulic Fracturing Fluid. For any chemical constituent for which Table 915 provides a standard, the concentration will be below the Table 915 standard.



**TABLE 208-1. Chemical Additives Prohibited in Hydraulic Fracturing Fluid**

| <u>Ingredient Name</u>  | <u>CAS #</u>         |
|---|----------------------|
| <u>Benzene</u>  | <u>71- 43- 2</u>     |
| <u>Lead</u>   | <u>7439- 92- 1</u>   |
| <u>Mercury</u>  | <u>7439- 97- 6</u>   |
| <u>Arsenic</u>  | <u>740- 38- 2</u>    |
| <u>Cadmium</u>  | <u>744043- 9</u>     |
| <u>Chromium</u>   | <u>7440- 47- 3</u>   |
| <u>Ethylbenzene</u>   | <u>100- 41- 4</u>    |
| <u>Xylene</u>   | <u>1330- 20- 7</u>   |
| <u>1,3,5,-trimethylbenzene</u>  | <u>108- 67- 8</u>    |
| <u>1,4,-dioxane</u>   | <u>123- 91- 1</u>    |
| <u>1-butanol</u>  | <u>71- 36- 3</u>     |
| <u>2-butoxyethanol</u>  | <u>111- 76- 2</u>    |
| <u>N,N-dimethylformamide</u>  | <u>68- 12- 2</u>     |
| <u>2-ethylhexanol</u>   | <u>104- 76- 7</u>    |
| <u>2-mercaptoethanol</u>  | <u>60- 24- 2</u>     |
| <u>benzene, 1,1'-oxybis-,tetrapropylene derivatives sulfonated, sodium salts (BOTS)</u> | <u>119345- 04- 9</u> |
| <u>butyl glycidyl ether</u>   | <u>8- 6- 2426</u>    |
| <u>polysorbate 80</u>   | <u>9005- 65- 6</u>   |
| <u>Quaternary ammonium compounds, dicoco alkyldimethyl, chlorides (QAC)</u>             | <u>61789- 77- 3</u>  |
| <u>Bis hexamethylene triamine penta methylene phosphonic acid ( BMPA)</u>               | <u>35657- 77- 3</u>  |
| <u>Diethylenetriamine penta ( methylene- phosphonic acid) ( DMPA)</u>                   | <u>15827- 60- 8</u>  |
| <u>FD&amp; C blue no. 1</u>   | <u>3844- 45- 9</u>   |
| <u>Tetrakis( triethanolaminate) zirconium( IV) (TTZ)</u>                                | <u>101033- 44- 7</u> |

**209. TESTS AND SURVEYS**

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b. At the time the Commission authorizes the Director to require tests or surveys, the Director will notify relevant and proximate local governments of said requirements. The Director will share all test and survey results with the relevant and proximate local governments.

c. If the Director requires an Operator to take action pursuant to Rule 209.a, the Operator may appeal the Director's decision to the Commission pursuant to Rule 503.g.(10). The matter will not be assigned to an Administrative Law Judge pursuant to Rule 503.h. The Commission will hear the appeal at its next regularly scheduled meeting. Relevant and proximate local governments will be notified of an appeal 14 days in advance of the hearing. Operators will continue to comply with any requirements identified by the Director pursuant to Rule 209.a until the Commission makes a decision on the appeal. Local and proximate governments will be consulted on all decisions. The Commission may uphold the Director's decision if the Commission determines the Director had reasonable cause to determine that an Operator's actions impacted or threatened to impact public health, safety, welfare, the environmental, or wildlife resources, and that the action required by the Director was necessary and reasonable to address those impacts or threatened impacts. If an Operator does not appeal the Director's decision pursuant to this Rule 209.b, the Director will report the decision at its next regularly scheduled hearing.

**Commented [A1]:** Local agencies need to be notified in advance, and have opportunity for input in any appeal. A Timeline should be defined, 14 days is used here as a possible suggestion.

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## 210. CORRECTIVE ACTION

a. The Director or Commission will require correction of any condition necessary to protect and minimize adverse impacts to public health, safety, and welfare, the environment and wildlife resources, and protect against adverse environmental impacts on any air, water soil, or biological resource, or any condition that the Director or Commission has reasonable cause to believe is in violation of the Commission's Rules. The Director or Commission may exercise its discretion to set forth the manner in which the condition is to be remedied.

b. The Director will notify relevant and proximate local governments of correction requirements, including schedules and anticipated completion dates.

c. When a Field Inspection Report includes a corrective action, upon completion of that corrective action the Operator will submit to the Director a Field Inspection Report Resolution Form (FIRR).

d. The Director will inspect findings of the FIRR to ensure all required corrective actions have been met/implemented and conditions have been remedied. The Director's inspection findings will be communicated to the local government. If the Director or local government conclude the Operator has not met requirements, the Director will give Operator direction and timeline for additional corrective action.

