APPENDIX B

Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the
Colorado Energy and Carbon Management Commission, 2 C.C.R. § 404-1

Cause No. 1R Docket No. 240600145
2024 Cumulative Impacts and Enhanced Systems and Practices Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments ("Cumulative Impacts and Enhanced Systems and Practices Rules") to the Colorado Energy and Carbon Management Commission ("ECMC" or "Commission") Rules of Practice and Procedure, 2 C.C.R. 404-1 ("Rules"). The new rules and amendments will become effective November 30, 2024. *See* C.R.S. § 24-4-103(5).

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on June 14, 2024, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State. This record includes public comments, written prehearing statements, written prehearing testimony, and oral testimony and comments provided during public hearings, and Commission deliberations. The Commission also took notice of the records of the 2020 Mission Change Rulemaking (Docket Nos. 200300071 and 200600155) and the discontinued 2024 Cumulative Impacts Rulemaking (Docket No. 240200042).

Background

In 2020, the Commission revised its Rules to align with the statutory amendments adopted in Senate Bill 19-181. As part of the 2020 Mission Change Rulemaking and in consultation with the Colorado Department of Public Health and Environment ("CDPHE"), the Commission adopted Rules to "evaluate and address the potential cumulative impacts of oil and gas development." C.R.S. § 34-60-106(11)(c)(II). For example, the Commission implemented new processes to collect data about cumulative impacts from each newly proposed Oil and Gas Development Plan ("OGDP"). The Commission also created a process for annual reporting by its Staff about information gathered in the database each year, and other information relevant to evaluating the cumulative impacts of oil and gas development compiled by other agencies and research institutions.

On March 16, 2023, Governor Polis sent a letter directing the Commission, in close coordination with CDPHE, to undertake a series of actions aimed at achieving ozone pollution reduction from oil and gas operations. The Governor's letter first directed the Commission and CDPHE to work together to develop rules to reduce nitrogen oxides ("NOx") emissions from upstream oil and gas operations in the ozone nonattainment area by 30% in 2025 and 50% by 2030, relative to a 2017 baseline. The Governor's letter also directed the Commission to adopt through rulemaking environmental best

management practices addressing ozone. And third, the Governor's letter instructed the Commission to prioritize the development of an environmental best management practices program aimed at incentivizing operations demonstrating industry-leading environmental performance.

On June 6, 2023, the Governor signed into law House Bill 23-1294, which emphasized the importance of the need to address the impact of oil and gas operations on Colorado's ozone problem, and specifically the cumulative impacts on disproportionately impacted communities. House Bill 23-1294 directed the Commission to "promulgate rules that evaluate and address the cumulative impacts of oil and gas operations" by April 28, 2024. House Bill 23-1294 also required the Commission to promulgate a definition of cumulative impacts by Rule. In signing House Bill 23-1294, the Governor issued a statement offering clarity to the Commission in its rulemaking efforts. First, the signing statement explained that the statutory term "addressable impacts" is intended to ensure the Commission is acting within its authority as provided by the Colorado Oil and Gas Conservation Act ("Act"), C.R.S. §§ 34-60-101 – 143, when making determinations on where and how to avoid, minimize, and mitigate potential impacts. The signing statement also clarified that in the Commission's efforts to address "foreseeable" impacts from "sources that are controlled or owned by the operator," such analyses should include any non-road engines contracted for services and used as part of an oil and gas location.

In May 2024, the Governor signed into law House Bill 24-1346 and Senate Bill 24-229, directing the Commission to adopt rules to evaluate and address cumulative impacts and require enhanced systems and practices from operators to avoid, minimize, and mitigate emissions of ozone precursors from newly-permitted oil and gas operations in the ozone nonattainment area. House Bill 24-1346 again directed the Commission to "promulgate rules that evaluate and address the cumulative impacts of oil and gas operations," requiring that the evaluation must be inclusive of all impacts described in the statutory definition of cumulative impacts and that such rules must be adopted by September 30, 2024. C.R.S. § 34-60-106(11)(d)(I). In addition, Senate Bill 229 directed the Commission to adopt rules requiring the use of enhanced systems and practices to avoid, minimize, and mitigate emissions of ozone precursors from operations at newly permitted oil and gas locations in the ozone nonattainment area. *See* C.R.S. § 34-60-106(11)(c)(III). In adopting such rules, the Commission is required to adopt an initial list of enhanced systems and practices considering the best management practices that have been recommended by CDPHE in consultation with operators, consider the proposed location's potential to contribute adverse impacts through emissions of ozone precursors, consider any available air modeling analyses, and periodically evaluate the potential for updates to the required enhanced systems and practices. *Id.*

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Statutory Authority

The Commission's authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act ("Act"), C.R.S. §§ 34-60-101 – 143:

- C.R.S. § 34-60-102 (Legislative declaration);
- C.R.S. § 34-60-103 (Definitions);
- C.R.S. § 34-60-104.5 (Duties of the Director);
- C.R.S. § 34-60-105 (Powers and authority of the Commission);
- C.R.S. § 34-60-106 (Specific powers and duties of the Commission);
- C.R.S. § 34-60-108 (Procedural rules);
- C.R.S. § 34-60-121 (Enforcement); and
- C.R.S. § 34-60-128 (Habitat stewardship).

Stakeholder and Public Participation

The Commission initiated the informal stakeholder and public participation process for the 2024 Cumulative Impacts Rulemaking during its weekly public meeting on January 20, 2023. As part of the process, the Commission announced and held a series of stakeholder meetings during January and February 2023, and also invited written feedback to solicit input from interested persons on how to further evaluate and address cumulative impacts consistent with its authority under the Act. On April 10, 2023, the Commission held a public comment session on the Director's 2022 Cumulative Impacts Report. The Director provided another update on the Commission's cumulative impacts process at its May 2, 2023 weekly meeting.

At its August 9, 2023 weekly meeting, the Commission instructed its Hearings Staff to convene an informational docket for stakeholders and interested members of the public to provide feedback on two questions specific to the cumulative impacts of oil and gas operations. On August 11, 2023, the Commission, on its own motion, noticed and applied for an informational docket hearing pursuant to Rules 503.a. and 904.c. The hearing was set for October 12 and 13, 2023. Interested persons and members of the public were given the option to participate by submitting written and oral comment.

Throughout the course of the informal stakeholder process, individual Commissioners and Staff met with interested persons to discuss topics relevant to the 2024 Cumulative Impacts Rulemaking. Because the 2024 Cumulative Impacts Rulemaking involves areas where the Commission regulates activities in close coordination with CDPHE, Commission Staff also met with staff from the Air Pollution Control Division

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("APCD"). Staff from APCD provided valuable input that helped shape the Commission's Rules to avoid inconsistencies and duplication. During December 2023, individual Commissioners and Staff convened listening sessions in Commerce City, Erie, Greeley, and Rifle, as well as a virtual listening session, to engage directly with disproportionately impacted community members on the issue of cumulative impacts. For the in-person listening sessions, the Commission provided questions to help guide the discussion as well as Spanish language translation services.

On January 17, 2024, Commission Staff released to the public a "strawdawg" draft of additions and revisions to the Commission's Rules. During the Commission's weekly meeting on January 17, 2024, Commission Staff announced it had created a public comment form to collect feedback on the "strawdawg" draft. Commission Staff presented an overview of the "strawdawg" draft during a special Commission meeting on January 25, 2024 and the Commissioners provided their feedback during the January 31, 2024 weekly meeting.

