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Jeff Robbins
Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

RE: SB 19-181 Draft Required Director Objective Criteria

Dear Director Robbins:

The Colorado Oil & Gas Association (COGA) submits this letter to provide public comment on the Colorado Oil and Gas Conservation Commission’s (COGCC) draft Objective Criteria (April 19, 2019). The scope of this letter is limited to the draft Objective Criteria and should not be construed as COGA’s position in the rulemakings to implement SB 19-181. COGA looks forward to working with the Commission and its staff to finalize these criteria.

The Objective Criteria in its current form will critically impact the COGCC’s processing and review of thousands of existing and future permit applications. Indeed, many COGA members will have nearly their entire catalog of pending and future permit applications fall within one or more of the draft Objective Criteria, creating mass uncertainty and regulatory inefficiency. Relatedly, the draft Objective Criteria would compound the existing permitting backlog and severely burden the administrative capacities of the COGCC. SB 19-181 did not amend the Oil and Gas Conservation Act’s mandate that the COGCC create a “timely and efficient” permitting process. §34-60-106(11)(a)(I)(A), C.R.S. Unless the Objective Criteria are substantially modified, the COGCC will not be able to achieve this statutory goal.

COGA has outlined general and specific concerns below. COGA has introduced its specific concerns in the order used by the draft Objective Criteria and not necessarily in the order of importance to COGA. Draft Criterion #15 regarding Form 6s, for example, is of great importance to COGA, despite being addressed last. Further, in an effort to provide operational certainty for its members’ operations as well as the general public, COGA is offering a draft

process (see Attachment A) for the implementation of the Objective Criteria that is consistent with SB 19-181 and the COGCC's charge thereunder.

General Concerns Regarding Applicability of Objective Criteria

COGA has questions and recommendations about the applicability of the draft Objective Criteria. Specifically, COGA believes permits involving federal surface Locations should be exempt from the Objective Criteria, as the federal government already has an extensive siting process for oil and gas locations and facilities proposed to be located on federal lands. Moreover, to the extent the Commission's siting analysis regarding a proposed Location on federal lands is tantamount to federal land use planning, such state involvement in federal land use planning is preempted. *See California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987).

COGA also believes that the Objective Criteria should not apply to locations approved in Comprehensive Drilling Plans (CDP). Because the concerns raised by the Objective Criteria will have already been reviewed by the Director and addressed in the approval of the overarching CDP, it is illogical and inefficient to subject a specific Location within an approved CDP to the same review twice.

Additionally, COGA understands the rationale for reviewing certain pending Form 2As indicating the surface development that is proposed by an operator. But there is no reason for the Objective Criteria to apply to the review of Form 2s, which by definition establish the downhole aspects of development. COGA would appreciate an explanation of why and how the proposed criteria will be applied to Form 2s and the review process the COGCC will employ.

Finally, the stated intent of the Objective Criterion is to delay processing of a very limited number of controversial permit applications. Accordingly, a pre-requisite to applying any additional review where any of the Objective Criteria are met should be that substantive, legally relevant, site-specific public comments on the application were received during the COGCC public comment period. If no public comments were received on either a Form 2 or Form 2A during the public comment period, then such permit applications should be exempt from the Objective Criteria. Further, where public comment on an application was received but the operator has addressed the public comment to the COGCC's satisfaction, such application should be exempt from additional review under the Objective Criteria.

Specific Comments on Criteria

Criterion 1. Locations Within 1,500 Feet of a Building Unit or High Occupancy Building.

COGA believes that requiring additional review for Locations within 1,500 feet of a Building Unit or High Occupancy Building is too broad. COGA believes the relevant point from which to measure regulatory distances should be the wellhead or production facility, as those terms are defined by the COGCC. This comment applies to this criterion and all other criteria involving measurements. Further, using 1,500 feet as the standard is arbitrary and three times the existing setback. Without understanding the Commission's basis for that number, this "objective" criterion appears to have been arrived at subjectively.

As a practical matter, if all permits proposing Locations within 1,500 feet of a Building Unit triggered additional review, the result would be that virtually every permit would be

subject to additional review. The delay this would generate would drastically increase the time required to review permits and the broad nature of this criterion does nothing to help the COGCC prioritize the limited number of more controversial permit applications.