\*\*\*\*\*

## 215. FORM 29, LOCAL GOVERNMENT INFORMATION

a. Each Local Government which designates an office for the purposes set forth in the 100 Series will provide the Commission written notice of such designation, including the name, address and telephone number, electronic mail address, local emergency dispatch, and other emergency numbers of the Local Government. It will be the responsibility of such Local Governmental Designee to:

- (1) Notify the Director via a Form 29, Local Government Information of which documents and Forms the Local Government desires to receive pursuant to the Commission's Rules;
- (2) Ensure that all documents provided to the Local Governmental Designee by oil and gas Operators and the Commission or the Director are distributed to the appropriate local government persons and offices; and
- (3) Submit a confidentiality agreement to the Director via a Form 29, Local Government Information to request the Geographic Information System (GIS) data submitted through Form 12s, Gas Facility Registration/Change of Operator and Form 44s, Flowline Reports.

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## 218. FORM 9, TRANSFER OF OPERATORSHIP

b. A current Operator ~~may~~ will notify the Commission about the transfer of any Transferable Item associated with its Oil and Gas Operations to a successor in interest by filing a Form 9, Transfer of Operatorship, with the Commission at least 30 days before the anticipated transfer date. The Form 9 will include:

- (1) The anticipated date for the transfer of all Transferable Items; and
- (2) The complete list of Transferable Items that:
  - A. Are proposed for transfer; and
  - B. That are not proposed for transfer, and:
    - i. Whether the current Operator retains responsibility for compliance with the Commission's Rules for the Transferable Item; or
    - ii. Whether a prior Operator retains responsibility for compliance with the Commission's Rules for the Transferable Item.
- (3) Documentation showing the Local Jurisdiction was notified of the transfer and the successor in interest meets local financial assurance requirements.
- (4) (4) Attached Attestations.
  - A. An attestation signed by the current Operator and the successor in interest attesting to all contents of the Form 9;
  - B. If applicable, an attestation signed by the successor in interest attesting that the successor meets all requirements of the relevant local government.
  - A.C. If applicable, an attestation signed by the current Operator attesting that the current Operator retains responsibility for compliance with the Commission's Rules for any Transferable Item listed in Rule 218.b.(2).B.i; and
  - B.D. If applicable, an attestation signed by the prior Operator attesting that the prior Operator retains responsibility for compliance with the Commission's Rules for any Transferable Item listed in Rule 218.b.(2).B.ii.

**Commented [A2]:** Is this form going to be modified to include a comprehensive list of forms and documents that LGDs would like notified?

**Commented [A3]:** To distinguish from documents that are reported to other local entities such as schools and local emergency responders. LGDs are only liaisons for documents provided to the local or proximate local governments.

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222. **COGCC Form 18. COMPLAINT REPORT**

- a. A complaint regarding Oil and Gas Operations is filed by submitting a Form 18.
- b. The Director will notify the Local Jurisdiction of the complaint.
- c. The Director will investigate any complaint and determine what, if any, action will be taken in accordance with Rule 522.
- d. The Director will communicate to the local government the determination of said complaint, and what action will be taken in accordance with Rule 522.

\*\*\*\*\*

**Commented [A4]:** Will this form be included on FORM 29?

**PERMITTING PROCESS  
300 SERIES**

**301. LOCAL GOVERNMENTS.**

**Commented [A1]:** See ALGC Prehearing Statement for discussion

- ~~a. Nothing in the Commission's Rules constrains the legal authority conferred to Local Governments by Colo. Rev. Stat. §§ 24-65.1-101 *et seq.*, 29-20-104, 30-15-401, or any other statute, to regulate Oil and Gas Operations in a manner that is more protective or stricter than the Commission's Rules.~~
- ~~b. **Local Government Siting Information.** With their Oil and Gas Development Plans, or, if applicable, with their Form 2A or drilling and spacing unit applications, Operators will submit to the Director certification that:~~
- ~~(1) The Relevant Local Government does not regulate the siting of Oil and Gas Locations;~~
- ~~(2) The Relevant Local Government regulates the siting of Oil and Gas Locations, and has denied the siting of the proposed Oil and Gas Location;~~
- ~~(3) The Relevant Local Government regulates the siting of Oil and Gas Locations, and the proposed Oil and Gas Location does not meet any of the criteria listed in Rule 302.b.(4); or~~
- ~~(4) The Relevant Local Government regulates the siting of Oil and Gas Locations, and the proposed Oil and Gas Location meets one or more of the following criteria:~~
- ~~A. The proposed Working Pad Surface is within:~~
- ~~i. 500 feet of 1 or more residential Building Unit(s);~~
- ~~ii. 1500 feet of 10 or more residential Building Units; or~~
- ~~iii. 1500 feet of 1 or more High Occupancy Building Unit(s);~~
- ~~B. The proposed Working Pad Surface is less than 2000 feet from the property line of a School Facility or Child Care Center, and the Relevant School Governing Body has not provided a signed waiver pursuant to Rule 604.b.(1);~~
- ~~C. The proposed Working Pad Surface is within 1500 feet of a Designated Outside Activity Area;~~
- ~~D. The proposed Working Pad Surface is less than 2000 feet of a municipal or county boundary, and the Proximate Local Government objects to the location or requests an alternative location analysis;~~
- ~~E. The proposed Working Pad Surface is within a Floodplain;~~
- ~~F. The proposed Oil and Gas Location is within a Surface Water Supply Area;~~
- ~~G. The proposed Oil and Gas Location is within the boundaries of, or is immediately upgradient from, a mapped, visible, or field-verified wetland or riparian corridor;~~
- ~~H. [Placeholder for 1200 Series High Priority Habitat];~~

