Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. 1R Docket No. 151100667
Governor's Task Force Rulemaking
100-Series Rules and Rules 302.c., 303.b.(3)K., 303.c., 305A, 305.a., 305.d., 306.d.(1), 604.b.(1), and 604.c.(4)

This statement sets forth the basis, specific statutory authority, and purpose for new rules and amendments ("Governor's Task Force Rules" or "Task Force Rules") to the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC") Rules of Practice and Procedure, 2 CCR 404-1 ("Rule" or "Commission rules"). The Commission promulgated the Governor's Task Force Rules on January 25, 2016.

The purpose of the Governor's Task Force Rulemaking is to implement Recommendation Nos. 17 and 20 of the Governor's Task Force on State and Local Regulation of Oil and Gas Operations ("Task Force"). To implement these Recommendations, the Commission has adopted a new definition in the 100-Series Rules and new Rules 302.c., 305A, 305.a.(3), and 604.c.(4), as well as amended Rules 303.b.(3)K., 303.c., 305.a.(1), 305.d., 306.d.(1), and 604.b.(1).

To promulgate the Governor's Task Force Rules, the Commission relied on the administrative record for the rulemaking proceedings, which formally began on October 7, 2015, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

I. Background

A. Executive Order B 2014-005

On September 8, 2014, the Governor issued Executive Order B 2014-005, "Creating the Task Force on State and Local Regulation of Oil and Gas Operations." This Executive Order identified a need for state and local jurisdictions, operators, and the public to discuss the complex issues surrounding increased oil and gas activity near communities.

The Task Force was comprised of 21 members who represented various stakeholder groups, including the oil and gas industry, agriculture, home-builders, local governments, citizen advocates, and the conservation community. Executive Order A 2014-203 "Members: Task Force on State and Local Regulation of Oil and Gas Operations" identified the individuals selected for membership on the Task Force.

The Executive Order directed the Task Force to recommend "policy or legislation to harmonize state and local regulatory structures" with objectives that included

fostering oil and gas development and protecting public welfare and the environment. To become recommendations to the Governor, Task Force proposals required approval of two-thirds of the membership. The report containing the recommendations was due to the Governor no later than February 27, 2015.

B. Task Force Recommendations

On February 24, 2015, a two-thirds majority of the Task Force approved nine recommendations. Two of these recommendations required action by other agencies (Recommendation Nos. 41 and 31b) and two required action of the General Assembly (Recommendation Nos. 27 and 49). Five recommendations required action by the Commission. Recommendation Nos. 25, 37, and 52b did not require rulemaking. However, the Task Force contemplated that Recommendation Nos. 17 and 20 would require the Commission to adopt implementing rules.

Recommendation No. 17, "Recommendation to Facilitate Collaboration of Local Governments, Colorado Oil and Gas Conservation Commission and Operators Relative to Oil and Gas Locations and Urban Planning," outlines a consultation process to facilitate a dialogue between operators and local governments when an operator proposes to locate a large oil and gas facility in an Urban Mitigation Area, as defined in Commission rules.

Recommendation No. 20, "Recommendation to Include Future Oil and Gas Drilling and Production Facilities in Existing Local Comprehensive Planning Processes," encourages local governments to integrate future oil and gas development into community planning and operators to consider community planning in proposing future oil and gas development.

Recommendations Nos. 17 and 20 were unanimously approved by the Task Force. These recommendations are attached as exhibits to this Statement of Basis and Purpose.

C. Stakeholder and Public Participation

Throughout July and August of 2015, Commission Staff held 11 outreach meetings across Colorado to hear from interested stakeholders about how Recommendation Nos. 17 and 20 could be implemented effectively.

Thirty-nine local jurisdictions participated in meetings hosted by the City of Brighton, City and County of Broomfield, and the Counties of Garfield, Weld, and La Plata. Commission Staff also met with environmental groups, citizen advocacy groups, and industry trade associations. Attendees included Conservation Colorado, Battlement Mesa Concerned Citizens, Grand Valley Citizens Alliance, Weld Air and Water, Windsor Neighbors for Responsible Drilling, Western Colorado Congress, Western Resource Advocates, Colorado Oil and Gas Association (COGA), American

Petroleum Institute, Colorado Petroleum Association, La Plata County Energy Council, and West Slope COGA.

Outreach meeting participants shared their perspectives on the potential impact of the new rules and proposed ideas for Commission Staff to consider in the drafting of proposed implementing rules. Several of these groups submitted written comments in preparation for or as a result of these meetings. Staff did not begin drafting the proposed rules until the outreach meetings had concluded. In its drafting of the proposed rules, Staff carefully considered the opinions of all groups and deliberated on its options within the purview of the Recommendations' language.

After releasing a draft of the proposed Governor's Task Force Rules, the Commission Staff solicited input from the public, as well as interested individuals and organizations, during stakeholder meetings held on October 14, 15, and 16, 2015. Staff invited and accepted written and oral comments regarding the proposed amendments during the stakeholder meetings.

Staff released the second draft proposed rules on October 23, 2015, a third draft on December 2, 2015, and its Final Proposed Rules on January 12, 2016. On January 22, 2016, Staff circulated a few final changes to the Final Proposed Rules based on party responses to the Final Proposed Rules. Staff released drafts of the Statement of Basis, Specific Statutory Authority, and Purpose on October 28, 2015, and January 20, 2016. In response to requests, Staff prepared and released a Cost Benefit & Regulatory Analysis on November 6, 2015.

The Commission encouraged public participation in the Governor's Task Force Rulemaking by allowing the public to comment on the proposed rules in advance of and during the November 16-17, 2015 hearing. Seventy-two persons and organizations participated in the Rulemaking as parties. Parties had the opportunity to submit prehearing statements, including alternative rule language, to respond to other parties' prehearing statements, and to submit responses to the Final Proposed Rules prior to the Commission hearing on January 25, 2016. The Commission received testimony from parties during the hearings on November 16-17, 2015, December 7, 2015, and January 25, 2016.

II. Statutory Authority and Identification of New and Amended Rules

The Commission's authority to promulgate the Governor's Task Force Rules derives from the following sections of the Colorado Oil and Gas Conservation Act ("Act"), Sections 34-60-101 – 130, C.R.S.:

- Section 34-60-102(1)(a)(I), C.R.S. (Commission is tasked with fostering responsible, balanced development in a manner consistent with protection

of public health, safety, and welfare, including protection of the environment and wildlife resources);

- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules);

- Section 34-60-105(2)(a), C.R.S. (Commission has the authority to regulate the drilling, producing, and plugging of wells and all other operations for the production of oil or gas);

- Section 34-60-106(2)(d), C.R.S. (Commission has authority to regulate "Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility");

- Section 34-60-106(11)(a)(II), C.R.S. (Commission has authority to promulgate rules that protect the health, safety, and welfare of the general public in the conduct of oil and gas operations); and

- Section 34-60-108, C.R.S. (Commission has authority and procedure to adopt rules).

To implement Task Force Recommendation Nos. 17 and 20 consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission added or amended the following Rules: 100-Series, Rule 302.c., 303.b.(3)K., 303.c., 305A, 305.a.(1), 305.a.(3), 305.d., 306.d.(1), 604.b.(1), and 604.c.(4).

III. Purpose and Intent of the Governor's Task Force Rules

The Commission's primary purpose in promulgating the Governor's Task Force Rules is implementing the Task Force's Recommendation Nos. 17 and 20.

The sections below discuss key provisions of the two Recommendations and describe the Commission's purpose in adopting specific new or amended Rules to implement that aspect of the Recommendation. Where appropriate, the Commission discusses alternatives proposed by Staff or parties and explains the bases for the rule language it ultimately adopted. As noted, Recommendation Nos. 17 and 20 are attached as exhibits to this Statement of Basis and Purpose.

