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October 5, 2012

ORIGINAL

Colorado Oil & Gas Conservation Commission
Attn: Matt Lepore, Director
1120 Lincoln Street, Suite 801
Denver, Colorado 80203

Re: Noble Energy, Inc. and Anadarko Petroleum Corporation – Joint Comments to COGCC Conceptual Overview of Amended Setback Rules

Dear Director Lepore:

Noble Energy, Inc. ("Noble") and Anadarko Petroleum Corporation ("Anadarko") (collectively, the "Parties") jointly submit the following comments to the Colorado Oil and Gas Conservation Commission ("Commission") to the Conceptual Overview of Amended Setback Rules ("Conceptual Overview"). This joint submittal is intended to inform the Commission that there are several fundamental flaws with the Conceptual Overview, as drafted, and to provide specific comments and/or proposed resolutions in an effort to assist the Commission with the drafting, explanation, and ultimate adoption of fair, effective, and workable rules and policies that will serve to govern well drilling and operations activities near occupied Building Units, high occupancy structures, and urban areas in Colorado.

The Parties respectfully request that you strongly consider the following comments, suggested changes, and potential resolutions to the Conceptual Overview. As always, representatives from Noble and Anadarko would welcome a meeting with you, Mr. Kerr and other Commission staff to discuss these comments in greater detail.

1. **Standing**. There are clear statutory flaws with the Commission's attempt to grant standing to surface owners (including adjacent surface owners) and any owner of a Building Unit[1] located within certain distances of a well or production facility.

First, the Commission has no statutory authority under the Colorado Oil and Gas Act ("Act"), or any other Colorado Statute, that allows it to grant standing to surface owners to give their "express consent" or provide comments to an Operator's Application for Permit to Drill ("APD") within the respective 350', 700' or 1,200' radii that could result in a denial or delay of the APD. *See Section I.a.i.1., I.a.i.2, I.a.ii.1, I.a.ii.1.a., I.a.ii.2, I.a.iii.1, and I.a.iii.1.a. of the Conceptual Overview.* To be clear, §34-60-114 provides that notice is only to be provided to the surface owner, as defined by the Act, and the local government representative. It would be an ultra vires act for the Commission to require notice, much less consultation rights and the requirement for express consent, to adjacent landowners. The provisions of the Conceptual Review extending any required consent or "good faith consultation" past that provided by statute fails to protect and

[1] The definition of the term "Building Unit" should be modified so that it is clear any "Building Unit" is an existing, occupied, permanent structure.

abide by the basic notion that the lessee has common law, or express lease language, rights to enter and use the lands for mineral development. The Commission may only condition the exercise of that property right as authorized by the State Legislature.

Second, §34-60-127 of the Act provides that an Operator is required to accommodate the surface owner to the maximum extent possible, which is incompatible with providing rights to adjacent owners to object to Surface Use Agreements or other agreements regarding the location of a well, tanks, and production facilities. §34-60-127 also reserves and recognizes the common law right of the lessee to enter upon the surface and make reasonable use thereon even under the accommodation obligation. This means that any requirement for surface owner consent, much less Building Unit owners or adjacent owners, is also an ultra vires act by the Commission. Third, any express consent provision changes the common law, which power to change is reserved solely to the courts and the General Assembly, not a state agency. Finally, any proposed rule that allows a surface owner or Building Unit owner to cause a delay, or ultimate denial, of an APD due to lack of consent or failure to "certify" that a good faith consultation is held in direct contradiction of Colorado law. It has been clearly established in Colorado that neither the surface owner nor the mineral owner has an absolute right to exclude the other from the surface estate. *Gerrity Oil & Gas Corporation v. Magness*, 946 P.2d 913, 927 (Colo. 1997).

The Commission's proposal that surface owners and Building Unit owners be given veto power over oil and gas operations on the surface estate, which destroys the mineral estate owner's privilege to access and to develop his rights and, in the case of a split estate scenario, the surface estate owner's right to negotiate the use of the surface, is overreaching and unauthorized by the General Assembly.