I. The Operator is using or intends to use a Surface Owner protection bond pursuant to Rule 703 to access the proposed Oil and Gas Location; or

J. The proposed Working Pad Surface may affect Disproportionately Impacted Communities, because the proposed Oil and Gas Location is within or immediately adjacent to:

i. A U.S. census tract in which more than 50% of the population meets the definition of a "minority population" pursuant to the U.S. Environmental Protection Agency's (EPA) Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (June 2016), or in which the minority population percentage of the tract exceeds the minority population percentage of the County, whichever is greater. Only the June 2016 edition of EPA's Technical Guidance for Assessing Environmental Justice in Regulatory Analysis applies to this Rule; later amendments do not apply. All materials incorporated by reference in this rule are available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, CO 80203. In addition, these materials may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and is available online at [https://www.epa.gov/sites/production/files/2016-06/documents/ejtg\\_5-6\\_16\\_v5.1.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5-6_16_v5.1.pdf).

ii. A U.S. census tract classified as a "low" income area by the Federal Financial Institutions Examination Council's (FFIEC) Online Census Data System (2019). Only the 2019 data in the FFIEC's Online Census Data System applies to this Rule; later years' data do not apply. The FFIEC's Online Census Data System 2019 data for all counties in Colorado are available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, CO 80203. In addition, these materials may be accessed online at [www.ffiec.gov/census/default.aspx](http://www.ffiec.gov/census/default.aspx).

iii. A U.S. census tract has a minority population percentage that exceeds the minority population percentage of the county in which the proposed Oil and Gas Location is located, and is classified as a "moderate" income area by the FFIEC's Online Census Data System (2019), as incorporated by reference in Rule 302.b.(4).J.ii.

iv. The exterior boundaries of the Southern Ute Indian Reservation and subject to the Commission's jurisdiction pursuant to Rule 201.d.(2), and the Southern Ute Indian Tribe objects to the proposed Oil and Gas Location or requests an alternative location analysis.

**c. Director's Review of Local Government Siting Information.**

(1) For proposed Oil and Gas Location listed in Rule 302.b.(1), the Director will conduct a siting review pursuant to the Commission's 300 Series Rules.

(2) For proposed Oil and Gas Location listed in Rule 302.b.(2), the Commission will not approve the proposed Oil and Gas Location without a hearing before the Commission.

(3) For proposed Oil and Gas Locations listed in Rule 302.b.(3), the Director will defer to the Relevant Local Government's siting disposition.

(4) For proposed Oil and Gas Locations listed in Rule 302.b.(4), the Operator will submit an alternative location analysis pursuant to Rule 304.b.(2), unless the Director determines in the Completeness Determination that an alternative location analysis is not necessary to protect public health, safety, welfare, the environment, or wildlife resources. The Director may not waive the

alternative location analysis requirement for any Oil and Gas Location that meets the criteria listed in Rule 302.b.(4).A-C.

~~d. With their Oil and Gas Development Plan, or, if applicable, with their Form 2A, Operators will state whether the proposed Oil and Gas Location is subject to the requirements of § 24-65.1-108, C.R.S. because it is located in an area designated as one of State interest.~~

~~e. **Notice to Relevant and Proximate Local Governments.** An Operator will notify any Relevant and Proximate Local Governments that it plans to submit an Oil and Gas Development Plan no less than 30 days prior to submitting an Oil and Gas Development Plan. The notice will comply with the procedural and substantive requirements of Rule 303.e.(2) & (3).~~

~~f. **Local Government Waiving Authority.**~~

~~(1) At any time, a local government may, by providing written notice to the Director on a Form 29, Local Government Information, and any relevant Operators:~~

~~A. Waive its right to receive notice under any or all of the Commission's Rules; or~~

~~B. Certify that it chooses not to regulate the siting of Oil and Gas Locations.~~

~~(2) The Commission will maintain a list of Local Governments that have certified to the Director that they have chosen not to regulate the siting of Oil and Gas Locations, or receive any category of notice otherwise required by the Commission's Rules. This list will be posted on the Commission's website.~~