The formal stakeholder process for the 2024 Cumulative Impacts Rulemaking began on February 8, 2024, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State. The Notice of Rulemaking included the proposed draft Cumulative Impacts Rules and a draft Statement of Basis and Purpose. In the Notice, the Commission invited stakeholders to participate formally as parties or informally by submitting oral or written comments. The Commission also created online portals through which anyone could submit written comments regarding the draft proposed Cumulative Impacts Rules. The Commission planned to commence the rulemaking proceedings beginning April 9, 2024, and received prehearing statements and responses regarding the Commission's proposed Cumulative Impacts Rules.

On April 9, 2024, the Commission, pursuant to C.R.S. § 24-4-103(13), continued the scheduled public comment session and vacated all pending deadlines, due to discussions in the General Assembly about the definition of "cumulative impacts" that would directly impact the 2024 Cumulative Impacts Rulemaking. The Commission determined it would not be prudent to persist in the rulemaking proceeding when the General Assembly was poised to amend the definition of "cumulative impacts" before the end of the legislative session on May 8, 2024. The General Assembly subsequently passed H.B. 1346, which included the definition of "cumulative impacts," and Governor Polis signed it into law on May 21, 2024.

During the Commission's May 15, 2024 public hearing, Commission Chair Robbins provided an update on the status of the 2024 Cumulative Impacts Rulemaking. The Commission Chair notified the parties that the Commission would re-engage with stakeholders on issues related to cumulative impacts and enhanced systems and practices to avoid, minimize, and mitigate the emission of ozone precursors from operations in the ozone nonattainment area, as directed by House Bills 24-1346 and 24-229, in order to meet the revised rulemaking deadline of September 30, 2024.

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The Commission subsequently re-noticed the rulemaking as the Cumulative Impacts and Enhanced Systems and Practices Rulemaking on June 14, 2024 by submitting its Notice of Rulemaking to the Colorado Secretary of State. The Notice of Rulemaking included the proposed draft 2024 Cumulative Impacts and Enhanced Systems and Practices Rules ("CI/ESP Rules"), along with a draft Statement of Basis and Purpose. The Commission noticed the Rulemaking to begin on September 3, 2024. In the Notice, the Commission advised the public of a virtual stakeholder meeting set for June 25, 2024 and directed persons or organizations seeking party status to file their written request by June 27, 2024 at 2 p.m. 46 parties filed applications for party status, which were accepted.

Commission Staff held a stakeholder meeting on June 25, 2024, where Staff presented information to the public regarding Rulemaking participation opportunities and the substance of the June 14 proposed draft CI/ESP Rules. The Commission held a virtual public work session on June 28, 2024 to discuss the Rulemaking process.

On July 2, 2024, the Hearing Officer issued a Case Management Order establishing filing deadlines. Also on July 2, Prairie Operating Company, joined by Chevron U.S.A., Oxy USA, Civitas Resources, American Petroleum Institution Colorado, and Colorado Oil and Gas Association, filed a motion to extend the filing deadline for responses to prehearing statements. No party filed a response in opposition to the motion. On July 11, 2024, the Hearing Officer issued a Corrected First Amended Case Management Order granting the motion and adjusting the deadline to file responses to prehearing statements to August 14, 2024. No other deadlines were modified.

On July 17, 2024, American Petroleum Institute Colorado and the Colorado Oil and Gas Association submitted a request for a regulatory analysis of the June 14 proposed draft CI/ESP Rules, pursuant to C.R.S. § 24-4-103(4.5). Both parties formally withdrew their request on August 13, 2024.

Parties filed prehearing statements for the Cumulative Impacts and Enhanced Systems and Practices Rulemaking on July 18, 2024.

On July 19, 2024, the Hearing Officer issued a Second Amended Case Management Order to revise the rulemaking schedule. No change was made to the date upon which the CI/ESP Rulemaking would commence; instead, adjustments to the schedule were made to allow for the Rulemaking to extend further into September 2024, if necessary.

On August 2, 2024, the Commission's Staff released a revised draft of the proposed CI/ESP Rules and redline comparisons against the June 14 proposed draft CI/ESP Rules. The revised draft responded to feedback that parties provided in their July 18 prehearing statements. To enable a better understanding of changes included in the updated draft, Staff also provided commentary intended to help explain how and why certain language was being proposed for additional consideration in the August 2 draft

rules. With respect to the initially proposed preferred operator program, Commission Staff concluded the concept of a preferred operator program should instead be the subject of a future working group to enable both the agency and stakeholders to determine the appropriate approach.

On August 14, 2024, the parties filed responses to prehearing statements.

On August 29, 2024, the Commission's Staff released a revised draft Statement of Basis and Purpose, intended to align with the August 2 draft rules.

Identification of New and Amended Rules

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission has revised, reorganized, and added to the regulations in its 200 and 300 Series Rules, as well as Rules 803, 904, and 1201. Additionally, the Commission has revised several definitions in its 100 Series Rules and added several new definitions to its 100 Series Rules. These changes include:

- 100-Series Rules: definitions of Community Liaison, Comprehensive Area Plan, Cumulative Impacts, Cumulatively Impacted Community, Disproportionately Impacted Community, Energy and Carbon Management Operations, Energy and Carbon Management Operator, Enhanced Systems and Practices, Greenhouse Gas Intensity Targets, Impact Area, Impacts to Climate, Industrial Facility, NOx, NOx Intensity Target, Ozone Nonattainment Area, PFAS Chemicals, and Reasonably Foreseeable Future Development;
- Rule 224;
- 300-Series Rules 301, 302, 303, 304, 306, 307, 308, 309, 312, 314, 315, and 316;
- Rule 803;
- Rule 904;
- Rule 1201; and
- The Commission also adopted conforming and clarifying changes, where necessary.

The Commission intends for its revised rules to be prospective—applying to new operations on or after November 30, 2024—unless otherwise specified in the text of a Rule.

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100 Series Rules--Definitions

The Commission revised existing 100 Series definitions, or adopted new definitions, of the following terms:

Community Liaison

The Commission adopted a new definition of Community Liaison to describe new positions on the Commission's Staff created by the passage of Senate Bill 24-229. Additional explanation concerning the role of the Community Liaisons is contained in the discussion of new Rule 224, *infra*.

Comprehensive Area Plan

The Commission revised its definition of Comprehensive Area Plan to incorporate the newly defined term Cumulative Impacts.

Cumulative Impacts

The Commission adopted a new definition of Cumulative Impacts, which is the same as the statutory definition of the term contained in House Bill 24-1346, as incorporated in C.R.S. §§ 34-60-103(7).

Cumulatively Impacted Community

The Commission adopted a new definition of Cumulatively Impacted Community which aligns closely with the definition of cumulatively impacted community contained in AQCC Rules. Although the Commission used terminology from a different agency's rules, the Commission does not intend to implement that agency's rule, but rather solely intends to use terminology that is familiar to stakeholders because of its use by other agencies. Consistent with C.R.S. § 24-4-109(2)(a)(I)(B) (2023), the Commission determined that it was warranted to prioritize and target certain criteria of the definition of Disproportionately Impacted Community in C.R.S. § 24-4-109(2)(b)(II), in order to appropriately tailor the regulatory requirements to the categories of communities that will most benefit from those requirements.