2. **Setbacks**:

A. No Increase Is Warranted. The Parties recognize that drilling operations do create impacts and affect those who live, work, or recreate near wells and production facilities. However, any increase in the current setbacks from a Building Unit is unnecessary and is unsupported by technical or scientific data. The Parties have operated under the existing setbacks for years in all areas of the State and, respectfully, challenge the increase of current 150' setback from a Building Unit, the 350' setback from "other facilities" as set forth in Rule 603.c, and any potential increase to the high-density setbacks determinations set forth in Rule 603.b.[2] Not only is there no historical, technical, or scientific reason to support increasing the existing setbacks, but the application of a setback statewide, especially in rural areas where the application of a statewide setback was not discussed during the seven months of stakeholder meetings, affects the Operator, home developers, the agricultural community, and mineral interest owners, as well as surface

[2] Please note that Noble and Anadarko do not believe an increase is necessary, but would not challenge the increase in the 150' setback to 200' as its applies to a public road, major above ground utility line, or railroad as set forth in Rule 603.a.(1). Further, it is the Parties understanding that the 150' surface property line setback will remain as set forth in Rule 603.a.(2).

owners who have executed, or anticipate executing, surface use agreements based on the current setback regulations.

B. Recommendations If Setbacks Are Increased:

i. Statewide Setbacks.

a. If, and only if, the Commission determines during the rulemaking proceedings that increased setbacks are necessary, as supported by an appropriate Statement of Basis and Purpose and the evidence presented during the rulemaking proceedings, Noble and Anadarko strongly urge the Commission to focus on operations within 350' from an existing, permanent, occupied Building Unit and limit the increase in setbacks to 350' from a Building Unit, with the exception of high occupancy structures described below.

b. Noble and Anadarko also urge the Commission to provide the Operator with a waiver of the 350' setback if:

1. The Operator has obtained a signed waiver/consent from the surface owner whose property is used for oil and gas operations,

2. The Operator has agreed to implement certain best management practices ("BMPs") (as set forth in Section 1.D. below), and

3. The Operator has noticed all Building Unit owners within a 500' radius of the well or production facility pursuant to the proposed notice procedures set forth in Section 1.D. below.

ii. High Occupancy Setbacks.

a. If, and only if, the Commission determines that an increase in setbacks is necessary, as supported by an appropriate Statement of Basis and Purpose and the evidence presented during the rulemaking proceedings, Noble and Anadarko would support a 750' setback for high occupancy structures under Rule 603.e.(2) so long as the definitions of "high occupancy structures" are clearly defined by Rule.

b. Noble and Anadarko strongly urge the Commission to provide the Operator with a waiver of the 750' setback if:

1. The Operator has obtained a signed waiver/consent from the surface owner whose property is used for oil and gas operations,

2. The Operator has agreed to implement certain best management practices ("BMPs") (as set forth in Section 1.D. below), and

3. The Operator has noticed all Building Unit owners within a 750' radius of the well or production facility pursuant to the proposed notice procedures set forth in Section 1.D. below.

c. If a waiver is not issued, then a hearing on the subject APD shall be scheduled on the Commission's next hearing docket and such hearing shall occur after adequate public notice is given pursuant to Commission rules and the APD will be reviewed by the Commissioners who would make the ultimate determination on the APD request.

iii. Other Factors.

a. An increase in the statewide setbacks to 350' must include the "savings" clause found in Rule 603.e.(3) which could state as follows: "Such [350'] setback shall be decreased to the maximum achievable setback of [350'] would extend beyond the area on which the operator has a legal right to place or construct such well or production facilities."

b. Any adopted setback regulations must explicitly define how the distance from the existing Building Unit to the well or production facility is measured. Noble and Anadarko propose that the measurement should take place from the existing structure itself, not a buffer around the structure, and not the property line.

c. Consistent with Section 5, Adopted setback regulations must acknowledge that, if residential, commercial, industrial or other development is allowed to encroach on the well or production facility after approved by the Commission, or after completion of the well or construction of the production facilities, then the Operator shall receive an automatic waiver of any adopted setback regulation under such circumstances.

C. "Zones" Are Unnecessary. Regardless of whether the setback distances are increased, the creation of three different "zones" is confusing and unnecessary for purposes of having more community involvement and/or knowledge about oil and gas development in their respective areas. There is no support that the proposed 350', 700', or 1,200' zones will serve a purpose other than increasing the amount of controversy over an APD and frustrating or delaying an Operator's ability to have APDs approved within a reasonable amount of time. The "zone" approach requires burdensome and, as stated in Section A above, potentially unlawful, notice and comment requirements and will also result in the Commission staff having more duties to monitor and determine where each and every APD stands at any given minute in the "zone" notice process. This takes away from the Commission staff's ability and statutory directive to issue APDs timely and effectively.