~~(3) A Local Government may withdraw a waiver at any time by providing written notice to an Operator and the Director on a Form 29, Local Government Information. Upon receiving such notice, the Director will immediately remove the Local Government from the Rule 302.f.(2) list on the Commission's website.~~

~~g. **Local Government Consultation.** Within 45 days after an Operator provides notice of a proposed Oil and Gas Development Plan, and prior to the Director making a Director's Recommendation that the Commission approve or deny the Oil and Gas Development Plan, Relevant Local Governments or Proximate Local Governments may request, and will be provided, an opportunity to consult with the Operator and the Director. The Director or Operator will promptly schedule a Formal Consultation Process meeting. Topics for Formal Consultation Process meeting will include, but not be limited to:~~

~~(1) The location of access roads, Production Facilities, and Wells; and~~

~~(2)(1) Necessary and reasonable measures to avoid, minimize, and mitigate adverse impacts to public health, safety, or welfare or the environment, or wildlife resources.~~

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#### 304. FORM 2A: OIL AND GAS LOCATION ASSESSMENT APPLICATION.

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**b. Information Requirements.** All Form 2A, Oil and Gas Location Assessments Applications must include the following information:

**(2) Alternative Location Analysis.**

**A. Applicability:** This Rule 304.b.(2) applies to any proposed Oil and Gas Location:

- i. Within a local government that does not regulate Oil and Gas Operations; or
- ii. That meets the criteria listed in Rule 302.b.(4) Where the Relevant Local Government has approved a permit for the Oil and Gas Location that does not meet COGCC criteria and standards; or
- iii. For which the Director or Commission otherwise determines that an alternative location analysis is necessary to evaluate whether the proposed Oil and Gas Location reasonably protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

**B. Contents of an Alternative Location Analysis.** If an alternative location analysis is required, the Operator will ~~prepare an analysis that identifies~~identify all potential alternate locations that may be considered for siting of the Oil and Gas Location. A minimum of three alternative locations must be included and all alternative locations must be sufficiently distanced and sufficiently distinct to allow for meaningful analysis (e.g., the alternatives must be 1,000 feet apart or substantially different from each other due to geologic features, natural areas, or topography). The Operator will provide - Operators will also submit the following information:

- i. One or more maps or recent aerial images showing the proposed area of mineral development, the Operator's proposed Oil and Gas Location, all Operator-identified technically feasible alternative locations, all proximal existing and permitted Oil and Gas Locations, all relevant jurisdictional boundaries, traffic and access routes for each location, and all Rule 302.b.(4) criteria met by the proposed location or any Alternative Location.
- ii. A data table for the proposed Oil and Gas Location and each alternative location, with all measurements made from each proposed Working Pad Surface, that lists the following information:
  - aa. All Rule 302.b.(4) criteria met;
  - bb. Distance to the nearest Disproportionately Impacted Community, as identified by Rule 302.b.(4).J;
  - cc. Distance to any municipal or county boundaries that are within 2000 feet, and the names of the Proximate Local Government(s);
  - dd. The Relevant Local Government's land use or zoning designation, and Local Government permit status, if applicable;
  - ee. Current land use, and plans for future land use at and proximal to the location;
  - ff. Distance to nearest wetland, surface water, Surface Water Supply Area, or other potentially sensitive water resource receptor, and a description of that receptor;
  - gg. Distance to nearest High Priority Habitat;
  - hh. Anticipated method of right-to-construct and surface ownership.

iii. A narrative description of the proposed site and each alternative location including:



aa. Whether mineral extraction is feasible from the location;

bb. Topographic, geologic, or development features that may exacerbate or mitigate adverse impacts from the location;

hh-cc. A rationale for the selection or non-selection of each location.

**C.** The Director may request that the Operator provide any additional information, or analyze additional locations for the Oil and Gas Location if the Director believes that additional analysis or information is necessary for the Director's and Commission's review of the public health, safety, welfare, environmental, and wildlife impacts of the locations the Operator analyzes.

**D.** In conducting the alternative location analysis, the Director will consider the following criteria:

i. Distance from those features listed in Rule 302.b.(4) and any other sensitive features;

ii. Comparative traffic and transportation infrastructure impacts from each location;

iii. Comparative land disturbance at each location;

iv. Existence of feasibility of accessible infrastructure, including pipelines and electric power;

v. Comparative impacts on wildlife, plant communities, wetlands, and other natural resources;

vi. Comparative impact on water bodies and drinking water sources;

vii. Comparative noise, light, and odor impacts on residents and frequent users of the surrounding area;

viii. Comparative public health concerns from each location;

ix. The degree to which each site allows for impact mitigation measures, such as berms and landscaping;

x. Comparative difficulty of complete reclamation at each location;

**C.E.** If, after conducting the alternative location analysis, the Director finds that a location other than the one proposed by the Operator would be more protective of public health, safety, welfare, the environment and wildlife, the Director will include that determination in the recommendation under Rule 306. If the Relevant Local Government has previously approved a different location, the Operator will be required to obtain local government approval of the alternate site selected by the Director before beginning operations.