The Commission prioritized Cumulatively Impacted Communities that meet the cumulative impacts prong of the statutory definition, *see* C.R.S. § 24-4-109(2)(b)(II)(F), because the protections afforded by such prioritization will help reduce the environmental health disparities faced by those communities due to a variety of cumulative impacts. The Commission's definition clarifies that census block groups with a Colorado EnviroScreen percentile score above the 80th percentile meet the definition of Cumulatively Impacted Community. CDPHE's Colorado EnviroScreen tool geographically identifies disproportionately impacted communities as it incorporates data from 35 different indicators to assess environmental health burdens that communities experience, was developed using methodologies that were developed by

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other states and recognized as valid by a peer-reviewed study conducted by the U.S. Centers for Disease Control and Prevention, and underwent an extensive year-long stakeholder engagement process. The use of the Colorado EnviroScreen tool ensures Cumulatively Impacted Communities are identified in a consistent, publicly accessible, data-driven, and transparent manner.

Disproportionately Impacted Community

During the 2020 Mission Change Rulemaking, the Commission initially adopted its definition of Disproportionately Impacted Community. The definition included four objective, measurable criteria for identifying areas that meet the definition. Since the Commission's adoption of its Disproportionately Impacted Community definition, the General Assembly passed and subsequently amended the definition of Disproportionately Impacted Community in statute, most recently during the 2023 legislative session. *See* C.R.S. § 24-4-109(2)(b)(II). Accordingly, the Commission revised its definition of to align with those changes.

Consistent with C.R.S. § 24-4-109(2)(a)(I)(B), for purposes of the Commission's Rules, the Commission determined that it was warranted to prioritize and target certain criteria of the definition of Disproportionately Impacted Community in C.R.S. § 24-4-109(2)(b)(II), in order to appropriately tailor the regulatory requirements to the categories of communities that will most benefit from those requirements. Specifically, the Commission determined that it would prioritize and target communities and census block groups that meet the demographic prongs of the statutory definition in C.R.S. § 24-4-109(2)(b)(II)(A)-(D), and Cumulatively Impacted Communities that meet the cumulative impacts prong of the statutory definition in C.R.S. § 24-4-109(2)(b)(II)(F).

Energy and Carbon Management Operations

The Commission adopted a new definition of Energy and Carbon Management Operations, which is the same as the statutory definition of the term contained in House Bill 24-1346, as incorporated in C.R.S. § 34-60-103(10).

Energy and Carbon Management Operator

The Commission adopted a new definition of Energy and Carbon Management Operator, which is the same as the statutory definition of the term contained in House Bill 24-1346, as incorporated in C.R.S. § 34-60-103(11).

Enhanced Systems and Practices

The Commission adopted a new definition of Enhanced Systems and Practices to describe techniques Operators will utilize to avoid, minimize, and mitigate emissions of ozone precursors from Oil and Gas Operations at newly permitted Oil and Gas

Locations in the Ozone Nonattainment Area. The phrase originates from Senate Bill 24-229, as incorporated in C.R.S. § 34-60-106(11)(c)(III).

Greenhouse Gas Intensity Targets

The Commission adopted a definition for Greenhouse Gas Intensity Targets, aligning the Commission-defined term with the greenhouse gas intensity program as described in AQCC Regulation No. 7.

Impact Area

The Commission adopted a new definition of Impact Area, which is the same as the statutory definition of the term contained in House Bill 24-1346, as incorporated in C.R.S. § 34-60-103(22).

Impacts to Climate

The Commission adopted a new definition of Impacts to Climate, which is the same as the statutory definition of the term contained in House Bill 24-1346, as incorporated in C.R.S. § 34-60-103(23).

Industrial Facility

The Commission adopted a new definition of Industrial Facility.

NOx

The Commission adopted a definition of NOx to streamline the repeated references to nitrogen oxides throughout the Rules.

NOx Intensity Target

The Commission adopted a definition of NOx Intensity Target, aligning the Commission-defined term with the NOx intensity program as described in AQCC Regulation No. 7.

Ozone Nonattainment Area

The Commission adopted a new definition of Ozone Nonattainment Area. The Commission determined that providing a definition in the 100 Series would be clearer for operators than listing out the 8-Hour Ozone Control Area, Denver 1-Hour Ozone Attainment/Maintenance Area, and Northern Weld County each time a reference to those areas became necessary. The definition of Ozone Nonattainment Area makes clear that the Commission intends to refer to the ozone area definitions as provided in AQCC Regulation No. 7.

PFAS Chemicals

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The Commission adopted a new definition of PFAS Chemicals, which aligns with the statutory definition contained in House Bill 22-1145, as incorporated in C.R.S. § 25-5-1302(7).

Reasonably Foreseeable Future Development

The Commission adopted a new definition of Reasonably Foreseeable Future Development, which is the same as the statutory definition of the term contained in House Bill 24-1346, as incorporated in C.R.S. § 34-60-103(39).

200 Series – General Provisions

Rule 224

The Commission recognizes that historically, residents of disproportionately impacted communities have often faced unique challenges in engaging with government processes, including the oil and gas permitting process. During the December 2023 listening sessions, participants reiterated the need for improved Commission communication and engagement with disproportionately impacted communities. Accordingly, the Commission proposed, as part of the 2024 Cumulative Impacts draft rules, to designate a community liaison as part of the Commission's Staff to help address environmental justice concerns related to oil and gas operations in disproportionately impacted communities. This position was subsequently codified with the passage of Senate Bill 229, which provided for the establishment of at least two community liaisons to serve as resources for disproportionately impacted communities.

The Commission acknowledges that the overarching goals of outreach to and engagement with disproportionately impacted communities are to build trust and transparency, provide meaningful opportunities to influence public policy, and modify proposed state action in response to public input to decrease environmental burdens or increase environmental benefits. Community liaisons will be dedicated to serving as resources for disproportionately impacted communities as community members seek to engage with the Commission and its proceedings. Rule 224 sets forth the authority, qualifications, and duties of the community liaisons. The Commission intends for the community liaisons to prioritize, collaborate with, and attend meetings in disproportionately impacted communities and to strive to meet in person as much as possible in order to improve relationships and build trust. To effectuate these goals, the Commission will prioritize hiring community liaisons who live in the communities they will be working with.

300 Series – Permitting Process

The Commission revised its 300 Series Rules to update its current permitting processes with additional requirements aimed at further addressing the cumulative

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impacts of oil and gas operations and incorporating the use of enhanced systems and practices to avoid, minimize, and mitigate emissions of ozone precursors from operations at newly permitted oil and gas locations in the ozone nonattainment area.

Rule 301

In Rule 301, the Commission revised and adopted general requirements for oil and gas operation permits.

Rule 301.f

The Commission made clarifying changes to Rule 301.f based on its adoption of new Rule 301.g. Specifically, in Rule 301.f.(1), the Commission clarified the content of the local government and federal agency pre-application consultation to include a discussion of cumulative impacts. In subpart (4), the Commission streamlined the discussion of sequential permitting, and removed language that became duplicative as a result of the Commission's revised alternative location analysis process, as set forth in Rule 304.b.

Rule 301.g.

Under new Rule 301.g, all operators must request and participate in a pre-application consultation with the Director prior to submitting an OGDP or Comprehensive Area Plan ("CAP"). The pre-application consultation process was originally adopted during the Mission Change Rulemaking to encourage collaboration among agencies with oil and gas location siting authority and to provide a venue for the discussion of factors relevant to avoiding, minimizing, and mitigating adverse impacts to public health, safety, welfare, the environment, and wildlife resources, including siting, proposed timelines of operations, and appropriate best management practices. In practice, the pre-application consultation has proven to be a valuable component of the permitting process, after being informally developed and used regularly by the Commission's Staff since early 2023. Following feedback from stakeholders in prehearing statements, the Commission determined it was prudent to preserve local governments' existing pre-application consultation processes. The new Rule specifies that if an Operator has engaged in a pre-application consultation process with a local government or the federal government, and the Director has participated in that consultation, that consultation process will satisfy the new general requirement set forth in new subpart g.