D. Notice Procedure Recommendations. If, as a result of the rulemaking, the setbacks and notice procedures are amended, then Noble and Anadarko propose the following notice procedures:

i. Utilize the LGD Process. The notice procedure for any setbacks should fully utilize the Local Government Designee ("LGD") process for purposes of coordinating notice mailings and any necessary public meetings.

a. The Operator will calculate the number of Building Units within 1000' of the proposed oil and gas well and production facility locations as described in Rule 603.b and 603.c. to make a determination of High Density or Non-High Density.

b. If the designation is Non-High Density, then the Operator shall provide notice to the LGD and the adjacent Building Unit owners within 500' of the well or production facility with instructions to contact the Commission if they have concerns regarding the application and desire to provide feedback regarding BMP mitigation measures associated with the APD.

c. If the Operator determines that the location is High Density, then the following procedure should be utilized:

1. Operator shall provide notice to each Building Unit owner within a 750' radius of the well or production facility and the LGD or local government contact with instructions to contact the Commission's Oil and Gas Location Assessment ("OGLA") staff if they have concerns regarding the proposed APD and desire to provide feedback regarding BMP mitigation techniques individually or collectively during a public informational meeting.

2. The LGD will use its discretion to determine whether it will hold a public informational meeting for those Building Unit Owners located within 750' of the well or production facility who provided comments on the proposed APD.

3. If the LGD determines a public informational meeting is required, the LGD will organize and host the meeting, invite the appropriate Building Unit Owners, and invite the Operator to attend and discuss the specific plans and timing related to the subject APD.

4. If there is no LGD in a county, city or municipality in which the land for the subject APD is situated in a High Density area, then planning staff or land use staff of such local jurisdiction shall have the responsibility of holding the public informational meeting.

ii. Other Notice Comments. The following comments apply to notice procedures set forth above:

a. No proposed rule should contain a reference to notice based on the proposed 350', 700' and 1,200' zones, nor should there be a requirement for "express consent" and "good faith consultation" of certain parties. Adjacent Building Unit owners should have no standing to consent to APD approval.

b. Any rule should establish that 500' is a reasonable distance to notice occupied Building Unit owners for well and production facilities in Non-High Density designations.

c. Any rule should establish that 750' is a reasonable distance to notice occupied Building Unit owners for well and production facilities in High Density designations.

d. Any rule should require that adjacent Building Unit Owners direct their comments to the Commission's OGLA staff relative to BMP mitigation measures or attendance of a public informational meeting on the APD to include comments relative to BMP mitigation techniques.

E. Other Setback Factors: Regardless of the final form of the notice and comment requirements adopted at the outcome of the setback rulemaking, the following factors should be included in the adopted regulations:

i. There must be a procedure in which a surface owner or building unit owner can "opt out" of receiving notice of the well or production facility APDs. There are many individuals and corporations who do not want to receive such notices and want no part in commenting on well or production facility location.

ii. Operators and LGDs should be allowed to coordinate and consolidate public informational meetings. This keeps the public informational meetings limited in number, as well as efficient and consistent.

3. **Mitigation Measures**:

The Commission and Industry are on the same page in that both want to employ the best available technologies ("BATs") and BMPs without significantly changing overall development plans to produce Colorado's abundance of oil and gas resources. The Commission should establish a policy whereby BMPs and BATs are submitted with the APD, the Commission and Operator should rely on the LGD process, and utilize the current procedures set forth in the Commission regulations for the approval of the Form 2 and 2A. The site-specific BMPs and BATs set forth below allow for flexibility and will enable the Operator, surface owner, the Commission, and the LGD to identify localized issues early in the process.