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### **305. APPLICATION FOR A DRILLING AND SPACING UNIT.**

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**e.b. Standards for Approval.** In determining whether to recommend that the Commission approve or deny a proposed drilling and spacing unit, the Director will consider whether the proposed drilling and spacing unit:

- (1) Protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and protects against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations, [including with respect to the cumulative impacts of establishing the drilling and spacing unit](#);
- (2) Prevents waste of oil and gas resources;
- (3) Avoids the drilling of unnecessary Wells; and
- (4) Protects correlative rights.

\*\*\*\*\*

**306. Director's Recommendation on the Oil and Gas Development Plan.**

\*\*\*\*\*

**b. Director's Recommendation.**

(1) **Approval.** The Director may recommend that the Commission approve an Oil and Gas Development Plan that:

- A. Complies with all requirements of the Commission's Rules; and
- B. In the Director's judgment, protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and protects against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations, [including with respect to the cumulative impacts of the development proposed in the Oil and Gas Development Plan](#).

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**307. COMMISSION CONSIDERATION OF THE OIL AND GAS DEVELOPMENT PLAN.**

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**b. Commission's Consideration of Director's Recommendation.**

(1) **Approval.** The Commission may approve an Oil and Gas Development Plan that complies with all requirements of the Commission's Rules, and protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and protects against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations, [including with respect to the cumulative impacts of the development proposed in the Oil and Gas Development Plan](#). The Commission may add any conditions to the approval of an Oil and Gas Development Plan that it determines are necessary and reasonable to ensure compliance with all requirements of the Commission's Rules or to protect public health, safety, welfare, the environment, and wildlife resources or to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations.

(2) **Denial.** If the Commission determines that an Oil and Gas Development Plan does not provide necessary and reasonable protections for public health, safety, welfare, the environment,

and wildlife resources, or that it fails to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations or fails to meet the requirements of the Commission's Rules, including with respect to the cumulative impacts of the development proposed in the Oil and Gas Development Plan, the Commission may deny the Oil and Gas Development Plan. The Commission will identify in the record the basis for the denial.

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#### 314. COMPREHENSIVE AREA PLANS.

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##### d. Submission Procedure.

~~One or more Operators (collectively, the "Operator") may apply for a CAP at any time by submitting the application materials specified in Rule 314.e, electronically pursuant to Rule 503.g.(9).~~

~~(1) The Operator will coordinate with the Director to ensure that the Operator submits all information necessary for the Director and Commission to fully evaluate the CAP's cumulative impacts on public health, safety, welfare, the environment, and wildlife.~~

~~(2) At any time after a CAP application is submitted, the Director may request any information necessary to review the CAP application. The Operator will provide all requested information before the Director issues the Director's Recommendation.~~

~~(3) When the Director has obtained all information necessary to fully review the CAP's cumulative impacts on public health, safety, welfare, the environment, and wildlife resources, the Director will make a completeness determination.~~

**Commented [A3]:** See ALGC Prehearing Statement for discussion on the initiation and processing of Comprehensive Area Plans

**OPERATIONS AND REPORTING  
400 SERIES**

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**405. Form 42. FIELD OPERATIONS NOTICE**

Operators will submit a Form 42, Field Operations Notice, as designated below and in accordance with a condition of approval on any Form 2, Application for Permit to Drill; Form 2A, Oil and Gas Location Assessment; Form 4, Sundry Notice; Form 6, Well Abandonment Report; or any other approved form. No Form 42 may be submitted more than 2 weeks prior to the scheduled activity. In each instance below, the Operator will provide the same notice to the LGD in the same timeframe as notice is provided to the Commission.

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**411. PUBLIC WATER SYSTEM PROTECTION**

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**e. Requirements for DCPS Operations at New Oil and Gas Locations in the Intermediate Buffer Zone.**

- (1) The following will be required for all DCPS Operations at New Oil and Gas Locations within the Intermediate Buffer Zone as defined in Table 411-1.
  - A. Flowback and stimulation fluids contained within tanks that are placed on a working pad surface in an area with downgradient perimeter berming;
  - B. Lined berms or other lined containment devices will be constructed in compliance with Rule 603.o around crude oil, condensate, and produced water storage tanks;
  - C. Daily inspection of the Oil and Gas Location for compliance with Rule 411; and
  - D. During drilling and completion operations, the Operator will maintain spill response equipment at the Oil and Gas Location.
- (2) Pits are prohibited within the Intermediate Buffer Zone.