A. Task Force Recommendation No. 17: To Facilitate Collaboration of Local Governments, Colorado Oil and Gas Conservation Commission and Operators Relative to Oil and Gas Locations and Urban Planning

Recommendation No. 17 proposed a Commission rulemaking to address local government collaboration with operators concerning locations for "Large Scale Oil and Gas Facilities" in "Urban Mitigation Areas" as defined in Commission rules. The Recommendation proposed that the Commission address three related issues through rulemaking: (1) "define and adopt a process for enhancing local government participation during the COGCC [permitting process] concerning location(s) of Large Scale Oil and Gas Facilities in Urban Mitigation Areas"; (2) "define what constitutes 'Large Scale Oil and Gas Facilities' taking into consideration scale, proximity, and intensity criteria"; and (3) address the authority of and procedures to be used by the Director to regulate the location of Large Scale Oil and Gas Facilities for the purpose of reducing impacts and conflicts with communities, including siting tools to locate facilities away from residential areas when feasible, and mitigation measures to lessen the impacts on neighboring communities.

The Recommendation proposed creating a process "intended to provide interested local governments a defined and timely opportunity to participate in the siting of such large-scale multi-well oil and gas production facilities before an Operator finalizes such locations." To facilitate early resolution of siting concerns in urban areas, the Recommendation proposed that an "Operator must offer to meet with the [Local Governmental Designee] and a designated representative of the COGCC to seek local government consultation concerning locations for . . . large-scale facilities." If accepted by the local government, "the first meeting begins a collaboration by which the Operator and the local government, and recognizing the requests and concerns of the surface owner on whom such facilities may be located, can agree on the site location and operational practices."

Recommendation No. 17 recognized that an agreement between the local government and an operator could take many forms, several of which are listed in the Recommendation. Obtaining a local government land use permit is one of the options, as is "any other mechanism in which agreement is established."

The Recommendation proposed that the operator and local government would work towards a compromise concerning locations, and the operator would submit a siting agreement when it submitted its Form 2A, Oil and Gas Location Assessment. The consultation process is intended to allow local governments to receive advance notice from operators and begin discussions regarding siting large facilities prior to the operator's selection and finalization of a location and commencement of the Commission permitting process.

Recommendation No. 17 did not intend for new Commission rules to alter any existing land use authority local governments may have over oil and gas operations.

The implementing rules for Recommendation No. 17 adopted by the Commission define "Large Urban Mitigation Area Facility;" incorporate the local government consultation into the Commission's approval process for Form 2A, Oil and Gas Location Assessments; and broadly outline both mandatory and site-specific best management practices and mitigation measures that the Commission will or may require as conditions of approval on a Large UMA Facility's Form 2A.

B. Task Force Recommendation 20: Recommendation to Include Future Oil and Gas Drilling and Production Facilities in Existing Local Comprehensive Planning Processes

Recommendation No. 20 proposed Commission rulemaking to address operator registration and information-sharing with municipal Local Government Designees ("LGDs") regarding "Future Oil and Gas Drilling and Production Facilities" for the purpose of incorporating those plans into "Existing Local Comprehensive Planning Processes." The Recommendation proposed that "[b]eginning on January 1, 2016, all operators registered with the COGCC shall also register with the LGD of each municipality in which it has current or planned oil and gas operations."

The Recommendation further provided that, at the request of the municipal LGD, the operator would provide the following information with a copy to the COGCC Local Government Liaison ("LGL"): (1) "Based on the current business plan of the operator, a good faith estimate of the number of wells (not including non-operated wells) that such operator intends to drill in the next five years in the municipal jurisdiction, corresponding to the operator's internal analysis of reserves classified as 'proven undeveloped' for SEC reporting purposes;" and (2) "A map showing the location of the operator's existing well sites and related production facilities; sites for which operator has, or has made application for, COGCC permits; and, sites identified for development on the operator's current drilling schedule for which it has not yet made application for COGCC permits."

Pursuant to the Recommendation, "the plan provided to the LGD is acknowledged to be subject to change at the operator's sole discretion, and shall be updated by the operator if materially altered." The Recommendation also proposed that participating municipalities "prepare a comprehensive map of the future drilling and production sites within its jurisdiction," which they would provide to the registered operators and LGL. The municipality would identify the following on the comprehensive map: "sites that it considers compatible with the current and planned future uses of the area; sites where it anticipates minor issues to be resolved by negotiation with the operator; and, sites where it anticipates significant conflicts with current and planned future uses."

The implementing rules for Recommendation No. 20 adopted by the Commission define "municipal local jurisdiction" to mean "a home rule or statutory city, town, territorial charter city, or combined city and county;" incorporate operator registration with municipal local jurisdictions and counties into Rule 302 (Registration for Oil and Gas Operations); and describe the information that operators are required to provide to municipal local jurisdictions.

IV. The Commission's Implementing Rules for Recommendation No. 17

A. 100-Series Definition of "Large UMA Facility"

Recommendation No. 17 required the Commission to define a "Large Scale Oil and Gas Facility" which, when proposed to be located within an "Urban Mitigation Area," triggers the consultation process between an operator and the local government with land use authority over the proposed site. The Commission was further directed to formulate this definition by considering "scale, proximity, and intensity criteria." "Large UMA Facility" is now defined in the 100-Series Rules.

The definition of a "Large UMA Facility" triggers the local government consultation process and consideration of specified mitigation measures and best management practices, but it does not limit either the size or location of a proposed oil and gas facility.

1. Selection of the Defining Metrics for a "Large Scale Oil and Gas Facility"

Commission Staff considered many different possible metrics by which to appropriately define a Large UMA Facility, informed by internal experience and input from stakeholders.

Among the metrics Staff considered were: (1) duration of twenty-four hour drilling or completion operations; (2) the total number of wells proposed for a location; (3) the total number of storage tanks proposed for a location; (4) the number and size of production equipment proposed for a location; (5) the distance from the location to building units including homes and schools; (6) the size of the proposed location; (7) the cumulative time to complete either a phase or the entire development; (8) the capacity of uncontrolled actual emissions; (9) the maximum planned "barrels of oil equivalent" production from the location; (10) the planned total length of wellbore perforations; (11) the mineral acreage planned to be drained; (12) the maximum number of truck trips; (13) the number of personnel likely to be on site; (14) total wellbore length; and (15) the total engine horsepower anticipated to be on site. Staff also considered using a matrix of several different metrics to define a Large UMA Facility. Such a matrix would assign different "weight" to different metrics, or might use a point system for different values based on a specific metric.

In addition to the metrics noted above, many stakeholders stated that a "large facility" should be defined by the impacts of a facility to the surrounding area. Generally speaking, however, anticipated impacts are difficult to quantify, especially prior to constructing a location. Moreover, the anticipated impacts generally correlate to other, more objective metrics, such as the number and size of proposed wells on a site, which are easier to quantify at an early planning stage than "impacts."

Commission Staff concluded that the metrics by which to define a Large UMA Facility should be objective, easy to determine and verify, and available early in the operator's planning or Form 2A application process. In addition, Staff concluded that many of the possible metrics overlap to some extent. For example, the number and size of proposed wells correlates closely to both the potential truck trips and to the likely volume of production. Accordingly, Staff determined that a matrix was not advantageous, and that a few key metrics would provide a large percentage of the information most pertinent to determining the size and potential impacts of a proposed Oil and Gas Location.

Stakeholders generally agreed that the defining metrics need to be easily analyzed in advance of drilling and subject to limited changes during the planning and construction process. The defining metrics also need to be flexible enough to accommodate Oil and Gas Locations proposed in different basins using different technology.

After due consideration, the Commission settled on two metrics as the most effective surrogates for most of the other metrics proposed and considered. The Commission defined Large UMA Facility with reference to: (1) the number of all new wells planned for the location; and (2) the cumulative new and existing on-site storage capacity for produced hydrocarbons. A location proposed to be located within an Urban Mitigation Area at which **either** the operator proposes 8 or more new wells (regardless of whether the wells are vertical, directional, or horizontal, and irrespective of the total measured depth of the wells) **OR** the cumulative new and existing on-site storage capacity for produced hydrocarbons exceeds 4,000 barrels constitutes a Large UMA Facility; a proposed location does not need to meet both metrics to be considered a Large UMA Facility.