Finally, where the resident of a Building Unit has a Surface Use Agreement with the operator, this criterion should not apply as the potentially impacted party has already consented to the Location. COGA also proposes that operators who have already obtained a local government permit or other authorization, such as an operator agreement or memorandum of understanding, should be exempt from this criterion since the relevant local government has already approved the siting of the proposed operation.

Criterion 2. Locations Within a Municipality.

COGA proposes that locations for which there is a local government permit or other authorization (e.g. operator agreement, memorandum of understanding, etc.) should be exempt from this criterion. In those instances, the relevant municipality has already conducted its review of the Location and granted its approval.

COGA also believes this criterion should not apply where a municipality does not have siting regulations or does not desire any additional consultation. If an operator submits a letter from the relevant municipality stating that it has no issues with the pending state application, the criterion should automatically not apply.

Criterion 3. Locations Within 1500 feet of a Municipal Boundary, Platted Subdivision, or County Boundary.

COGA seeks clarity regarding the scope of the adjacent local government's participation in the permitting process under this criterion. As you know, the drafters of SB19-181 adopted language specifying that the local government relevant to permitting decisions and applications for establishing pooling units and drilling and spacing units is the "local government having jurisdiction[.]" By granting authority to adjacent local governments, COGA does not believe this criterion is within the intent or spirit of SB19-181.

COGA would also like to know how the COGCC will determine if a Location is within 1,500 feet of a platted subdivision, since information regarding platted but undeveloped subdivisions could be difficult to obtain.

Finally, COGA believes this criterion should not apply where the relevant municipality or county does not desire additional consultation or where the operator has already obtained a local government permit or other authorization.

Criterion 4. Locations Within 2,000 Feet of a School Property Line.

This criterion is inconsistent with the School Setback Rulemaking that concluded just months ago. In the course of that rulemaking, legitimate reasons were presented as to why the school property line should not be used as a measurement endpoint, including the undisputed fact that often schools own large tracts of property that are not used by students, teachers or staff. COGA recommends this criterion track the notice requirement from the School Setback Rulemaking, namely that this criterion be amended to include Locations proposed to be within 1,320 feet from the School building or School Facility as defined in COGCC Rules.

Criterion 5. Locations Triggering Certain Requirements

COGA notes initially that completing a Form 2A application already requires an operator to indicate the presence of floodplains, floodways and sensitive areas. Because of these existing requirements, COGA is unclear what, if anything, this criterion is supposed to change from the current process. COGA also recommends that the terms in (a)-(c) of the criterion should be capitalized to clarify that they reference the COGCC defined terms. An alternative suggestion with respect to (a) is to change the relevant term to “floodway.”

Criterion 6. Locations within a Colorado Parks and Wildlife (“CPW”) mapped Restricted Surface Occupancy Area (“RSO”) or Sensitive Wildlife Habitat (“SWH”), or locations receiving site- or species-specific CPW comments.

COGA recommends that this criterion should not apply where an operator has already consulted with Colorado Parks and Wildlife and a Wildlife Mitigation Plan is in place.

Criterion 8. Locations With More Than 18 Tanks or 5,200 Barrels of Hydrocarbon or Produced Liquid Storage.

COGA submits that this criterion could have the unintended consequence of discouraging consolidation of oil and gas surface development. Particularly if pipelines are being used and therefore truck traffic is not a concern, COGA believes that this criterion is misguided and would result in more surface disturbance as operators develop sites with fewer numbers of tanks.

Criterion 9. Locations Where the Operator Does Not Have Surface Use Agreement.

We do not understand the rationale for this criterion. The existence or non-existence of a surface use agreement is not implicated by SB19-181 and has no bearing on the COGCC’s charge to protect health public health, safety, welfare, the environment and wildlife resources. Furthermore, an operator may own the surface or have the right to construct a Location on a surface pursuant to lease rights. In these instances, a surface use agreement would not exist and would not be needed because the right is established and uncontroversial.