- ~~(3) The following chemicals listed in Table 411-2 are prohibited as additives in Hydraulic Fracturing Fluid within the intermediate buffer zone. This prohibition does not prevent Operators from recycling or reusing produced water that may have trace amounts of chemicals listed in Table 411-2 as Hydraulic Fracturing Fluid. For any chemical constituent for which Table 915-1 provides a standard, the concentration will be below the Table 915-1 standard.~~

**TABLE 411-2. Chemical Additives Prohibited in Hydraulic Fracturing Fluid**

| Ingredient Name |  | CAS #     |
|-----------------|--|-----------|
| Benzene         |  | 71-43-2   |
| Lead            |  | 7439-92-1 |
| Mercury         |  | 7439-97-6 |

**Commented [A1]:** Moved to Rule 208

|   |             |
|---|-------------|
| Arsenic   | 740-38-2    |
| Cadmium   | 7440-43-9   |
| Chromium  | 7440-47-3   |
| Ethylbenzene  | 100-41-4    |
| Xylene  | 1330-20-7   |
| 1,3,5-trimethylbenzene  | 108-67-8    |
| 1,4-dioxane   | 123-91-1    |
| 1-butanol   | 71-36-3     |
| 2-butoxyethanol   | 111-76-2    |
| N,N-dimethylformamide   | 68-12-2     |
| 2-ethylhexanol  | 104-76-7    |
| 2-mercaptoethanol   | 60-24-2     |
| benzene, 1,1'-oxybis-,tetrapropylene derivatives, sulfonated, sodium salts (BOTS) | 119345-04-9 |
| butyl glycidyl ether  | 8-6-2426    |
| polysorbate-80  | 9005-65-6   |
| Quaternary ammonium compounds, dicoco alkyl dimethyl, chlorides (QAC)             | 61789-77-3  |
| Bis hexamethylene triamine penta methylene phosphonic acid (BMPA)                 | 35657-77-3  |
| Diethylenetriamine penta (methylene- phosphonic acid) (DMPA)                      | 15827-60-8  |
| FD&C blue no. 1   | 3844-45-9   |
| Tetrakis (triethanolamino) zirconium (IV) (TTZ)                                   | 101033-44-7 |

(4)(3) DCPS Operations at New Oil and Gas Locations and New Surface Disturbances within the Intermediate Buffer Zone will comply with the requirements of Rule 411.f.

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#### 422. LOCAL GOVERNMENT WELFARE PROTECTION STANDARDS.

Operators will comply with all Local Government requirements, provided such requirements are equivalent to or including regulations that may be more protective or stricter than the Commission's Rules.

#### 423. NOISE

a. Operators will submit a noise mitigation plan that demonstrates their capability of meeting the maximum permissible noise levels described by this Rule 423 as an attachment to their Form 2As, as required by Rule 304.c.(2). The noise mitigation plan will include at least the following information:

(1) An explanation of how the Operator will comply with the maximum permissible noise levels specified in Rule 423.b.(1). This is to include a description of methods to design acoustical mitigation measures or choose/site equipment appropriately such that the Operator has a reasonable expectation of compliance. Operators must update the noise mitigation plan any time a piece of equipment is changed or replaced.

(2) Estimated noise levels by stage of operation, including drilling completion, flowback, production, and an estimate of time duration for each day; estimates must be supported by detailed information regarding the methods, procedures, reference information, and results underlying the estimates;

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- b. A preliminary plan for how the Operator will conduct background ambient noise surveys to establish baseline conditions for noise levels on the site, for both A-scale and C-scale noise. The Director may require as a Condition of Approval on the Form 2A that the Operator conduct the background ambient noise survey between 30 and 90 days prior to start of construction and update the plan accordingly based on the results. Operators will conduct baseline noise surveys at the noise points of compliance identified pursuant to Rule 423.a.(5). When an Operator conducts a background ambient survey the Operator will follow the same approach as outlined in Rule 423.c.(7) and over a 72-hour period, including at least 24-hours between 10:00 p.m. on a Friday and 4:00 a.m. on a Monday. A single cumulative daytime ambient noise level and a single cumulative nighttime ambient noise level will be established by taking the logarithmic average of all daytime or nighttime 1-hour Leq values measured and in accordance with the sound level data collection requirements pursuant to the maximum permissible noise levels.

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~~(2) Drilling or completion operations, including flowback, in Residential/Rural or Commercial/Agricultural, maximum permissible noise levels will be 60 db(A) in the hours between 7:00 p.m. to 7:00 a.m. and 65 db(A) in the hours between 7:00 a.m. and 7:00 p.m. unless otherwise required by Rule 423.~~

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- c. To demonstrate compliance with Rule 423.b.(1) and Rule 423.d.(3) Operators will measure sound levels according to the following standards:

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(5) Operators will determine sound levels by logarithmic averaging minute-by-minute measurements made over a minimum 1 hour sample duration.

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- d. **Cumulative Noise.** All noise measurements will be cumulative.