The Commission concluded these metrics correlate most directly with anticipated potential impacts to adjoining areas during both the drilling and completion phases of an oil and gas facility. These metrics typically are known early in the planning process, and are easy to measure and verify. The number of proposed wells encompasses vertical, directional, and horizontal wells of different lengths. In addition, including both new and existing storage capacity for produced

hydrocarbons will include the situation where an operator adds fewer than 8 wells – and therefore needs more storage capacity – at an existing location.

Many stakeholders urged the Commission to expand the definition of Large UMA Facility or Urban Mitigation Area to include less densely populated areas. Alternatively, stakeholders asked that the Commission require the consultation and mitigation procedures for "Large Scale Oil and Gas Facilities" located outside of Urban Mitigation Areas as currently defined. The Commission feels that the Task Force carefully considered, and deliberately limited, the scope of Recommendation No. 17 to apply strictly within Urban Mitigation Areas as currently defined. Because Recommendation No. 17 was very specific, the Commission has determined to adhere to the scope envisioned by the Task Force.

The Commission defined "Large UMA Facility" with reference to the definition of "Oil and Gas Location," which refers to an "oil and gas facility." "Oil and gas facility" is defined to include equipment or improvements used for the gathering of oil or natural gas. The Commission did not intend to consider ancillary portions of an Oil and Gas Location, such as pipeline rights of way or lease roads, when determining whether a proposed facility is a Large UMA Facility. Similarly, the Commission did not intend to include midstream gathering systems in evaluating whether a facility meets the Large UMA Facility definition.

2. Eight or More New Wells

A location qualifies as a Large UMA Facility if the operator proposes to drill 8 or more new wells at the location. The number of new wells is known early in the planning process and easy to measure and verify. It includes all new horizontal, vertical, or directional wells. Some stakeholders expressed the concern that this metric only focused on new wells proposed for an existing location, and not the number of both new and existing wells. For this metric, the Commission was largely concerned with the potential impacts from the drilling and completion phases, such as noise, lighting, and truck traffic. These impacts are almost exclusively associated with drilling new wells and do not necessarily aggregate with existing wells.

Stakeholders also expressed concern that operators would seek to avoid the "Large UMA Facility" designation by permitting fewer than 8 wells at a location, but coming back later to add more, or permitting another, smaller facility nearby, resulting in many smaller locations concentrated in an area. The Commission is generally aware of the number of wellbores required for effective horizontal development of a given acreage, and also routinely imposes limits on the number of surface locations within a spacing unit. The Commission does not intend to allow an operator to avoid qualifying as a Large UMA Facility by strategically permitting fewer wells on a number of different surface locations, or coming back repeatedly to add wells to an existing location. The Commission will closely monitor development

plans for any indication an operator is building multiple, smaller locations to avoid the Large UMA Facility designation.

3. Total Cumulative New and Existing Hydrocarbon Storage Capacity

A proposed oil and gas location at which the cumulative new and existing on-site storage capacity for produced hydrocarbons exceeds 4,000 barrels also constitutes a Large UMA Facility. Total cumulative on-site hydrocarbon storage capacity of 4,000 barrels is approximately equivalent to eight 500-barrel tanks or thirteen 300-barrel tanks.

Staff proposed a lower threshold for hydrocarbon storage capacity than for wellbore length to incentivize operators to transfer hydrocarbons off-site via pipeline rather than truck. On-site storage tanks are serviced by truck traffic; have potential to emit methane and volatile organic compounds; and have visual impacts. Storage tanks also are required to be used for as long as the wells on location continue to produce – although the storage capacity may be reduced as production diminishes over time. Conversely, using pipelines will eliminate or minimize truck traffic. Consequently, the Commission elected to use a lower storage tank capacity to define a Large UMA Facility.

The Commission chose to not include produced water tanks in the storage capacity metric because those tanks are typically smaller than oil tanks, have lower potential emissions, and are frequently buried partially below grade, which minimizes visual impacts. The Commission rarely receives complaints regarding produced water tanks.

Some stakeholders expressed concern that operators could avoid a Large UMA Facility designation by using fewer storage tanks and emptying tanks more often, which potentially could increase truck traffic. Ultimately, the number of truck trips required is a function of the production capacity of the wells on location, not the storage volume. Less storage capacity would necessitate that trucks make more frequent trips, but not more total trips. Under-sizing storage capacity would create operational difficulties that would dis-incentivize operators from using this tactic to avoid qualifying as a Large UMA Facility.

B. Local Government Notification and Consultation for Large UMA Facilities – Rule 305A.a.-.d.

Recommendation No. 17 tasked the Commission with creating a process "to provide interested local governments a defined and timely opportunity to participate in the siting of such large-scale multi-well oil and gas production facilities, before an Operator finalizes such locations." Unless the operator already has an agreement with the local government concerning the location, "an Operator must obtain local

government consultation during the Operator's COGCC APD approval process concerning such facilities in Urban Mitigation Areas."

The Recommendation provides that the consultation process is not required if the operator and local government have "already negotiated an MOU [Memorandum of Understanding], site plan review, or have otherwise agreed on the location of a multi-well production facility." If no prior agreement exists and the local government accepts the offer to consult, Recommendation No. 17 envisioned "a collaboration by which the operator and the local government, and recognizing the requests and concerns of the surface owner on whom such facilities may be located, can agree on site location and operational processes."

The Commission adopted new Rule 305A to implement the Task Force's recommended consultation process between an operator proposing a Large UMA Facility and the local government with land use authority over the proposed facility. With certain exceptions, Rule 305A requires an operator to notify and offer to consult with the local government with land use authority and the surface owner prior to finalizing the location with the surface owner, and prior to submitting a Form 2A for a Large UMA Facility to the Commission. The goal of this consultation process is for the operator and the local government with land use authority to reach agreement on a proposed location for the Large UMA Facility.

Rule 305A provides that an agreement between an operator and the local government with land use authority may take virtually any form; the Rules do not prescribe a specific consultation process.

The details of specific provisions of Rule 305A are discussed below.

1. Notice of Intent to Construct a Large UMA Facility – Rule 305A.a.&b.

The Task Force Rules require an operator to provide a written Notice of Intent to Construct a Large UMA Facility ("NOIC") to the local government with land use authority over the proposed site not less than 90 days prior to initiating the Form 2A process with the Commission, and before the operator has finalized a specific location with the surface owner. **Rule 305A.a.** The Form 2A process is initiated by an operator sending the pre-application notices required by Rule 305.a. The operator must also provide the NOIC to the surface owner of the lands on which a Large UMA Facility is proposed. **Rule 305A.a.(1)B.**

During outreach meetings, stakeholders proposed 90, 120, and 180 days prior to the submission of a Form 2A as a reasonable time frame for notification. Local governments noted that they would need enough time to review the notification and be able to participate without shortening the time for consultation. The Commission adopted 90 days before initiating the Form 2A process as the minimum time frame

for operators to notify the required parties in Rule 305A.a. In many cases, it will benefit the operator to begin collaborating with a local government much farther in advance than 90 days. Thus, operators are encouraged to view 90 days as a floor and not a ceiling for beginning outreach to local governments for a Large UMA Facility.

Some stakeholders suggested that if the local government requires a land use permit, the 90-day time period should not commence until an operator submits a complete land use application for review. Local governments have different processes and will apply these rules in the way that works best for them. Therefore, the Commission determined that a complete application triggering the 90-day time period would create unnecessary complication both for Staff and for local governments and may call for a level of detail in the application that is not readily available to an operator early in the consultation process.

The Task Force Rules require that the consultation occurs before the operator has finalized a specific location with the surface owner. Some stakeholders expressed concern that this would limit an operator's ability to enter into a surface use agreement with a surface owner prior to engaging in the consultation process. However, operators can still execute surface use agreements and include language that clarifies that the surface use agreement is subject to regulatory approval. In addition, the state's evaluation of a location and alternate locations will not be limited or bound by the existence of a surface use agreement; however, the state will consider relevant provisions of an existing surface use agreement when evaluating the location of a proposed Large UMA Facility.

Local government and citizen stakeholders expressed strong interest in being provided with information about the possible alternative locations outside of an Urban Mitigation Area considered by an operator. The Commission believes an Urban Mitigation Area should be the last choice in which to locate a large multi-well oil and gas facility. At the same time, the Commission recognizes that an operator may have a property right to access the surface above its mineral estate, and other locations that would allow economic recovery of the minerals may not be available.