Moreover, any issues that might be addressed by this criterion are already covered by the “COGCC Policy For Onsite Inspections on Lands Where The Surface Owner is Not a Party to a Surface Use Agreement or Other Relevant Agreement.” Under this Policy and current COGCC Rule 305.f. surface owners not party to a Surface Use Agreement receive a mandatory 30-day notice prior to operations beginning that includes a copy of the COGCC Informational Brochure for Surface Owners and the COGCC Onsite Inspection Policy.. The surface owner then has up to ten business days to request that the COGCC conduct an onsite inspection to address potential health, safety and welfare or significant adverse environmental impacts resulting from the proposed surface location. Following the onsite inspection, the “Director may apply appropriate site specific drilling permit conditions, if necessary, to avoid potential unreasonable crop loss or land damage, or to prevent or mitigate health, safety and welfare concerns, including potential significant adverse environmental impacts” Because any concerns by a surface owner are already addressed under this Policy, there is no need for this criterion. SB19-181 did not amend any of the surface owner provisions of current law. Surface owners provide input as discussed above and surface owners are protected from unreasonable land damage by Rule 703, which requires operators to provide financial assurance

to the Commission, prior to commencing any operations with heavy equipment, to protect surface owners who are not parties to a lease, surface use or other relevant agreement with the operator from unreasonable crop loss or land damage caused by such operations.

Criterion 10. Locations where the relevant local government or state or federal agency requests additional consultation.

COGA first requests that the COGCC relate the term “relevant local government” to its capitalized COGCC definition. As mentioned, SB 19-181 limited local government involvement to the local government that has jurisdiction over a proposed location. The same limitation should apply to this criterion.

COGA is also concerned that this criterion could be abused by a local government asking for *all* pending applications within its jurisdiction to be subject to additional review. Any local government request for additional consultation should be premised on objective criteria that the local government can articulate and demonstrate as satisfied.

Finally, COGA does not believe this criterion should apply where the local government has already issued a permit or otherwise authorized the Location via an operator agreement, memorandum of understanding or similar document.

Criterion 12. Locations with an access road in a RSO, SWH, 317B buffer zone, or within 200 feet of a Building Unit on lands not subject to a Surface Use Agreement.

COGA seeks clarity regarding whether a public road over which an operator has no control can be considered part of an access road.

Criterion 15. An Intent to Plug for (a) a Location Within 1,500 Feet of a Building Unit or High Occupancy Building Unit, or (c) a Well Subject to a Stray Gas Investigation.

This criterion is a major source of concern for COGA and its members. COGA wishes to impress upon the COGCC the consequence of adopting this criterion without modification, and is very concerned about the potential for unintended consequences that would result from delaying proposals to plug a well under these circumstances. Indeed, nearly all Form 6s submitted would meet this criterion, leading to significant delay in plugging wells and reclaiming older Locations.

Operators rely upon the efficient approval of Form 6s in scheduling workover rigs to maximize the number of wells that can be plugged. If approval of a Form 6 for a particular site is delayed because of this criterion, the workover rig may have to be moved to the next well in the schedule, even if the well being passed over has a higher priority. Accordingly, COGA strongly urges you to delete this criterion. If this criterion is not deleted, the COGCC should develop an expedited process for implementing this criterion to assure quick approval of Form 6s.

Conclusion

COGA appreciates the opportunity to offer these comments and suggestions. COGA respectfully submits that the draft Objective Criteria need substantial clarification and modification to promote operational certainty and consistency and to mitigate the impacts to

business. COGA looks forward to additional, collaborative engagement with the COGCC and all stakeholders as the implementation of SB19-181 moves forward.

Sincerely,

s/ Christy Woodward

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Attachment A
COGA Proposed Process for Implementation of Objective Criteria

ATTACHMENT A COGCC Draft Objective Criteria Process

Process for Form 2s and 2As that Met the Above Objective Criteria

A pre-requisite to applying any additional review where any of the Objective Criteria are met shall be that substantive, site-specific public comments relevant to SB19-181 or otherwise grounded in law on the application were received during the COGCC public comment period. If no such public comments were received on either a Form 2 or Form 2A during the public comment period, then such permit applications shall be exempt from the Objective Criteria. Further, where public comment on an application was received but the operator has addressed the public comment to the COGCC's satisfaction, such application will be exempt from additional review under the Objective Criteria. Finally, the Objective Criteria relating to local governments should not apply where the relevant local government has already issued a permit or executed some other form of authorization, such as an operator agreement, for the proposed Location.

Any Siting Criteria Met (Criteria #1, 2, 3, 4, 7)

If any one of the five above criteria is identified with an existing or future application, COGCC staff shall discuss the details with the Director at the next regularly-scheduled meeting the Director has with staff or within two weeks, whichever comes first. The Director shall consult with COGCC staff related to the application specifics and shall take into consideration the following factors: relevant local government position on the application, location assessment/analysis performed by the operator, specific nature of the application, and any added BMPs the operator agreed to implement on the application.