New Rule 301.g is intended to increase transparency, public accessibility, and provide increased opportunity to participate in pre-application processes for OGDPs and CAPs. Rule 301.g.(1) sets forth the purpose and content of the Commission's pre-application consultation. In Rule 301.g.(2), the Commission included the list of parties that must be invited to participate in the general pre-application consultation process, including

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but not limited to CDPHE, residents within 2,000 feet of the proposed working pad surface, and the community liaisons, if any proposed location is within a cumulatively impacted community or if the working pad surface of the location is proposed within 2,000 feet of listed building unit within a disproportionately impacted community. With this new rule, the Commission intends to facilitate robust participation early on in the planning process for future oil and gas development and operations from those communities most impacted by permitting decisions.

To ensure that cumulative impacts and related considerations are elevated early in the permitting process, the Commission also expanded the topics set for discussion during the pre-application consultation to include cumulative impacts considerations, impact area determinations, alternative locations, lesser impact area exemption requests, and the status of permit refiles or amendments. These changes will ensure all pre-application consultation participants receive current, accurate information and further increase the transparency of the pre-application planning process.

Rule 301.h.

Under new Rule 301.h, the Commission adopted additional notice requirements in order to increase transparency for those residents who may be potentially impacted by a proposed OGDP. For OGDPs containing proposed oil and gas locations that are within 2,000 feet of a residential building unit or high occupancy building unit, an Operator will provide notice to these residents of its intent to submit an OGDP no less than 30 days prior to submitting an OGDP. Some stakeholders suggested increasing the 2,000 foot distance. But the Commission determined that it is not only appropriate to provide notice to surface owners and tenants within 2,000 feet, but also important to maintain consistency with the radii used for notifications throughout its Rules. The Commission intends for these expanded notice requirements to ensure robust participation by the communities that may be most impacted by future OGDP approval.

Rule 301.i.

In Rule 301.i, the Commission adopted a new rule to incorporate by reference Air Quality Control Commission Regulation No. 7, Control of Emissions from Oil and Gas Operations ("AQCC Regulation No. 7"). Like all Colorado state agencies, the Commission must comply with the APA, which requires several specific standards for agency rules that incorporate part or all of a code, standard, guideline, or rule adopted by another agency or nationally-recognized organization or association. *See* C.R.S. § 24-4-103(12.5). Consistent with Rule 201.g, the Commission's standard practice is to provide all information relevant to the incorporation by reference in the text of the specific Rule where the material is incorporated. However, references to AQCC Regulation No. 7 appear numerous times in the 300 Series Rules. Accordingly, the Commission determined that it would be less confusing and clearer to all stakeholders

to provide all information relevant to the incorporations by reference in the entire 300 Series Rules in a single Rule 301.i. Although the incorporations by reference in Rule 301.i appear in a single Rule, they are no different than the incorporations by reference that appear elsewhere in the Commission's Rules.[1]

Rule 302

Rule 302 contains the permitting process requirements pertaining to local governments.

Rules 302.b. and c.

In Rule 302.b, operators are required to certify that the local government with jurisdiction over siting the proposed oil and gas location has reached one of the listed siting dispositions. Rule 302.c then specifies what the Director will do based on the information that the operator certifies. The changes to Rule 302.c clarify that the Director will "consider" rather than "defer to" the Relevant Local Government's siting disposition to align with existing practice and ECMC's statutory and regulatory obligations. This change is not intended to diminish the co-equal siting authority of local governments, as set forth in Senate Bill 19-181. The Commission recognizes local governments have co-equal siting authority with the Commission and that local governments are typically best positioned to make local land use decisions. The Commission cannot override a local government's siting disposition. The revised language merely reflects that the Commission may reach a different decision regarding the siting of an oil and gas location due to ECMC's legal obligations pursuant to the Act and the Commission's Rules. To coordinate this co-equal siting authority, the Commission will make every effort to consult and coordinate with the local government to achieve a mutually beneficially siting disposition. In the event the Director makes a decision contrary to a local government siting disposition, the Director will provide detailed reasoning and explanation in support of such decision.

To align with the changes to the applicability of the alternative location, as set forth in revised Rule 304.b.(2), the Commission has made conforming edits in Rules 302.b and c to remove references to outdated citations and reflect the changes made to the alternative location analysis process.

Rule 302.g.

[1] The Commission acknowledges that earlier versions of AQCC Regulation No. 7 are incorporated elsewhere in its Rules, specifically in the 900-Series Rules. The Commission intends to conduct a rulemaking in the near future to address revisions that may be necessary due to the continued evolution of state and federal regulatory language incorporated in all Rule Series.

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The Commission made a clarifying edit to Rule 302.g in order to eliminate any confusion regarding the timeline and notice requirement pertaining to local government consultations.

Rule 303

Rule 303.a.

The Commission moved prior Rule 303.a.(5) to new Rule 315.a and included a cross-reference to the new the rule to clarify that such information will still be required as a component of an OGDP application.

Rule 303.d.

Rule 303.d.(1) provides the timeframes for which public comment will be considered following the Director's completeness determination and approval of the Form 2C, Oil and Gas Development Plan Certification. Rule 303.d.(1).A retains the 30-day default public comment period and now expands the public comment period as it pertains to oil and gas locations proposed within or nearby to sensitive receptors. As the Commission recognized during the Mission Change Rulemaking, residents of disproportionately impacted communities have often faced unique challenges in engaging with government processes, including the oil and gas permitting process. The Commission determined that increased opportunity for public comment regarding oil and gas locations proposed within or nearby to sensitive receptors will likely assist in a more comprehensive evaluation of addressable cumulative impacts from oil and gas operations. With these factors in mind, the Commission adjusted the public comment timeframes for oil and gas locations proposed near or within disproportionately impacted communities, as well as those locations proposed within 2,000 feet of residential building units, high occupancy building units, school facilities, or child care centers. The Commission increased the public comment period to 60 days for proposed oil and gas locations within a cumulatively impacted community, or with a working pad surface within 2,000 feet of certain buildings within a disproportionately impacted community. The Commission also set the public comment period at 45 days from the date the OGDP was posted to the Commission website for proposed oil and gas locations within a disproportionately impacted community, or within 2,000 feet of any residential building unit, high occupancy building unit, school facility, or child care center.

Rule 304

In Rule 304, the Commission revised certain requirements for Form 2A, Oil and Gas Location Assessment Applications to better incorporate cumulative impacts considerations into evaluating proposed oil and gas locations and identifying best

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management practices and conditions of approval to protect public health, safety, welfare, the environment, and wildlife resources.

Rule 304.b.

Rule 304.b sets forth the informational requirements for a Form 2A. In Rule 304.b.(2), the Commission revised the requirements of the alternative location analysis process to fold in additional, more explicit, cumulative impacts considerations. Senate Bill 19-181 required the Commission to "[a]dopt an alternative location analysis process and specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process." C.R.S. § 34-60-106(11)(c)(I). The alternative location analysis process has been used since the Mission Change Rulemaking as a tool for the Commission, its Staff, and the operator to identify the best location to avoid adverse impacts to public health, safety, welfare, the environment, and wildlife resources. Going forward, the Commission intends for operators to engage in an alternative location analysis for all proposed oil and gas locations, not just those that meet certain criteria. The Commission intends for this expanded process to serve as a key tool for avoiding, minimizing, and mitigating adverse cumulative impacts as operators will be required to justify their preferred oil and gas locations based on a more comprehensive evaluation of potential impacts to surrounding resources. The operator's narrative analysis must also include maps and data describing any disproportionately or cumulatively impacted communities within 2,000 feet of each location analyzed.