To afford local governments and citizens an opportunity to understand an operator's siting rationale, new Rule 305A.b.(2) requires an operator to provide "a description of the siting rationale for proposing to locate the facility within the Urban Mitigation Area, including a description of other sites considered and the reasons such alternate sites were rejected." **Rule 305A.b.(2).** While such a description need not be overly elaborate, it should identify any other sites considered by the operator and should clearly articulate reasons those sites were ruled out.

A majority of local governments and many citizen groups supported a notice and meeting or consultation process for local governments whose boundaries are within 1,000 feet, ½ mile, or one mile of a proposed Large UMA Facility ("Proximate Local Governments"). Industry stakeholders and some local governments opposed any requirement for an operator to notify or meet with Proximate Local Governments. These stakeholders contend any such requirement exceeds what the Task Force recommended in Recommendation No. 17. Further, these stakeholders expressed concern that Proximate Local Governments would leverage a meeting requirement into "standing" to either request a hearing or otherwise interfere with the land use approval process of the local government where the Large UMA Facility is located.

The Commission determined that Proximate Local Governments whose citizens may be affected by a Large UMA Facility should receive written notice from the operator 45 days before the operator submits the Form 2A. This ensures the local governments can engage their citizens and participate in the public comment process in Rule 305.d. to provide input on the proposed Large UMA Facility. **Rule 305.a.(3).** In addition, if the Proximate Local Government submits comments that are reasonably related to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources that are within the Commission's jurisdiction to remedy, the Director will respond to those comments in writing. **Rule 305.a.(3).B.** Although Recommendation No. 17 did not expressly contemplate requiring operators to provide notice to Proximate Local Governments, the directive to reduce conflicts between all parties regarding impacts from large-scale oil and gas operations in Urban Mitigation Areas was clear. The Recommendation also specified that the Commission should consider mitigations to lessen impacts on "neighboring communities." Providing Proximate Local Governments notice of the opportunity to comment on a Large UMA Facility is consistent with these objectives.

Several stakeholders requested that operators be required to notify citizens around a proposed Large UMA Facility concurrently with notifying the local government with land use authority. Stakeholders suggested the operator notify citizens within 1,500 feet of a proposed Large UMA Facility. The Commission determined that, consistent with the new Rule 305A and amended Rule 305.a.(1), local governments that receive notice that an operator will propose a Large UMA Facility can determine how or whether to notify nearby residents. Local governments have different methods and requirements for notifying local residents.

Additionally, as with all proposed locations, operators are still obligated to notify: (1) the Building Unit owners in the Exception Zone and Buffer Zone prior to filing a Form 2A; and (2) the Building Unit owners within the Exception Zone and Buffer Zone, as well as owners of surface property within 500 feet of the proposed locations of the Form 2A comment period.

In order to prevent duplicative and potentially confusing notices, the Commission made conforming changes to the pre-application notice to local governments for all proposed locations in Urban Mitigation Areas. **Rule 305.a.(1).**

2. Consultation between the Operator and Local Government with Land Use Authority – Rule 305A.c.

Task Force Recommendation No. 17 proposed that the Commission "define and adopt a process for enhancing local government participation during the COGCC [permitting] process concerning Large Scale Oil and Gas Facilities in Urban Mitigation Areas." The process was "intended to provide interested local governments a defined and timely opportunity to participate in the siting of large-scale multi-well oil and gas production facilities, before an operator finalizes such a location." Recommendation No. 17 envisioned a consultation process, based on local government planning perspectives, designed to anticipate community concerns about a large-scale facility in an Urban Mitigation Area. The consultation was intended to begin "a collaboration by which the Operator and the local government, and recognizing the requests and concerns of the surface owner on whom such facility may be located, can agree on site location and operational practices."

Recommendation No. 17 provided that a siting agreement could take many forms. Where an operator and a local government already reached an agreement, the operator would not be required to seek further consultation. On the other hand, if an operator and local government were unable to reach agreement despite the consultation process, Recommendation No. 17 suggested the operator be required to offer to engage in mediation with the local government.

New Commission Rule 305A.c. defines the consultation process between an operator and the local government with land use authority proposed by Recommendation No. 17. If the local government accepts an operator's offer to consult by responding to the operator in writing within 30 days of receipt of an NOIC, the operator shall consult in good faith regarding siting of, and best management practices to be employed at, the proposed Large UMA Facility. The operator will invite the surface owner to participate in the consultation with the local government so the surface owner's siting requests and concerns can be considered. **Rule 305A.c.(1).** This does not mean that the surface owner must participate in every meeting or aspect of the consultation. However, there must be an opportunity for the surface owner to meet with the local government and operator so the surface owner's concerns may be heard. The Director will participate in the consultation process at the request of either the local government or the operator. **Rule 305A.c.(2).** If the local government and the operator do not reach agreement about the site for a proposed Large UMA Facility, the operator must offer to engage in mediation. **Rule**

305A.c.(3). If mediation occurs, it is to conclude within 45 days unless both parties agree to an extension. **Rule 305A.c.(3)**.

Local government stakeholders also expressed a strong interest in preserving their existing planning and approval processes and, in some cases, being able to use those processes in determining whether they agree with a proposed Large UMA Facility site. The Commission does not intend for Rule 305A to abrogate local government planning and approval processes and the Commission expressly declined to prescribe any particular form of consultation or local land use planning or approval process. **Rule 305A.c.(4).** Thus, if a local government determines it can it can only come to agreement with the operator on the siting of a proposed Large UMA Facility by conducting its full land use planning and approval process, the Commission intends that the operator will engage in and complete that process in good faith. An operator may initiate the Form 2A process by providing notice as required in 305.a. 90 days after the local government with land use authority received a written NOIC for the Large UMA Facility. However, if the local government and operator have not reached agreement at that point, the operator must state on the Form 2A that the local government does not agree and the timing and hearing requirements in Rule 303.c. and 305A.f apply. The local government may choose to require a different process than its full planning and approval process. However, the operator must still obtain any local government permit prior to drilling and completing a well.

Consistent with Recommendation No. 17, an agreement between operators and local governments may be memorialized in a "Memorandum of Understanding, proposed Best Management Practices for the Form 2A, Comprehensive Drilling Plan, Local Government Land Use Permit, or any other mechanism in which agreement is established."

The Rule 305A.c. consultation process does not preclude citizens or local governments from using existing Commission public participation mechanisms.

C. Exceptions – Rule 305A.e.

Task Force Recommendation No. 17 proposed that "[u]nless an agreement was already in place with an interested affected local government concerning locations within its boundaries," the operator should offer to consult with the local government with land use authority when it proposes to build a Large UMA Facility.

New Commission Rule 305A.e. includes four exceptions from the requirements to notify and consult with the local government before an operator can initiate the Form 2A process for a Large UMA Facility. These exceptions are: (1) a local government opts out of the Rule 305A requirements; (2) the operator and local

government have an existing agreement regarding siting of oil and gas locations and the proposed Large UMA Facility is within the scope of that agreement; (3) the Large UMA Facility is proposed to be located within a site specific development plan and the plan expressly governs the location of wells or production facilities on the surface estate; and (4) the Large UMA Facility is proposed to be located within an approved Application for Development that includes an oil and gas operations area.

If an operator submits a Form 2A pursuant to one of these exceptions, the Director may verify with the local government with land use authority that the proposed Large UMA Facility is within the scope of the cited agreement or development plan within 30 days of receiving the Form 2A. If, after conferring with the local government with land use authority and the operator, the Director determines that it is not within the scope, the Director will reject the Form 2A and notify the operator that it must comply with Rule 305A.a.-d. **Rule 305A.e.(2).** If the Director does not notify the operator within 30 days after receiving the Form 2A that the agreement is in question, the exception will be deemed granted and the Director will proceed with review of the submitted Form 2A.