A. Utilize and Enhance the LGD Process. Consistent with Section 4, LGDs will play an increasingly important role in the oil and gas permitting process to ensure all issues are identified and addressed in a timely manner. Prior to the discussion on the specific mitigation measures set forth in Section 3.B. below, the Parties propose that, in lieu of memorializing any mitigation measures in a new rule, that the Commission consider fully utilizing the LGD process as follows:

i. If setbacks are increased, prior to permit submittal the Operator will notify the Commission, LGD, and the directly impacted surface owner when proposing wells within 350' of an occupied Building Unit, or 750' from a school, hospital, or nursing home. This notification must include plats, Operator name, Operator contact information, Commission contact information, how to access the permit and comment to the Commission, what roads are planned to be used for access, planned locations of associated facilities, and a list of all owners of occupied building units within the radii set forth in Section 2.B. above.

ii. Operator will send a notification postcard to all owners of existing, permanent, occupied Building Units within the radii set forth in Section 2.B. as prescribed below.

iii. With each of the Form 2 and Form 2A filings, the LGD and the Colorado Department of Public Health and Environment (CDPHE) will receive notice and be afforded an opportunity to consult with the oil and gas Operator, as already provided for in the Commission rules, concerning the proposed location and operation.

iv. When a proposed location falls within 350' of a Building Unit or 750' from a school, hospital, or nursing home, the OGLA staff will evaluate the mitigation measures contained in the APD submitted by the Operator.

v. The LGD will have twenty (20) days from receipt of the Form 2/2A in which to comment and can ask for an extension to forty (40) days if the well location is designated High Density under Rule 603.b. See Section 4 below for further discussion on this point. If OGLA Staff does not receive LGD comments within 20 days of the LGD's receipt of notice of the filings or an extension request, the LGD waives it rights to otherwise comment on the filings.

vi. The LGD will organize and host public informational meetings as required by any newly adopted notice procedure and the Operator will attend to discuss the subject APD.

B. Site Specific Mitigation Measures Are Necessary. As asserted throughout this process, it is imperative that any mitigation measures utilized with respect to setbacks should be kept flexible and applied on a site-specific basis. With respect to the specific mitigation measures set forth in the Conceptual Overview, as well as a few others, the Parties have thoroughly reviewed and analyzed them and provide the comments below:

i. Restrictions on Operating Hours. The Parties strongly disagree with the proposed restriction on operating hours for the following four reasons: (i) economics and waste, (ii) jobs and tax revenues, (iii) impacts on other issues, and (iv) safety.

ii. Remaining Mitigation Measures. With respect to the remaining mitigation measures set forth in the Conceptual Overview, the Parties set forth the following suggestions as to BMPs that should be utilized if a well or proposed facility is located within

350'of an occupied Building Unit or 750' of a high occupancy structure. Such BMPs shall be submitted with the applicable APD, but Noble and Anadarko maintain the position that these proposed mandatory BMPs are not memorialized by rule. Further, Noble and Anadarko submit that no activities listed below can supersede federal regulations.

a. Restrictions on, or prohibitions of, pits for all drilling below surface casing

1. For all drilling below surface casing, Operators shall utilize pitless loop drilling to minimize pits when drilling below usable water sources.

2. Surface casing must be set at a depth at least 50' below the deepest domestic water well within one mile of the proposed well.

b. Restrictions on allowable noise levels

1. Operator shall discuss the necessary noise level mitigation measures that may be needed for the site-specific development.

2. Operator's shall provide a training program for its employees, contractors, or other parties at the site regarding how to reduce the volume of noise occurring on site.

3. Facilities that use engines or motors not electronically operated shall be equipped with quiet design mufflers, or an equivalent device.

4. Vehicle back up alarms must be limited, to the extent possible, between 7:00 P.M. and 7:00 A.M. unless absolutely required for safety purposes, or such vehicles may use flashing strobe lights and a person to assist with the reverse maneuvers when trucks are backing up instead of backup alarms between the hours of 7:00 P.M. to 7:00 A.M.

c. Development of traffic plan

1. Upon request, the Operator will provide the LGD a site-specific traffic management plan for drilling and completions operations. The traffic management plan shall address the following: (i) expected traffic and timing of such traffic, (ii) how traffic at each intersection will be managed and mitigated, and (iii) what truck traffic weight and use restrictions for evening hours and, if applicable, school bus hours. If an Operator submits the LGD site-specific traffic management plan as a mitigation measure, the Operator should be given a waiver by the LGD from any traffic or overweight vehicle permits required in such local jurisdiction.

d. Green completions required

1. Well completion practices shall follow the procedures outlined in section 805.b.(3) of the Colorado Oil and Gas Conservation rules and regulations

e. Operations and Production facilities.

1. Operators shall utilize existing roads, pipelines and production facilities, consolidate production facilities and locate production facilities outside of 350' of a Building Unit, all whenever possible.