As part of the Commission's updated Rule 304.b process, new Rule 304.b.(2).D provides that operators must perform a cumulative impacts analysis pursuant to Rule 315.b for its proposed oil and gas location. New Rule 315.b contains the specific requirements of the cumulative impacts analysis portion of this now combined process for Form 2As. Some stakeholders suggested, and the Commission originally considered, a process whereby operators would conduct a cumulative impacts analysis for proposed *and* alternative locations. However, the Commission received significant feedback on this proposed process in prehearing statements, with parties arguing that such a requirement would be overly broad and not yield useful information. Upon further consideration of the proposed process, the Commission agreed with those parties. Therefore, to ensure operators are providing useful information related to any adverse cumulative impacts at alternative locations, the Commission adopted the requirement that an operator provide a narrative explaining how the proposed oil and gas location compares with each potential alternative location. In addition, in an effort to avoid duplication, the Commission moved certain requirements from prior Rule 304.b into new Rule 315.b, which sets forth the requirements for the new cumulative impacts analysis.

Rule 304.b.(7) sets forth the information requirements for site planning drawings that must be submitted with an operator's Form 2A(s). The Commission updated the

non-exhaustive list of visible improvements that must be included on a location drawing pursuant to Rule 304.b.(7).A to include other industrial facilities, now a defined term in the 100 Series. The Commission determined that the specific addition of other industrial facilities is a necessary piece of information to include on a location drawing, as industrial facilities are likely to have substantial impacts to public health, safety, welfare, the environment, and wildlife resources, which may relate to impacts from a proposed oil and gas facility and therefore create a cumulative impact.

In Rule 304.b.(7).J, the Commission updated the requirements for the disproportionately impacted communities map. This Rule now requires that if oil and gas operations are proposed within a cumulatively impacted community or within 2,000 feet of a residential building unit, high occupancy building unit, school facility, or child care center located within a disproportionately impacted community, an operator must show the spatial relationship between the proposed oil and gas location, the building units within 2,000 feet of the proposed location, and the boundaries of the disproportionately impacted community. In addition, the disproportionately impacted communities map will now also identify the distance and direction to other identified sensitive receptors and include a table listing the identified sensitive receptors that are between 2,000 feet and one mile from the oil and gas location. A critical component to analyzing the cumulative impacts of oil and gas development is an understanding of whether oil and gas facilities are disproportionately concentrated within these communities over time. By tracking the frequency with which new oil and gas locations are proposed for siting in and near disproportionately impacted communities, the Commission intends to further increase its own understanding of these historic and ongoing patterns and use that knowledge to inform its future decision-making.

Rule 304.c.

Rule 304.c identifies the information requirements for several plans that must be submitted with an operator's Form 2A(s). Prior Rules 304.c.(20) and (21), the community outreach plan and geologic hazard plan, were renumbered as a result of moving the components of the cumulative impacts plan, prior Rule 304.c.(19), into the new Rule 315.b cumulative impacts analysis.

The Commission also updated the requirements for an operator's Community Outreach Plan, now in revised Rule 304.c.(19). The Commission intends for these revisions to facilitate improved outreach and ongoing transparent communications with residents where the proposed working pad surface is within a cumulatively impacted community, or within 2,000 feet of a residential building unit, high occupancy building unit, school facility, or child care center located within a disproportionately impacted community. In Rule 304.c.(19).A, the language was revised to specify that an operator's description of planned measures to mitigate adverse impacts to cumulatively impacted communities, and disproportionately impacted communities where the working pad surface is proposed within 2,000 feet of a residential building unit, high occupancy

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building unit, school facility, or child care center must be tailored to both the pre-production and production phases of operation in order to address the reduction of potential impacts over the life of the operations, rather than simply during pre-production operations. These enhanced requirements will help ensure operators are committed to ongoing, transparent communication with communities that have historically been most impacted by oil and gas operations. In Rule 304.c.(19).C, the Commission revised the rule language to better meet the intent of the rule. The prior language regarding public meeting requirements was moved to Rule 309.c, as such language was necessary to build out the expanded consultation process involving building owners and tenants within disproportionately impacted communities. The Commission intends for its Staff to promptly issue guidance providing additional detail about the necessary components of a Community Outreach Plan pursuant to Rule 304.c.(19).

Rule 304.d.

Rule 304.d allows operators to seek relief from certain information requirements on the Form 2A through lesser impact area exemptions. The Commission originally adopted this Rule during Mission Change in recognition that not all proposed oil and gas locations have equivalent impacts, and when locations are proposed farther away from potential receptors, information regarding those impacts may not be necessary. In this rulemaking, the Commission adopted language specifying that no operator will be exempt from submitting the alternative location and cumulative impacts analyses, as set forth in Rules 304.b.(2) and 315.b. In evaluating its mandate from the General Assembly for the 2024 Cumulative Impacts and Enhanced Systems and Practices Rulemaking, the Commission determined that the lesser impact area "off-ramp" does not align with the environmental justice concerns of residents in close proximity to proposed oil and gas locations or within disproportionately impacted communities. Therefore, in Rule 304.d, the Commission removed the Director's ability to grant lesser area impact exemptions for OGDP applications when the proposed location is within a cumulatively impacted community, or within 2,000 feet of any residential building unit, high occupancy building unit, school facility, or child care center within a disproportionately impacted community.

Rule 304.e.

In Rule 304.e, the Commission made adjustments to the language around allowing operators to submit substantially equivalent information or plans developed through a local government or federal government permitting process in lieu of information that the operator would otherwise be required to submit on a Form 2A. The Commission recognizes that in many cases, operators will prepare and submit very similar information to state, federal, and local government permitting entities, and intends to avoid or minimize unnecessary duplication of effort by operators in between the permitting processes. However, to ensure the Commission can adequately evaluate and

address cumulative impacts in line with its statutory mandate from House Bill 24-1346, the Commission determined it was necessary to require an alternative location and cumulative impacts analyses for all proposed OGDPs.

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APPENDIX B

Rule 306

Rule 306.b.

Pursuant to Rule 306.b, the Director may issue a recommendation that the Commission approve or deny a proposed OGDP based on whether the proposed development is adequately protective of and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources. Consistent with the statutory directives provided by the General Assembly in House Bills 23-1294 and 24-1346, the Commission updated the language in Rule 306.b to add considerations of whether an operator has exceeded its NOx and Greenhouse Gas Intensity Targets, as reported to APCD. If the operator has exceeded either of its targets, the Director may recommend that the Commission deny the OGDP.

Rule 306.c.

In Rule 306.c, the Commission made an addition to the list of persons required to receive electronic notice upon the Director's issuance of a recommendation to approve or deny an OGDP. The Commission will now require such notice to be electronically sent to any person or entity that participated in the consultation process, as set forth in Rule 309.c, if they provided an email address.

Rule 307

Rule 307.b.

Rule 307.b sets forth the actions the Commission may take upon consideration of the Director's recommendation that the Commission approve or deny a proposed OGDP. Consistent with the statutory directives provided by the Legislature in House Bills 23-1294 and 24-1346, the Commission updated the rule language to add considerations of cumulative impacts and emissions reductions under AQCC's Regulation No. 7 NOx and Greenhouse Gas Intensity Targets as part of the Commission's consideration of the Director's Recommendation. In addition, the Commission made conforming changes to Rule 307.b.(3) to reflect the new requirement that an alternative location analysis will be performed for all proposed oil and gas locations.