1. Local Government Opt Out – Rule 305A.e.(1).A.

Since the Commission cannot mandate local government participation in the consultation process, the Task Force Rules provide an opportunity for the local government to opt out of the notification and consultation process. The local government must notify the Director in writing that it does not wish to receive Notices of Intent to Construct for Large UMA Facilities proposed within its jurisdiction. The written opt-out notifications will be posted on the Commission's website and shall remain in effect for any term included in the notification or until the local government notifies the Director in writing that it no longer wishes to opt out of the 305A notification and consultation process.

2. Existing Agreement Between Local Government and Operator – Rule 305A.e.(1).B.

Task Force Recommendation No. 17 included a list of potential agreements including: Memorandum of Understanding, Best Management Practices on the COGCC Permit, Comprehensive Development Plan, Unconventional Resource Units, Local Government Land Use Permit, or any other mechanism in which agreement is established. If the local government and operator have any of these forms of agreement in place that specifically include siting of oil and gas locations and the proposed Large UMA Facility falls within the scope of that agreement, the operator does not need to provide an NOIC for a Large UMA Facility or engage in the consultation process in 305A.a.-d.

If the operator relies on this exception, it must provide certification and the relevant provisions of the agreement with its Form 2A as required by Rule 303.b.(3).K.

3. Site Specific Development Plan – Rule 305A.e.(1).C.

If the proposed Large UMA Facility location is contained within and consistent with a site specific development plan as defined in Section 24-68-102(4)(a), C.R.S., that establishes vested property rights as defined in Section 24-68-103, C.R.S., the operator does not need to provide an NOIC for a proposed Large UMA Facility or engage in the consultation process in 305A.a.-d. The Commission concluded that a local government's participation in and approval of the site specific development plan would be substantially equivalent to the consultation process contemplated by Rule 305A.a.-d. and, therefore, the Rule 305A process would be redundant.

4. Approved Application for Development – Rule 305A.e.(1).D.

If the proposed Large UMA Facility location is contained within and consistent with an approved Application for Development as defined in Section 24-65.5-101, *et. seq*., C.R.S., the operator does not need to provide an NOIC for a proposed Large UMA Facility or engage in the consultation process in 305A.a.-d. The Commission concluded that a local government's participation in and approval of the Application for Development would be substantially equivalent to the consultation process contemplated by Rule 305A.a.-d. and, therefore, the Rule 305A process would be redundant.

D. Initiating the Form 2A Process – Rule 305A.f.

Under the consultation process adopted by the Commission, an operator may initiate the Form 2A process by submitting its pre-application notices pursuant to Rule 305.a(1). once any of the following occur: the operator and local government reach agreement, the proposed Large UMA Facility is subject to an exception in 305A.e. (discussed above), the local government waives Rule 305A procedures in writing, the local government fails to respond in writing within 30 days of receiving the NOIC, or at least 90 days have passed since the local government received the NOIC, but the operator and local government have not reached agreement. **Rule 305A.f.(1).** In addition, under new 305.a.(3), the operator must submit a preapplication Large UMA Facility Notice to Proximate Local Governments. **305.a.(3).** The Director will reject the Form 2A if the documentation submitted with the Form 2A pursuant to Rule 303.b.(3).K. does not demonstrate compliance with Rule 305A. **Rule 305A.f.(2).**

1. Local Government Agreement– Rule 305A.f.(1)A.

If the local government and the operator reach an agreement on the proposed location, the operator may begin the Form 2A process, and must provide documentation of the agreement. **Rule 305A.f.(1)A.** Recommendation No. 17 proposed that "if a local government has in place a comprehensive plan or master plan that specifies locations for oil and gas operations, and if an application would be consistent with the terms of that plan, the COGCC shall include a provision in its rules that provides for expedited consideration of that application." The Task Force Rules provide expedited consideration for these types of applications. If an operator submits a Form 2A that is consistent with a Comprehensive Drilling Plan as defined in the Rules, or a local government comprehensive plan that specifies locations for oil and gas facilities, the Director will approve or deny that Form 2A within 90 days. **Rule 303.c.(1).**

2. Local Government Waiver – Rule 305A.f.(1).C.

If, after receiving the Notice of Intent to Construct a Large UMA Facility, the local government waives the 305A procedures for the proposed Facility, the operator may initiate the Form 2A process. The operator must submit documentation that the local government waived the Rule 305A procedures in writing with its Form 2A.

If the local government has waived the consultation process or the local government and operator have reached an agreement, the operator does not need to issue the Urban Mitigation Area Notice to Local Government. **Rule 305.a.(1).** The operator must still provide notice to Proximate Local Governments as required in Rule 305.a.(3).

3. Local Government Failure to Respond – Rule 305A.f.(1)D.

Recommendation No. 17 did not contemplate the failure of a local government to respond to an operator's NOIC; however, this is a potential outcome. Consequently, if the local government with land use authority does not respond to the operator in writing within 30 days of receiving the Notice of Intent to Construct a Large UMA Facility, an operator may initiate the Form 2A process. **Rule 305A.f.(1)D.**

Different stakeholders suggested different time periods for a local government's response, ranging from 30 days to 60 days. The Commission determined that 30 days was a reasonable amount of time for a local government to seek and obtain approval from its governing body, if necessary, prior to responding to an operator's offer to consult.

If a local government fails to respond, the operator must still submit the pre-application Urban Mitigation Area Notice to Local Government and the Large UMA Facility Notice to Proximate Local Governments. **Rule 305.a.(1).; Rule 305.a.(3).**

This will give the local governments a chance to participate in the comment procedures provided in the rules, but will not re-open the opportunity for the consultation process unless the local government with land use authority demonstrates that it did not receive the NOIC.

4. No Agreement After 90 Days – Rule 305A.f.(1).E.

Under Recommendation No. 17, if the mediation process is unsuccessful or the local government rejects the offer to mediate, the operator will "present its OGLA [Oil and Gas Location] to the full COGCC at an expedited hearing."

Under Rule 305A.f.(1).E., the operator may initiate the Form 2A process with its proposed site accompanied with a certification that the operator and local government with land use authority engaged in consultation, at least 90 days have passed, and no agreement was reached. The Director will review the Form 2A in order to provide the necessary technical expertise to the Commission, and will notify the operator and local government when the technical review is complete. If the parties have reached agreement at that point, the Director may issue a decision on the Form 2A and a Commission hearing will not be mandatory under these circumstances. If the parties have not agreed, the Director will notice the Form 2A for an expedited Commission hearing. **Rule 305A.f.(1).E.** The Commission will decide whether to approve the Form 2A as submitted. The hearing will follow the Rule 528 hearing procedures for contested applications. **Rule 305A.f.(1).E.** The operator will be the applicant, the local government with land use authority may intervene as a matter of right, and Staff's role will be to provide analysis at the request of the Commission. **Rule 305A.f.(1).E.** The Director may provide a recommendation to the Commission, but is not obligated to do so. Local government intervenors will have the same rights as a party respondent.

The Commission's decision on the Form 2A is completely independent of a local government's local land use permitting or approval process.

Recommendation No. 17 required this hearing to be no more than 90 days from the first meeting with the local government. In order to comply with notice requirements of Section 34-60-108, C.R.S., and practical constraints on the agency, local governments, and operators the Commission determined that this timing requirement was unfeasible. The hearing will be expedited as much as possible with observation of the 20-day notice period, unless waived.