2. Operator will utilize steel-rim, or other material approved by the COGCC, berms around tanks and separators instead of earthen berms, unless a waiver is obtained from the surface owners within 350' of the Building Unit.

3. A synthetic or geosynthetic liner will be used for tank battery construction.

4. If a tank battery is located less than 500 feet from surface water and the surface water is down gradient, secondary containment will be implemented by constructing an earthen berm between the tank battery berm and the surface water.

f. Blowout preventers

1, Blowout preventer (BOP) and related equipment (BOPE) shall be installed, used, maintained, and tested in a manner necessary to assure well control and shall be in place and operational prior to drilling the surface casing. The BOP must be capable of complete closure of the well bore and shall be closed whenever the well is unattended.

g. Emergency Response Plans

1. Prior to commencing Drilling or Completions operations and at the request of OGLA Staff, Operator will provide an Emergency Response Plan to the LGD and the requested appropriate emergency response personnel.

2. If a request is made by the LGD, Operator will meet with appropriate emergency response personnel to review the Emergency Response Plan.

h. Lighting

1. All lighting must be directed down and away from all Building Units located 350' from the well or production facility.

i. Dust Management Plan

1. Operator must develop a site-specific dust management plan, including dust sacks to be used on Sand Masters, to address all Building Units within 350' of a well or production facility.

j. Equipment Deliveries.

1. After the drilling and completion phase, Operator shall use reasonable efforts to avoid major deliveries between the hours of 7:00 P.M. to 7:00 A.M.

4. **Extension of Comment Period**:

The Parties recommend that the comment period of 20 days remain in place. If, however, the Commission determines that an amended is required, then Noble and Anadarko recommend that the following procedure be utilized:

a. The 20 day comment period should remain in place, but the LGD shall have the ability to request an extension within the 20 day comment period. The request for extension shall extend the applicable comment period to 40 days if the application is within a High Density area as determined under Rule 603.b.

b. If there are no comments by the notice recipients or the LGD within the 20 day or 40 day extended period, then the APD process continues as it currently works and any late comments shall be deemed waived.

c. If there are comments and the 20 day comment period was extended to 40 days, then the Commission, the Operator, the complaintant/commentor and the local government designee shall reach an agreement or resolution within 75 days. Meaning, there is a 75-day cap on any comment and resolution period applicable to an APD.

d. If the APD has not been approved within 75 days, then the APD should be automatically approved on day 76. This timing provides certainty to the Operators that the APD process will continue to progress on an efficient schedule and also provides the Commission, complaintant/commentor, and local government designee with an incentive to reach agreement on the surface issues with respect to a particular APD. *See I.a.i.3 and I.a.ii.3.*

e. If the LGD exercises its right to participate and play an active role in the APD approval process with respect to an establishment or modification of setbacks, and application of the BATs and BMPs, then the LGD waives it right to demand an Memorandum of Understanding as to COGCC regulated operational issues with the Operator.

f. Noble and Anadarko confirm that this proposal does not affect the local government's land use process.

5. **Existing Surface Use Agreements or Other Well Location Agreements**:

Consistent with Section 2. B. iii. c., any setback amendment proposed must incorporate language that any existing Surface Use Agreement or other form of Well Location Agreement effective and executed on or before the effective date of the Regulations will not be subject to the new rules. The effect of any new setback rules on existing agreements would be detrimental, if not devastating, to the statewide development of oil and gas.

6. **Express Allowance for Variance or Waiver**:

In order for any rule to be effective, there must be a provision that allows for Operators to seek a waiver, exception, or variance to such rule. This is especially true where there are mandatory consents and consultations that, if not received, will result in the delay or ultimate denial of an APD. The Commission should expressly provide that a variance is allowed under Rule 502 or that a waiver or exception to any adopted setback rule may be approved by the Director of the Commission.

By submission of this letter, Noble and Anadarko do not waive their rights to object to the rulemaking or the proposed rule, and further reserve the right to supplement or modify this letter as necessary and to provide additional information for the Commission's consideration as it becomes available. Thank you for the opportunity to present the above-referenced comments. The Parties look forward to continuing to work with you and the Commission staff to responsibly develop oil and gas in Colorado.

Respectfully submitted,

NOBLE ENERGY, INC.

Donnie Moore
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ANADARKO PETROLEUM CORPORATION

Brad Miller
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