Rule 308

Rule 308 contains the procedural requirements for a Form 2, Application for Permit to Drill. The Commission revised several requirements for Form 2 applications in order to provide opportunities to evaluate more recent information concerning potential cumulative impacts. The Commission initially proposed changes to permit expiration under Rule 311, but has deferred those changes to a later rulemaking and believes that the following changes to Rule 308 will help ensure the Commission can obtain

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up-to-date cumulative impacts information for any well that is proposed to be drilled from a location that may have been permitted prior to 2021.

Rule 308.a.

The Commission revised and restructured Rule 308.a. Now, Rule 308.a.(1) specifies when an operator may submit a Form 2. As set forth in the rule, an operator may submit a Form 2 when the Director recommends approval of the operator's OGDP, or when the operator's Form 2A and Drilling and Spacing Unit, where applicable, are approved and the oil and gas location is in compliance with Rule 1003. Some stakeholders questioned the requirement that the oil and gas location be in compliance with Rule 1003, which concerns interim reclamation. The Commission determined it was necessary to add this requirement for Form 2s to ensure operators remain compliant with interim reclamation requirements when there are more wells planned for the location on the approved Form 2A than approved Form 2s. Additionally, the Director will determine if approval of the Form 2 will aid the operator in meeting interim reclamation requirements, or if additional corrective actions are necessary. The activities in Rule 308.a.(2) were revised for clarity and restructured in order of the most-to-least potentially impactful activities.

The Commission recognizes that there are generally two types of Form 2s that may be submitted by operators: those Form 2s that are subject to and submitted pursuant to the OGDP process, which are the most common type of Form 2 submitted, and those Form 2s that are submitted outside the OGDP process because their associated locations were approved or built prior to January 15, 2021. These distinctions are important, as Form 2s submitted as part of an OGDP will undergo a more robust cumulative impacts assessment as established throughout the 300 Series Rules and via the Form 2A, Form 2B, and new Form 2D. However, Form 2s submitted outside the standard OGDP or Form 2A process will not have the benefit of a cumulative impacts assessment; in most instances, they will be associated with already built oil and gas locations.

In new Rule 308.a.(3), the Commission required an operator provide notice to relevant local governments and proximate local governments when it submits a Form 2 not subject to an OGDP. The Commission determined that it is necessary for local governments in close proximity to proposed new or continuing well operations to receive notice of activities occurring within their jurisdictions.

Rule 308.c.

The Commission revised Rule 308.c to provide further clarity about what the Director will review as part of the Form 2 administrative review process. The Commission also added new cumulative impacts analysis requirements to Rule 308.c, consistent with the Commission's mission and statutory authority. The Commission also made several

clarifying edits to Rule 308.c to more clearly set forth the process envisioned by the rule.

Rule 308.c.(2) sets forth the circumstances when the Director may require additional information as part of a Form 2 submission and how such additional information will be considered. The Commission adopts these requirements as a means to fully identify any existing impacts and receptors proximal to the built oil and gas location relevant in time to the proposed activity; assess the potential impacts associated with any necessary re-construction or pad expansion, drilling, and completion operations; and address impacts through best management practices.

Consistent with the Commission's statutory authority to regulate oil and gas development in a manner protective of public health, safety, welfare, the environment, and wildlife resources, as well as its authority to evaluate and address the cumulative impacts of oil and gas operations, the Commission enacted a process where the Director can meaningfully review any changes to the area surrounding the oil and gas location that may impact a decision to allow operations set forth on the Form 2. These changes could include the encroachment of homes or communities, changes in wildlife habitat, the development of other industries in the area, or changes to land use or land use regulations, for example. Depending on the circumstances, the operator may be required to submit a Form 4 with additional best management practices or a cumulative impacts analysis. These requirements are intended to ensure that the Director has a clear understanding of the proposed operations and current surrounding area considerations prior to taking any action on the Form 2.

Rule 308.c.(2).D provides that the Director may refer any Form 2 for which the Director has requested additional information to the Commission for consideration.

Rule 308.e.

The Commission adopted new Rule 308.e to clarify that the Commission may initiate proceedings to approve or deny a Form 2 in place of the Director. In proceedings initiated upon the Commission's own motion, the permit applicant has the burden of proof.

Rule 309

Rule 309 contains the Commission's consultation requirements. To ensure clarity, the Commission adjusted the title of Rule 309 to reflect that the requirements contained therein apply to the post-completeness consultation process.

Rule 309.c.

The Commission made several revisions to Rule 309.c to optimize the consultation process between operators and building unit owners and tenants within 2,000 feet of

the proposed working pad surface. The Commission determined these additional requirements were necessary to improve the transparency of communications by operators and ensure community feedback would be incorporated into the operator's application or plans for operation. First, the Commission adopted new Rule 309.c.(1) to explicitly provide for consultation between operators and building unit residents within disproportionately and cumulatively impacted communities. In revised Rule 309.c.(2), the Commission added contact information requirements that must be provided by the operator when meeting with building unit owners, agents, or tenants. New Rule 309.c.(3) includes a requirement to provide meeting attendees the opportunity to receive future correspondence regarding the proposed oil and gas location, and Rule 309.c.(4) requires the operator to submit a written summary of the meeting to the Director within 10 days of the meeting. Prior Rules 309.c.(2), (3), and (4) were renumbered as a result of these changes but were not otherwise modified.

Rule 309.e.

The Commission updated references to the newly-defined term "cumulative impacts" in Rules 309.e.(2) and (5).

Rule 309.f.

The Commission made several additions to Rule 309.f.(1) to specify when consultation with CDPHE will occur on an OGDP. An important overall objective of the consultation with CDPHE is for the Director to obtain the best available information from CDPHE in understanding the potential risks to public health, safety, and welfare, or impacts to the environment, which also informs the cumulative impacts analysis. The Commission determined that it was necessary to expand CDPHE consultation to proposed oil and gas locations nearest to sensitive receptors, including those applications with proposed operations within and/or near disproportionately and cumulatively impacted communities, certain building units, and the nonattainment area during ozone season. The Commission also made several clarifying edits to Rules 309.f.(2) and (3), and to incorporate cumulative impacts considerations.

Rule 312

Rule 312 concerns subsequent operations on existing wells and provides the Commission Staff with notice of subsequent well operations, and the opportunity to review, add any necessary conditions of approval, and approve or deny subsequent well operations.

Revised Rule 312.d now includes new subpart (3), which allows the Director to request the submission of an updated or supplemental Cumulative Impacts analysis pursuant to Rule 315.b to inform the review of the Form 4 requesting approval for subsequent operations. This provision is particularly important to allow for a meaningful review

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and consideration of any changes that may have occurred in proximity to the oil and gas location, such as the encroachment of homes or communities, changes in wildlife habitat, the development of other industries in the area, or changes to land use or land use regulations, prior to any approval of a Form 4 allowing for high impact work.

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APPENDIX B

Rule 314

Rule 314 governs Comprehensive Area Plan ("CAPs"), which provide a tool for landscape-level planning that can be used to address cumulative impacts to various resources by facilitating consolidation of infrastructure, electrification, and intentionally phased timing of development.

Rule 314.a.

The Commission updated references to the newly-defined term "cumulative impacts" in Rule 314.a.(1).

Rule 314.b.

Rule 314.b concerns the rights conveyed by a CAP. The Commission recognizes that in order to effectively evaluate and address the cumulative impacts of oil and gas development, it is imperative to have the most current and accurate information on which to base its determinations. Accordingly, in Rule 314.b.(3), the Commission revised the requirements for evaluating cumulative impacts for separate OGDPs proposed within an existing CAP. Operators with approved CAPs will remain exempted from the requirement to separately evaluate the cumulative impacts via submission of a Form 2B for each OGDP proposed within the CAP, and may choose to voluntarily submit a Form 2B. To ensure the Commission is collecting useful data in the CAP process, operators will be required to submit a Form 2F, CAP Cumulative Impacts Data Identification, which is described in more detail in the discussion of Rule 314.e.(10).