5. Process for Staff Review of a Large UMA Facility, Form 2A

If, at the time the Form 2A is submitted, the operator and the local government have reached agreement, the Form 2A was excepted from the Rule 305A process, or the local government waived the 305A processes or did not timely respond to the NOIC, and the operator certifies and provides written documentation of the same

with the Form 2A, an operator may request a hearing before the Commission on its application if the Director does not issue a decision within 90 days. Ninety days allows for Staff's typical 75-day review period for other Form 2As as well as the extension from a 20 to 40 day public comment period applicable to Large UMA Facilities. **Rule 303.c.(2)B.i.**

If, at the time the Form 2A is submitted, the operator and local government do not have an agreement, an operator may request a hearing before the Commission on its application if the Director does not issue a decision within 120 days. If the operator and local government come to agreement after the Form 2A is submitted but before the Director's technical review is complete, the Director still has at least 120 days to issue a decision before the operator can request a hearing. In all cases, the hearing shall be expedited. **Rule 303.c.(2)B.ii.**

The Rule 305.d. comment period for a Form 2A for a Large UMA Facility is 40 days from posting. **Rule 305.d.(2).** To allow for more community involvement, the Commission provided a longer timeline for the comment period for Large UMA Facilities than the typical 20-day comment period for all other applications. In addition, the Commission must offer to consult with the Colorado Department of Public Health and the Environment on any Form 2A submitted for a Large UMA Facility. **Rule 306.d.(1)A.(iii).**

At the Director's sole discretion, the comment period for any proposed location may be extended or re-opened for 20 more days. **Rule 305.d.(3).** Many citizen stakeholders commented that operators often make substantial changes to a proposed location compared to what was on the Form 2A when originally submitted. These stakeholders expressed a desire to be able to comment on the location as it actually will be constructed if that has changed substantially from what was initially proposed. The Commission agrees with this perspective and amended Rule 305.d.(3) to expressly grant discretion to the Director to extend or re-open a comment period in appropriate circumstances.

E. Best Management Practices and Mitigation Measures– Rule 604.c.(4)

Recommendation No. 17 directed the Commission to "address the authority of, and procedures to be used by the Director of the COGCC to regulate the location when permitting Large Scale Oil and Gas Facilities for the purpose of reducing impacts to and conflicts with communities." The Recommendation further proposed that these procedures include "siting tools to locate facilities away from residential areas when feasible" and "mitigations to limit the intensity and scale of operations, as well as other mitigations, to lessen the impacts on neighboring communities."

Current Rule 604.c.(2)E.i., requires multi-well production facilities proposed to be located within a Designated Setback Location to be located as far away as possible

from Building Units. COGCC Staff closely scrutinizes Form 2As proposing to place multi-well production facilities within a Designated Setback Location and will continue to do so.

The Commission expressly specified that a Large UMA Facility must be located as far as possible from existing building units within the UMA, and operated using the best technology available. **Rule 604.c.(4).** Operators who construct and operate a large Oil and Gas Location within an Urban Mitigation Area must expect and be prepared to make every effort and take every reasonable precaution to eliminate or minimize the impacts of their operations on nearby residents and the community. While operators will be expected to use the best available technologies at Large UMA Facilities, the Commission acknowledges that it will consider "cost-effectiveness and technical feasibility" in requiring best management practices or Form 2A conditions of approval. §34-60-106(2)(d), C.R.S.

The Commission concluded that the Exception Zone Setback Location mitigation measures listed in Rule 604.c.(3) will apply to all Large UMA Facilities, regardless of whether the facility is in the Buffer or Exception Zone. **Rule 604.c.(4)A.** The Exception Zone mitigation measures incorporate by reference all Designated Setback Location mitigation measures listed in Rule 604.c.(2). The Commission also adopted requirements for "Required Best Management Practices" and "Site Specific Mitigation Measures" for Large UMA Facilities. These requirements are discussed below.

1. Required Best Management Practices – Rule 604.c.(4)B.

The Commission identified six specific potential hazards or impacts that an operator must address to the Director's satisfaction. Conditions of approval addressing each of these potential hazards will be incorporated into all Form 2A permits for Large UMA Facilities:

1. fire, explosion, chemical, and toxic emission hazards, including lightning strike hazards;
2. fluid leak detection, repair, reporting, and record keeping for all above and below ground on-site fluid handling, storage, and transportation equipment;
3. automated well shut-in control measures to prevent gas venting during emission control system failures or other upset conditions;
4. zero flaring or venting of gas upon completion of flowback, excepting upset or emergency conditions, or with prior written approval from the Director for necessary maintenance operations;
5. storage tank pressure and fluid management; and
6. proppant dust control.

Because circumstances vary at all oil and gas locations, the Commission is not prescribing specific practices or technologies to address these issues. Rather the operator, in consultation with Staff, must develop appropriate site-specific practices and procedures to manage the issues identified. **Rule 604.c.(4)B.** The Director will not approve a Large UMA Facility Form 2A until each of these issues has been addressed completely and thoroughly in a manner that ensures public health, safety and welfare, including the environment and wildlife resources, are protected.

Some stakeholders were concerned that without prescriptive requirements for best management practices the requirements are uncertain, or operators will have too much leeway and may not use "best available technology." The Commission determined that a "one-size-fits-all" approach to best management practices is not practicable given the variation in site conditions.

By identifying six specific issues that an operator must address at any Large UMA Facility as a prerequisite to approval of the Form 2A, the Commission intends that operators will employ best available technology – which may change over time or vary from one location to the next – to eliminate or minimize adverse impacts to public health, safety and welfare potentially associated with these issues.

2. Required Mitigation Measures

In addition to requiring Best Management Practices and Site Specific Mitigation Measures, the Commission initially considered authorizing the Director to impose a time limit on the duration of drilling, completion, and stimulation operations as a condition of approval for a Large UMA Facility. Recommendation No. 17 required the Commission to consider "mitigations to limit the intensity and scale of the operations" at Large UMA Facilities. Twenty-four hour, seven-day per week operations during drilling and completion operations contribute significantly to the "intensity" of a location for nearby residences. These impacts are not being eliminated or adequately minimized in most cases with currently available technology.

Industry stakeholders strongly opposed a drilling and completions duration limit for several reasons, including economic impact, safety concerns, unintended consequences such as extending the time necessary to develop the resources at a location, which increases the impacts, and an alleged lack of statutory authority to impose such a limitation.

Based on the alleged lack of authority, the Commission requested an opinion from the Assistant Attorney General regarding the Commission's authority to impose a duration limit under existing Rule 305.e. as a condition of approval. The Assistant Attorney General provided a memorandum to the Commission concluding that Rule 305.e. "is an available means for the Commission to impose a duration limit on a

case by case basis." The memorandum also describes the Commission's statutory authority under Section 34-60-106(11)(a)(II), C.R.S., which requires the Commission to pass rules "to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations." Based on the legal analysis, there is no need for a rule specifically authorizing the Director to impose duration limits on Large UMA Facilities because the Director already has this authority to impose a duration limit, or other conditions of approval to address public health, safety, or welfare concerns, on a case by case basis pursuant to Rule 305.e.

3. Site Specific Mitigation Measures – Rule 604.c.(4)C.

The Commission identified four additional issues – noise, ground and surface water protection, visual impacts, and remote stimulation operation – that it anticipates will likely require site-specific mitigation measures as conditions of approval for Large UMA Facility Form 2As. **Rule 604.c.(4)C.** The Commission did not prescribe any specific technology or best management practice to address these issues, but included these in the Task Force Rules to put operators and the public on notice of specific issues that may require conditions of approval on a Large UMA Facility's Form 2A.

When evaluating the need for additional site specific mitigation measures, the Director will consider and give substantial deference to mitigation measures agreed to by the operator and local government with land use authority. This provision acknowledges that where an operator and local government have agreed to mitigation measures, as contemplated by Rule 305A, the Director will respect such agreements and generally should defer to the agreed upon practices rather than impose overlapping, duplicative, or inconsistent requirements. **Rule 604.c.(4).D.**

The non-exhaustive lists of BMPs and mitigation measures for Large UMA Facilities in the Rules are non-exclusive and may be applied to other types of facilities. Industry stakeholders acknowledge that the Commission currently has the authority to require site-specific best management practices at any location to protect public welfare or the environment; indeed, these stakeholders suggested no additional, specific BMPs for Large UMA Facilities were necessary because the Commission has this authority.

F. Setback Exception – Rule 604.b.

The Commission's setback rules contain an exception to certain setback requirements for "Existing Oil and Gas Locations." **Rule 604.b.(1).** The Commission determined that this exception should apply to Large UMA Facilities as well so long as the operator complies with Rule 305A notification and consultation requirements.

V. The Commission's Implementing Rules for Recommendation No. 20

A. Operator Registration with Local Jurisdictions – Rule 302.c.(1)&(2)

Recommendation No. 20 proposed that the Commission require all operators to register with "the LGD of each municipality in which it has current or planned oil and gas operations." The Recommendation further proposed an effective date for this registration of January 1, 2016. This Recommendation explicitly restricted this registration requirement to municipalities, because oil and gas development is not currently well-coordinated "most acutely in municipalities."