- (1) Noise measurements taken at noise points of compliance designated pursuant to Rule 423.a.(5) will take into account ambient noise, rather than solely the incremental increase of noise from the facility targeted for measurement.
- (2) At new or substantially modified Oil and Gas Locations where ambient noise levels at noise points of compliance designated pursuant to Rule 423.a.(5) already exceed the noise thresholds identified in 423.b.(1), then Operators will be considered in compliance with Rule 423, unless at any time their individual noise contribution, measured pursuant to Rule 423.c, increases noise above ambient levels by greater than ~~5 dBC and 54~~ dBA between 7:00 p.m. and 7:00 a.m. or ~~7 dBC and 74~~ dBA between 7:00 a.m. and 7:00 p.m. This Rule 423.d.(2) does not allow Operators to increase noise above the maximum cumulative noise thresholds specified in Rule 423.d.(3) after the Commencement of Production Operations. Increases of dbC levels above the maximum permissible levels in Rule 423.b.(1) are never permitted.

**Commented [A2]:** This provision may need re-consideration based on the ALGC's overall comments regarding evaluation of cumulative impacts. These redlines are offered to improve the rule, but may be a starting place only.

- (3) After the Commencement of Production Operations, if ambient noise levels already exceed the maximum permissible noise thresholds identified in 423.b.(1), under no circumstances will new Oil and Gas Operations or a significant modification to an existing Oil and Gas Operations raise cumulative ambient noise above:

| LAND USE  | 7:00 am to next 7:00 pm | 7:00 pm to next 7:00 am |
|---|-------------------------|-------------------------|
| Residential /Rural/State Parks/State Wildlife Areas | 65 db(A)                | 60 db(A)                |
| Commercial/Agricultural                             | 70 db(A)                | 65 db(A)                |
| Light Industrial                                    | 80 db(A)                | 75 db(A)                |
| Industrial  | 90 db(A)                | 85 db(A)                |
| All Zones   | 705 db(C)               | 6570 db(C)              |

- e. If Oil and Gas Operations result in persistent noise that adversely impacts public welfare, the Director may require the Operator to take action pursuant to Rule 901.a.

#### 424. LIGHTING

- a. Operators will submit a light mitigation plan as an attachment to their Form 2As, as required by Rule 304.c.(3).

- (1) All light mitigation plans will be certified by a qualified professional.

- (2) All light mitigation plans will address:

- A. A pre-production facility lighting plan demonstrating compliance with Rule 424.c, and:
  - i. That provides adequate lighting to ensure safety during active operations involving personnel without adversely impacting public health, safety, welfare, the environment and wildlife resources; and
  - ii. The proposed anticipated location, mounting, height, hours of operation, and orientation of all outdoor lighting fixtures on the site during pre-production activities.
- B. A production facility lighting plan demonstrating compliance with Rule 424.d and 424.e, and:
  - i. The location, mounting, height, hours of operation, and orientation of all outdoor lighting fixtures on the site;
  - ii. A table that calculates the total lumen output of all fixtures combined; and
  - iii. Cut sheets of light fixtures that demonstrate Backlight, Uplight, and Glare (BUG) rating, lumen output, and fully shielded design; and
  - iv. For any location with a building unit within 2,000 feet, a A photometric model estimating or calculating the lumens at 100 feet outside the facility boundary;
- C. The Operator's capability of meeting all requirements of this Rule 424;

D. The location of the nearest building or area listed in Rules 424.c and 424.d; and

b. **Lighting Standards for all Phases.**

(1) Operators shall use full cut-off, fully shielded light fixtures;

(4)(2) Operators ~~will~~ shall direct site lighting downward and inward, such that no light shines above a horizontal plane passing through the center point light source.

(3) Operators ~~will~~ shall use appropriate technology within fixtures that obscures, blocks, or diffuses the light to reduce light intensity outside the boundaries of the Oil and Gas Facility.

(2)(4) Operators shall install low-glare or no-glare lighting;

(3) (5) Operators ~~will~~ shall use all additional Best Management Practices required by the COGCC or local government permit to minimize light pollution and obtrusive lighting, which may include, but are not limited to:

A. ~~M~~ minimizing lighting when not needed using timers or motion sensors;

B. Using full cut-off lighting;

C. Using lighting colors that reduce light intensity; and

D.B. Using low-glare or no-glare lighting.

c. **Pre-Production and Maintenance Facility Lighting.**

(1) At all Oil and Gas Facilities with active operations involving personnel, Operators will provide sufficient on-site lighting to ensure the safety of all persons on or near the site while protecting public health, safety, welfare, the environment and wildlife resources.

(2) If the facility has a noise barrier, Operators will locate the facility lighting beneath the noise barrier, except for drilling rig lights, which will be shielded and in compliance with Federal Aviation Administration permit requirements if applicable. Operators will take precautions to ensure that lights do not shine out of openings in the noise barrier.