Rule 314.c.

The Commission updated references to the newly-defined term "cumulative impacts" in Rule 314.c.(2).A.ii.

Rule 314.d.

Rule 314.d provides the procedure for an operator to submit a CAP application to the Director, and for the Director to review the CAP application to ensure that it is complete and includes all required information. The Commission adopted a new Rule 314.d.(1) to specify that, prior to applying for a CAP, an operator will request a pre-application consultation with the Director. This requirement is intended to mirror the new, mandatory pre-application requirement the Commission adopted for OGDPs. The Commission determined this addition was necessary to increase transparency, public accessibility, and provide opportunities for all potentially impacted persons to participate in the CAP process. Prior Rules 314.d.(1)–(5) were renumbered as a result of the addition of new Rule 314.d.(1) and the Commission updated references to the newly-defined term "cumulative impacts" where appropriate.

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APPENDIX B

Rule 314.e.

Rule 314.e provides the informational requirements for a CAP. While similar to the informational requirements for a Form 2A under Rules 304.b and 304.c, the informational requirements for the CAP are tailored to uniquely match its broader scale.

The Commission updated several informational requirements for CAPs. First, the Commission made clarifications to the map and description requirements for utility lines in Rule 314.e.(3).D. The Commission intends that more specific information from these maps will be used by its Staff to evaluate potential risks and impacts associated with a proposed CAP.

Next, in Rule 314.e.(7), the Commission expanded the informational requirements related to the narrative on the timing of operations. If an operator proposes operations within the Ozone Nonattainment Area, the operator is required to include a discussion of its anticipated timing of pre-production activities anticipated to occur between May 1 and September 30.

In Rule 314.e.(10), the Commission aims to gather information about potential adverse and beneficial cumulative impacts from oil and gas development within the CAP. The Rule is also intended to facilitate discussion between the Commission and operators about appropriate methods to mitigate adverse cumulative impacts. To that end, the Commission created a new Form 2F, CAP Cumulative Impacts Data Identification, to collect data about cumulative impacts from each newly proposed CAP. This information will populate the Cumulative Impacts Data Evaluation Repository ("CIDER"), so that it can be used to evaluate cumulative impacts and be included in the Director's annual report on cumulative impacts. The Commission intends for its Staff to critically evaluate the information submitted on the Form 2F to verify that operators are making robust and thorough efforts to meaningfully address cumulative impacts to relevant resources. Where a CAP application seeks preliminary siting approval of one or more oil and gas location, the Form 2F will include cumulative impacts estimates specific to the proposed location(s); where a CAP application does not seek preliminary siting approval, the Form 2F will include cumulative impacts estimates based on the applicant's most rigorous logical and reasonable assumptions about the proposed location(s).

To align with its statutory mandate to evaluate and address cumulative impacts, the Commission made several revisions to Rule 314.e.(10) to ensure useful data is being collected as part of the CAP application process. The Commission revised and added to the subparts of Rule 314.e.(10) to ensure quantative and qualitative information around air resources and impacts to climate, water resources, terrestrial and aquatic wildlife resources, and ecosystem resources is being properly evaluated as part of the CAP process. In addition, in Rule 314.e.(10).G, the Commission revised the

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requirements concerning information on the boundaries of disproportionately impacted communities to seek more expansive information on each disproportionately and cumulatively impacted community located within the proposed CAP boundaries.

In Rule 314.e.(10).H requires operators to provide information on whether operators are meeting or exceeding their NOx and Greenhouse Gas Intensity Targets. As specified in the rule, this information must be the same information each operator has reported to APCD as part of its interim and annual reports, as applicable. These additions to Rule 314.e.(10) are intended to implement the directive from House Bills 23-1294 and 24-1346 to address the impact of oil and gas operations on Colorado's ozone problem, and more specifically the cumulative impacts on disproportionately impacted communities.

Finally, the Commission updated a reference to the alternative location analysis process in Rules 314.e.(11).A.

Rule 314.f.

Rule 314.f provides the public review process for a CAP, which is similar to the public review process for OGDPs. In Rule 314.f.(1).C, the Commission inserted additional completeness notice requirements for those CAPs containing proposed oil and gas locations that are within 2,000 feet of a residential building unit and those that are between 2,000 feet and one mile of residential building units within disproportionately impacted communities. The Commission intends for these expanded notice requirements to ensure robust participation by the communities that may be most impacted by future CAP approval. As a result of these insertions, the following subparts were renumbered. The Commission also made an edit to Rule 304.f.(2).A to clarify that the Director will only consider comments provided on the CAP during the 60-day public comment period. While the Commission may consider comments received beyond the formal 60-day public comment period, the Director must set limitations for receiving public input in order to make, and publish, the Director's Recommendation.

In Rule 314.f.(3), the Commission expanded the CAP public meeting requirements. In addition to the increased opportunity for participation in the public meeting as a result of updates to Rule 314.f.(1).C, the Commission updated requirements pertaining to the timing of the meeting, accommodation, and content of the meeting. The Commission intends that the increased specificity of the requirements around public meetings will help overcome potential barriers to community engagement and allow for equitable opportunities for engagement in the CAP process. The Commission also specified in Rule 314.f.(3).E that the operator's summary of the public meeting must be provided to the Director in writing and contain certain elements, including any support, questions, or concerns voiced by those in attendance; revisions the operator intends to make to the CAP; and anticipated best management practices. This written summary will provide the Director and the Commission with a more complete picture of the

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perspectives of those potentially impacted by future CAP approval. As a result of the additions to the public meeting requirements in Rule 314.f.(3), following subparts were renumbered.

The Commission also updated certain consultation requirements contained in Rule 314.f.(4). First, the Commission updated references to the newly-defined term "cumulative impacts" in Rules 314.f.(4).B and C. In addition, and to provide for an opportunity to identify an operator's compliance with emissions targets, the Commission updated the consultation process with CDPHE to specifically address the operator's past compliance with, and anticipated ability to meet, the NOx and Greenhouse Gas Intensity Targets. Understanding an operator's status as it relates to these two critical metrics is a necessary tool for the Commission in evaluating and addressing cumulative impacts to public health related to CAPs.

Rule 314.g.

Rule 314.g concerns the Director's Recommendation on a CAP. The Commission updated references to the newly-defined term "cumulative impacts" in Rules 314.g.(1) and (2). In Rule 314.g.(3), the Commission added a new notification requirement in Rule 314.g.(3).H to include anyone who participated in a public meeting on the CAP and provided an email address. As a result of this addition, prior subpart H was moved to Rule 314.g.(3).I.

Rule 314.h.

The Commission updated a reference to the newly-defined term "cumulative impacts" in Rule 314.h.

Rule 315

New Rule 315 concerns cumulative impacts data and a new requirement for operators to perform a cumulative impacts analysis. The Commission moved prior Rule 303.a.(5) to new Rule 315.a and overhauled prior Rule 304.c.(19), which described the requirements for an operator's cumulative impacts plan, to create a more robust cumulative impacts analysis in Rule 315.b. The new cumulative impacts analysis is intended to address each resource identified in House Bill 24-1346's "cumulative impacts" definition. As discussed above, House Bill 24-1346 codified a comprehensive definition of "cumulative impacts" to include impacts to air quality, water quality, climate, noise, odor, wildlife, and biological resources. Rule 315 reflects the Commission's statutory directive from House Bill 24-1346 to promulgate rules that "require evaluation of all impacts set forth in the definition of cumulative impacts" and "address[] those impacts resulting from operations regulated by the Commission." C.R.S. § 34-60-106(11)(d)(I).