The Task Force Rules define "municipal local jurisdiction" for the limited purpose of the Rule 302.c. as a "home rule or statutory city, town, territorial charter city, or combined city and county." **Rule 302.c.(1).** This definition is not intended to exclude any municipalities. Several stakeholders requested that the requirements from Recommendation No. 20 also apply to counties. The Commission limited the information sharing requirements in the Task Force Rules to municipal local jurisdictions, but included counties in the registration requirements. A county may always seek similar information from operators and the registration helps ensure the counties know which operators to contact.

Under the Task Force Rules, all operators that have filed a Form 1, Registration for Oil and Gas Operations, with the Commission must register with the municipal local jurisdiction and county in which they have an approved drilling unit or a pending or approved Form 2 or Form 2A. This registration requirement will be effective on March 1, 2016, after the Task Force Rules' anticipated effective date. **Rule 302.c.(2).** Municipal local jurisdictions and counties may establish their own registration processes. In the absence of a specific local process, an operator may satisfy the registration requirement by submitting a copy of its COGCC Form 1 or Form 1A to the local jurisdiction.

B. Information Provided to Municipal Local Jurisdictions at the Municipal Local Government's Request – Rule 302.c.(3)

Recommendation No. 20 proposed that registered operators provide the LGD, at his or her request, with "a good faith estimate of the number of wells (not including non-operated wells) that such operator intends to drill in the next five years in the municipal jurisdiction, corresponding to the operator's internal analysis of reserves classified as 'proven undeveloped' for SEC reporting purposes."

Under the Task Force Rules, operators registered in municipal local jurisdictions must provide a good faith estimate of the number of wells that they intend to drill in the next five years in that jurisdiction to the municipal local jurisdiction and the Commission's Local Government Liaison ("LGL"). **Rule 302.c.(3)A.** Many

stakeholders requested that the Commission consider including a municipality's growth management area, which was not expressly included in the Recommendation itself. A municipality's formally adopted and approved growth management area is a crucial area for a planning conversation between oil and gas operators and communities. As municipalities look to expand their boundaries, future and existing oil and gas development should be part of their planning conversation. The Commission did not extend the boundaries to growth management areas but municipalities may request additional information from operators if they wish.

The Recommendation as written appears to require only publicly-traded companies to provide an estimate of the number of wells it plans to drill in the next five years because only publicly-traded companies report to the SEC. Excluding private companies does not fulfill the Recommendation's overall purpose of "facilitate[ing] incorporation of drilling plans into municipal comprehensive planning." Accordingly, the well estimate requirement applies to both private and publicly-traded companies. Consistent with the Task Force Recommendation, a publicly traded company's well estimates may be based on SEC reporting information. **Rule 302.c.(3)A.**

The Recommendation noted that the information provided by the operator "is acknowledged to be subject to change at the operator's sole discretion, and shall be updated by the operator if materially altered." Any estimates provided are to be made in good faith using reasonable business judgment based on information known to the operator at the time of the request. Many variables beyond an individual operator's control influence when, where, and how many wells the operator may drill. Consistent with the Recommendation, the Rules acknowledge that any estimates are subject to change at any time at the "operator's sole discretion." **Rule 302.c.(3)C.** This information exchange is designed to be a planning tool that will be beneficial to local governments and operators. It is in the interests of both to communicate often and to the best of their current knowledge.

Recommendation No. 20 proposed that operators submit "a map of an operator's existing well sites and related production facilities; sites for which the operator has, or has made application for, COGCC permits; and, sites identified for development on the operator's current drilling schedule for which it has not yet made application for COGCC permits." The Task Force Rules incorporate these requirements with the addition of sites for which an operator has approved or submitted applications for drilling and spacing orders because this provides advance notice of the size of a particular spacing unit and planned number of wells. **Rule 302.c.(3)B.**

Recommendation No. 20 also proposed that the municipality "prepare a comprehensive map of the potential future drilling and production sites within its jurisdiction" and provide that map to each of the registered operators and the LGL

beginning on July 1, 2016. The comprehensive map would identify oil and gas sites that would have no issues with current and future issues, sites that would have minor issues, and sites where significant conflict was anticipated. Several stakeholders raised concerns about the Commission mandating the creation of a map. Local governments have the authority to determine how they will utilize this information and local governments may have different planning processes. Therefore, the Commission did not adopt a rule requiring municipalities to prepare this map. The local government has discretion whether to prepare or update a map showing potential future drilling and production sites.

VI. Effective Date

The Commission adopted the Governor's Task Force Rules at its hearing on January 25, 2016, in Cause No. 1R, Docket No. 151100667. These amendments will become effective 20 days after publication pursuant to Section 24-4-103, C.R.S.

The Task Force Rules apply prospectively to any application for a Form 2A, Oil and Gas Location Assessment, proposing to locate a Large UMA Facility that will be submitted after the effective date of the Task Force Rules.

The Task Force Rules also apply to any pending application for Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility. For pending applications, pre-application notices and consultations otherwise required by the Task Force Rules will not apply, but applicable BMPs and mitigation measures will be required. In contrast to the consultation procedures, pending Form 2As are undergoing Staff's Review and are at the appropriate stage for the Director to add best management practices and mitigation measures. Moreover, the Commission had the authority to require the best management practices and mitigation measures identified in 604.c.(4) on Form 2As prior to adopting the Task Force Rules.

Task Force Recommendations

The following nine recommendations have been approved by the Colorado Oil and Gas Task Force as its final recommendations to the Governor. Each recommendation included in the Task Force Recommendations exceeded the two-thirds voting threshold established by the Governor.

RECOMMENDATION TO FACILITATE COLLABORATION OF LOCAL GOVERNMENTS, COLORADO OIL AND GAS CONSERVATION COMMISSION AND OPERATORS RELATIVE TO OIL AND GAS LOCATIONS AND URBAN PLANNING

(Recommendation #17)

TOTALS:		Yes: 21		No: 0	
Barwinski	**Y**	**Holly**	**Y**	**Quinn**	**Y**
Buescher	**Y**	**Kelly**	**Y**	**Rau**	**Y**
Cleveland	**Y**	**Kourlis**	**Y**	**Robbins**	**Y**
Dea	**Y**	**Lachelt**	**Y**	**Sura**	**Y**
Fitzgerald	**Y**	**Moreno**	**Y**	**Toor**	**Y**
George	**Y**	**Pearce**	**Y**	**Wedgeworth**	**Y**
Goldin-Dubois	**Y**	**Peppler**	**Y**	**Woodall**	**Y**

Agency: Colorado Oil and Gas Conservation Commission (COGCC)

Recommendation: *Recommend COGCC rulemaking to address Local Government collaboration with Operators concerning locations for "Large Scale Oil and Gas Facilities" in "Urban Mitigation Areas," as defined in COGCC rules.* The COGCC should initiate a rules making that would address three related issues:

> **First**, it would define and adopt a process for enhancing local government participation during the COGCC Application for Permit to Drill ("APD") process concerning location(s) of Large Scale Oil and Gas Facilities in Urban Mitigation Areas, consistent with the proposal.
>
> **Second**, the rulemaking would also define what constitutes "Large Scale Oil and Gas Facilities" taking into consideration scale, proximity, and intensity criteria.
>
> **Third,** address the authority of, and procedures to be used by the Director of the COGCC to regulate the location when permitting Large Scale Oil and Gas Facilities for the purpose of reducing impacts to and conflicts with communities. This shall include siting tools to locate facilities away from residential areas when feasible. Where siting solutions are not possible, the Director would require mitigations to limit the intensity and scale of the operations, as well as other mitigations, to lessen the impacts on neighboring communities.