If these additional factors address the Director's questions or concerns at this staff meeting, then the application shall immediately be put back into the normal approval process.

If questions or concerns remain after this internal discussion, then COGCC staff shall notify the operator within two business days of the specific concerns or questions that need to be addressed in order for the Director to consider approval.

The following is a list of examples of actions and options an operator **may** take to address siting related concerns or questions identified from the above five criteria. **This is not an all-inclusive list.**

- Secure a letter of support from the local government on the proposed location.
- Secure signed waivers from building unit owners or high occupancy building unit owners, or a subset of these owners, within 1,500'.
- Provide comments of all outreach the operator did with all building unit owners within 1,500'. These comments should include date of meeting, location of meeting, whether issues arose during the meeting, and what changes if any were made to address any potential concerns that arose from these meetings.
- Provide a detailed location analysis showing why this was the appropriate location for the

targeted minerals under the totality of the circumstances.

- Provide letter indicating that the Building Unit owner is the surface owner for the proposed Location and has requested that the Location be sited where the operator has proposed
- Add BMPs to address specific concerns.

If any of these or other actions are taken to address the Director's specific concerns or questions as communicated to the operator, the Director will expeditiously review the new information provided by the operator and make a determination as to whether the additional information resolves the Director's specific concerns or questions. If the Director determines no additional information is needed, the application shall immediately be put back into the normal approval process.

Any Environmental Criteria Met (Criteria #5, 6, 8, 12, 13, 14)

If any one of the six above criteria is identified with an existing or future application, COGCC staff shall discuss the details with the Director at the next regularly scheduled meeting the Director has with staff or within two weeks, whichever comes first. The Director shall consult with COGCC environmental staff related to the application specifics to determine if there is a need for further information from the operator.

This discussion with COGCC environmental staff shall take into consideration only potential impacts that are objectively realistic possibilities from the application as proposed, any comments or analysis performed by the CDPHE, and any added BMPs the operator agreed to implement to address these issues.

If these additional factors address the Director's questions or concerns at this staff meeting, then the application shall immediately be put back into the normal approval process.

If questions or concerns remain after this internal discussion and analysis, then COGCC staff shall notify the operator within two business days of the specific concerns or questions that need to be addressed in order for the Director to consider approval.

The following is a list of examples of actions and options an operator **may** take to address environmental related concerns or questions identified from the above five criteria. **This is not an all-inclusive list.**

- Propose additional BMPs or mitigation measures to further address the environmental concerns.
- Demonstrate that piping will occur or best efforts to obtain right-of-way to allow piping are underway to reduce truck traffic.
- Provide an alternative site analysis showing why this was the appropriate location from the reasonable alternatives in the general area.

If any of these or other actions are taken to address the Director's specific concerns or questions as communicated to the operator, the Director will expeditiously review the new information provided by the operator and make a determination as to whether the additional information resolves the Director's specific concerns or questions. If the Director determines no additional information is needed, the application shall immediately be put back into the normal approval process.

Other Criteria Met (Criteria #9, 10, 11)

If any one of the three above criteria is identified with an existing or future application, COGCC staff shall discuss the details with the Director at the next regularly scheduled meeting the Director has with staff or within two weeks, whichever comes first. The Director shall consult with COGCC staff related to the application specifics to determine if there is a need for further information from the operator.

If after this internal discussion the Director's questions or concerns are addressed, then the application shall immediately be processed and approved through the normal approval process.

If questions or concerns remain after this internal discussion, then COGCC staff shall notify the operator within two business days of the specific concerns or questions that need to be addressed in order for the Director to consider approval.

Related to criterion #9, an operator can provide additional information related to the negotiations with the surface owner. If an operator has a surface owner waiver letter instead of a signed SUA, for example, such a waiver should suffice to allow the application to proceed through the normal approval process.

Related to criterion #10, the Director will discuss with staff the nature of the comments and shall determine whether the comments raise legitimate concerns that are supported by evidence and are not otherwise covered by any other criterion. If this is the case, COGCC staff shall notify the operator within two business days of the specific concerns or questions that need to be addressed in order for the Director to consider approval.

Related to criteria #11, the operator shall respond to the specific concerns related to the requested variance.

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