(3) Prior to the Commencement of Production Operations, Operators will take all necessary and reasonable precautions to ensure that lighting from Oil and Gas Facilities does not unnecessarily impact the health, safety, and welfare of any of the following:

A. Persons occupying Building Units within 2,000 feet of the Oil and Gas Facility;

B. Motorists on roads within 2,000 feet of the Oil and Gas Facility; and

C. Wildlife occupying any High Priority Habitat within 2,000 feet of the oil and gas facility.

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d. **Production Phase Facility Lighting in Certain Areas.** At all Oil and Gas Facilities, after the Commencement of Production Operations, Operators will develop site lighting to reduce nighttime light intensity from an Oil and Gas Facility to 1 lumen at any of the following locations within 2,000 feet, measured at 5.5 feet above grade in a direct line of sight to the brightest light fixture onsite:

- (1) The outer wall of any residential Building Unit;
- (2) The outer wall of any High Occupancy Building Unit;
- (3) The outside boundary of any High Priority Habitat or State Wildlife Area; and
- (4) The outside boundary of any Wilderness Area, National Park, National Monument, or State Park.

e. **Production Phase Facility Lighting in Other Areas.** At all Oil and Gas Facilities not located in the areas specified by Rule 424.d, after the date of first production, Operators will develop site lighting to reduce nighttime light intensity from an Oil and Gas Facility to 3 lumens at any of the following locations within 2,000 feet, measured at 5.5 feet above grade in a direct line of sight to the brightest light fixture:

- (1) Any industrial building;
- (2) Any commercial building; and
- (3) Any public road or highway.

f. **Cumulative Light Impacts.** Operators will develop site lighting to reduce cumulative nighttime light intensity from all Oil and Gas Facilities to 4 lumens at any residential Building Unit or High Occupancy Building Unit within 1 mile of any Oil and Gas Facility, measured at 5.5 feet above grade in a direct line of sight to the brightest light fixture onsite.

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**Commented [A5]:** The ALGC requests information from COGCC staff regarding these measures and distances and reserves the right to suggest changes upon review of that information

**Commented [A6]:** As written, this is neither consistent with the ALGC's suggestions on cumulative impacts analysis and management, nor sufficiently protective. This provision needs re-evaluation in light of the overall approach to evaluating cumulative impacts.

## RULES OF PRACTICE AND PROCEDURE (500 SERIES)

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### 502. VARIANCES

- a. **Variances Sought from Director.** ~~Upon written request from the Operator, Variances from~~ any Commission Rule, regulation, or order may be granted in writing by the Director ~~without a hearing only~~ if the ~~Director determines that the~~ request does not implicate ~~requirements that protect~~ public health, safety, welfare, the environment, or wildlife resources, ~~without a hearing upon written request by an Operator to the Director.~~
- b. **Variances Sought from Commission.** ~~An Operator or Applicant authorized by these Rules may file an application with the Commission for a~~ Variances from any Commission Rule, regulation or order not ~~covered by Rule 502.a. applied for pursuant to Rule 502.a., may be granted by the Commission or after a hearing upon application. For purposes of seeking a variance from the Commission, only the Operator or an applicant authorized by the Commission's Rules, may file an application seeking the Commission's approval of a variance.~~
- c. The Operator or the applicant requesting a variance pursuant to Rule 502.a. or Rule 502.b. ~~will make a showing~~ shall demonstrate that it has made a good faith effort to comply, or is unable to comply with the specific requirements contained in the Commission Rule, regulation, or order, from which it seeks a variance. ~~Good faith efforts,~~ including, without limitation, securing a waiver or an exception, if any. ~~The Operator or Applicant shall demonstrate that and that~~ the requested variance will ~~not violate the basic~~ further the intent of the Act, ~~will minimize~~ adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and ~~protects against~~ will not cause adverse environmental impacts on any air, water, soil, or biological resource.

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### 525. ASSESSING PENALTIES IN ENFORCEMENT MATTERS

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- c. **Penalty Calculation.** The base penalty for each violation will be calculated based on the Commission's Penalty Schedule which considers the severity of the potential consequences of a violation of a specific rule combined with an assessment of the degree of actual or threatened adverse impacts to public health, safety, and welfare, including the environment and wildlife resources. Pursuant to § 34-60-121(1)(a), the maximum daily penalty cannot exceed \$15,000 per day per violation.

~~(4) — Penalty adjustments based on duration of violation. In its discretion, the Commission, an Administrative Law Judge, or Hearing Officer may decrease the daily penalty amounts for violations of long duration to ensure the total penalty is appropriate to the nature of the violation.~~

**SAFETY AND FACILITY OPERATIONS REGULATIONS  
600 SERIES**

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**604. SETBACKS.**

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**c. Building Units.**

- (1) No Working Pad Surface will be located less than 500 feet from 1 or more residential Building Unit not subject to a Surface Use Agreement or Waiver from the Building Unit owner explicitly agreeing to the proposed Oil and Gas Location siting.
- (2) No Working Pad Surface will be located less than ~~4,500~~2,000 feet from ~~10~~ or more residential Building Units or 1 High Occupancy Building Unit, unless the Commission finds, after a hearing pursuant to Rule 510, that the location can be approved because the Commission has developed conditions of approval that protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

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