Process: This process is intended to provide interested local governments a defined and timely opportunity to participate in the siting of such large-scale multi-well oil and gas production facilities,

before an Operator finalizes such locations. This would also provide an opportunity to address location of right-of-way for pipelines, facility consolidation, access routes, and to otherwise mitigate impacts within the Urban Mitigation Area. The purpose of this new rule would be to create an incentive for early resolution of concerns about siting in urban areas, and could be done as part of an Operator's permitting process at the COGCC. Unless an agreement was already in place with an interested affected local government concerning locations within its boundaries, an Operator must obtain local government consultation during the Operator's COGCC APD approval process concerning such facilities in Urban Mitigation Areas. Other local governments may continue to use the current local government designee ("LGD") comment, permit condition and hearing process.

Nothing in this recommendation is intended to or shall be interpreted to alter any existing land use authority local government may have over oil and gas operations.

As set forth, this process would not apply in cases where the Operator and the local government have already negotiated an MOU, site plan review, comprehensive development plan or have otherwise agreed on the location of a multi-well production facility.

When an Operator intends to permit an oil and gas location that meets the criteria for the process, the following steps would be involved:

1. If a local government has in place a comprehensive plan or master plan that specifies locations for oil and gas operations, and if an application would be consistent with the terms of that plan, the COGCC shall include a provision in its rules that provides for expedited consideration of the application.

2. Prior to selecting an oil and gas location, the Operator must offer to meet with the LGD and a designated representative of the COGCC to seek location government consultation concerning locations for such large-scale facilities. Such consultation, cased on the local government planning perspectives, would be designed to anticipate community concerns. Should the local government decide to use this process, the first meeting begins a collaboration by which the Operator and the local government, and recognizing the requests and concerns of the surface owner on whom such facilities may be located, can agree on site location and operational practices. These agreements can be documented in:
    a. Memorandum of Understanding (MOU)
    b. Best Management Practices (BMP's) on the COGCC permit
    c. Comprehensive Drilling Plan (CDP)
    d. Unconventional Resource Units
    e. Local Government Land Use Permit
    f. Or any other mechanism in which agreement is established

3. Operator and local government are required to work towards a compromise concerning locations, and the Operator is required to submit the agreement reflected in paragraph 1 upon submittal of an Oil and Gas Location Assessment ("OGLA"; Form 2A) to the COGCC, or otherwise indicate whether the local government has approved the location for the multi-well production facility.

    The COGCC staff and local government liaison would be charged, if necessary, with convening meetings of the local government, Operator, and COGCC staff to consider alternative locations

for multi-well production facilities and to encourage locations that consider distances between building units and/or high occupancy units

4. A local government's request concerning location must be based on a set of established set of reasonable standards or criteria addressing land use and surface related issues resulting from the proposed oil and gas operation, balanced with consideration of responsible development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources, and include consideration of surface and mineral owner wished.

5. If a compromise cannot be reached concerning proposed locations within reasonable time frame (to be determined during rulemaking) after the first meeting, but before the OGLA is submitted, the Operate shall offer to engage in mediation with the local government. If the local government agrees to mediation, they shall jointly select a mediator or mediators and shall share in the cost of mediation. Upon selection of a mediator(s), the process shall conclude within 45 days unless the two parties jointly agree to an extension. The parties may request the assistance of COGCC staff, and if they do so the COGCC Director shall exert his or her best efforts to provide the requested technical assistance. If mediation does not occur, the Operator may submit its OGLA and APD for processing and approval.

6. If the parties reach agreement, they may memorialize that agreement in any of the forms outlined above.

7. If the parties are unable to reach agreement, on their own or with the mediation, and the timing process of mediation has lapsed, the Operator will finalize its OGLA with its settled location and then will be required to present its OGLA to the full COGCC at an expedited hearing. The COGCC will hear evidence from the local government, the Operator and the COGCC staff before the OGLA can be approved. In no case will the hearing on the OGLA be greater than 90 days from the first meeting with the local government.

   In order to approve the OGLA, the COGCC must weigh the data and information presented from both parties as the proposed location(s), including the standards discussed in paragraph 4.

Rationale: The Task Force heard concerns from numerous parties about the location of large multi-well production facilities in close proximity to urbanized areas. The scale and intensity of multi-well production facilities that are in close proximity to neighborhoods has led to a need for local governments to represent their constituents to a greater degree than in the past. Local governments have expressed the need for more involvement earlier in the process of permitting oil and gas locations, in particular, to the siting of large-scale multi-oil and gas well production facilities in order to represent land use impacts and community concerns (such as those of nearby homeowners, schools, etc.). The above outlined process allows for local governments to get advance notice from Operators and begin discussions with Operators prior to locations being selected. It provides a mechanism for local governments to influence locations prior to permitting at the COGCC and establishes a mechanism for

collaboration among local governments, oil and gas Operators, and the COGCC. This recommendation is consistent with COGCC Director Matt Lepore's suggestion, and that of other Task Force members, including Matt Sura, that the Task Force considers scale, proximity, and intensity in addressing location of multi-well production facilities.

RECOMMENDATION TO INCLUDE FUTURE OIL AND GAS DRILLING AND PRODUCTION FACILITIES IN EXISTING LOCAL COMPREHENSIVE PLANNING PROCESSES

(Recommendation #20)

TOTALS:		Yes: 21		No: 0	
Barwinski	**Y**	**Holly**	**Y**	**Quinn**	**Y**
Buescher	**Y**	**Kelly**	**Y**	**Rau**	**Y**
Cleveland	**Y**	**Kourlis**	**Y**	**Robbins**	**Y**
Dea	**Y**	**Lachelt**	**Y**	**Sura**	**Y**
Fitzgerald	**Y**	**Moreno**	**Y**	**Toor**	**Y**
George	**Y**	**Pearce**	**Y**	**Wedgeworth**	**Y**
Goldin-Dubois	**Y**	**Peppler**	**Y**	**Woodall**	**Y**

Agency or General Assembly: Colorado Oil & Gas Conservation Commission (COGCC)

Description: Proposal to require operator registration with certain Local Government Designees ("LGD"), and upon the request of a municipal LGD, submission of operational information for the purpose of incorporating potential oil and gas development into local comprehensive plans. Key elements of this recommendation include:

1. Beginning on January 1, 2016, all operators registered with the COGCC shall also register with the LGD of each municipality in which it has current or planned oil and gas operations. Upon the request of a municipal LGD, the operator shall provide the following information, with a copy to the COGCC Local Government Liaison ("LGL"):

    a. Based on the current business plan of the operator, a good faith estimate of the number of wells (not including non-operated wells) that such operator intends to drill in the next five years in the municipal jurisdiction, corresponding to the operator's internal analysis of reserves classified as "proved undeveloped" for SEC reporting purposes.

    b. A map showing the location of the operator's existing well sites and related production facilities; sites for which operator has, or has made application for, COGCC permits; and, sites identified for development on the operator's current drilling schedule for which it has not yet made application for COGCC permits.

    The plan provided to the LGD is acknowledged to be subject to change at the operator's sole discretion, and shall be updated by the operator if materially altered.

2. The Planning Department of participating municipalities will prepare a comprehensive map of the potential future drilling and production sites within its jurisdiction, overlaid on the existing Comprehensive Plan Map.

3. Beginning on July 1, 2016, and upon material alteration, the municipality will provide the Comprehensive Plan Map, overlaid with future drilling and production sites to each of the registered operators and to the LGL. On such map, the municipality will identify sites that it considers compatible with the current and planned future uses of the area; sites where it anticipates minor

issues to be resolved by negotiation with the operator; and, sites where it anticipates significant conflicts with current and planned future uses as indicated in the Comprehensive Plan.

4. Disputes between local governments and operators will be resolved through mediation as more thoroughly described in Recommendation 13b.

Rationale: Local governments throughout the state have complicated and lengthy processes to develop Comprehensive Plans. The plan ultimately reflects the community's goals and aspirations in terms of land development and preservation. The plan guides public policy in terms of transportation, utilities, land use, open space, recreation and housing.

Oil and gas development is within the purview of the State of Colorado, and long-term planning to the extent it is performed, is often disjointed and not coordinated with local governments, most acutely in municipalities. Accordingly, when oil and gas development comes to a municipality, it can result in conflict with the existing, documented, community goals and aspirations. This proposal is to recommend the framework which will facilitate incorporation of drilling plans into municipal comprehensive planning.