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As adopted during the Mission Change Rulemaking, Rule 315.a largely concerns CIDER, the baseline dataset that the Commission has used to facilitate its ongoing efforts to evaluate the cumulative impacts of oil and gas operations in Colorado. The Commission made several edits to Rule 315.a in order to capture newly-defined terms from the 100 Series and collect additional information on cumulative impacts associated with proposed oil and gas operations, including a focus on habitats included in Colorado Parks and Wildlife's State Wildlife Action Plan in order to better understand impacts to biological, ecosystem, and soil resources. Similar changes were also captured in Rule 314.e.(10). The Commission also added additional informational requirements in order to better inform the evaluation of cumulative impacts to identified resources. Furthermore, in Rule 315.a.(3), the Commission made clarifying edits to the information an operator is required to submit on its Form 2B, Cumulative Impacts Data Identification concerning existing, permitted, and proposed surface disturbance acreage. In Rules 315.a.(3) and (4), the Commission incorporated new 100 Series Definitions of impact area and industrial facilities.

The Commission added new Rules 315.a.(5) and (6) to set forth Form 2B informational requirements around beneficial impacts and an operator's NOx and Greenhouse Gas Intensity Targets. The Commission added beneficial impacts to the Form 2B in response to the definition of cumulative impacts adopted in House Bill 24-1346. The Commission adopted Rule 315.a.(6) concerning information related to an operator's NOx and Greenhouse Gas Intensity Targets as part of its efforts to continue making meaningful progress toward achieving greenhouse gas emissions and ozone precursor reductions in oil and gas operations and advance environmental justice in Colorado. To that end, the Commission determined that it is critical that the Commission's and AQCC's emissions reductions analyses complement each other. As specified in the rule, the information each operator will submit must be the same information as reported to APCD as part of the operator's interim and annual reports, as applicable. These additions to Rule 315.a.(6), along with similar updates to Rule 314.e.(10), are intended to implement the directive from House Bills 23-1294 and 24-1346 to address the impact of oil and gas operations on Colorado's ozone problem.

In Rule 315.b, the Commission set forth the circumstances under which a cumulative impacts analysis will be required: when an operator proposes an oil and gas location pursuant to Rule 304.b.(2), when an operator submits a Form 2 pursuant to Rule 308.c.(2).B, and when an operator wishes to conduct subsequent operations on existing wells as set forth in Rule 312.d.(3). Rule 315.b.(1) also includes a provision that allows the Director to require an analysis, where appropriate.

Rule 315.b.(2) sets forth the required contents of a cumulative impacts analysis. The Commission has built out these requirements from the prior cumulative impacts plan in an effort to facilitate a more holistic analysis that will meaningfully identify, evaluate, and address cumulative impacts. Specifically, the cumulative impacts analysis is meant to capture a more robust identification of impacts and receptors that

currently exist near the proposed oil and gas location; new impacts that are anticipated to occur, or changes to existing impacts as a result of the proposed operations; and how the operator intends to evaluate the impacts the receptors will experience. In line with the definition of "cumulative impacts" from House Bill 24-1346, the cumulative impacts analysis asks operators to fully analyze impacts to all resources identified in the definition: air quality, water quality, climate, noise, odor, wildlife, and biological resources. Required information for a cumulative impacts analysis includes: an explanation of the determined impact area; a recent high-resolution aerial image annotated to specified sensitive receptors; descriptions of impacts from other past, present, and reasonably foreseeable future development; measures the operator plans to take to avoid, minimize, or mitigate adverse cumulative impacts; and resource impact descriptions. In order to reduce duplication of information across multiple plans, attachments, and applications, Staff intends to publish an operator guidance document that details how an operator should list its best management practices in a single document attached to the Form 2A pursuant to Rule 304, or attached to its Form 4 pursuant to Rules 308.c or 312.d.

A critical component of the cumulative impacts analysis is the information required in subpart (2).D: measures to avoid, minimize, or mitigate adverse cumulative impacts. Here, operators are required to describe specific measures taken to avoid or minimize the extent to which adverse cumulative impacts are incrementally increased, including but not limited to any best management practices or enhanced systems and practices the operator is committed to implementing. Consistent with the intent of Senate Bill 24-229 to afford more robust protections to disproportionately impacted communities, the Commission adopted the provisions in subpart gg to ensure that as part of their cumulative impacts analyses, operators are identifying and implementing appropriate operational and use practices at locations near and within those impacted communities.

The impact area determination process set forth in Rule 315.b.(2).A was also the subject of robust stakeholder feedback. The new 100 Series Definition of impact area, reproduced from the statutory definition, provides that the "Commission shall determine the impact area for a particular proposed operation based on the nature, intensity, and scope of the operation in its proposed location and the geographic extent of potential impacts." *See* C.R.S. § 34-60-103(22). Some stakeholders argued that the impact area should be comprised of numerous resource-specific impact areas. Other stakeholders suggested that the Commission should not provide deference concerning the impact area determination to the Director or Commission Staff. Some stakeholders advocated for a fixed-radius impact area that cannot be expanded. And some stakeholders supported the presumptive one-mile impact area, unless otherwise expanded by the Director at the pre-application consultation, as reasonable and supported by prior determinations during the 2020 Mission Change Rulemaking concerning cumulative impacts data to be collected pursuant to prior Rule 303.a.(5).

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The Commission agreed that the presumptive one-mile impact area, coupled with the Director's discretion to expand the impact area early in the application process, provided the most predictable and implementable process for its Staff as it reviews and considers cumulative impacts analyses, while retaining sufficient flexibility to ensure that cumulative impacts are appropriately analyzed and addressed for a particular proposed operation.

By expanding the requirements for and information necessary to perform the cumulative impacts analysis, operators should have a better opportunity to provide clear and concrete plans on how they will follow the mitigation hierarchy to first avoid impacts, and second minimize impacts, and lastly mitigate impacts that cannot be avoided or minimized, and how those efforts directly or indirectly address cumulative impacts. In addition, as set forth in Rule 316.b.(3), an operator's cumulative impacts analysis will be reviewed to determine whether the proposed OGDP application, Form 2A, Form 2, or Form 4 provides information that allows for a meaningful evaluation of, and addresses, cumulative impacts.

The Commission intends for its Staff to promptly issue guidance concerning the cumulative impacts analysis. For example, the Commission intends that the guidance should clarify the method of presentation for the recent, high resolution aerial image(s). The guidance will clarify whether multiple images each showing the same aerial view but having different informational overlays will be acceptable, or whether one image is preferred. The guidance will also provide additional detail regarding the content of the descriptions concerning measures taken to avoid, minimize, and mitigate, or offset, adverse cumulative impacts.

Rule 316

In Rule 316, the Commission adopted rules governing oil and gas operations in the ozone nonattainment area. The Commission determined that organizing the ozone nonattainment area operational requirements in one rule would provide more clarity for stakeholders. Rule 316 complements the significant additions to the Commission's analysis of cumulative impacts, and further reflects the Commission's statutory directive in Senate Bill 24-229 to adopt rules by September 30, 2024 that "require enhanced systems and practices to avoid, minimize, and mitigate emissions of ozone precursors from operations at newly permitted oil and gas locations" in the ozone nonattainment area. C.R.S. § 34-60-106(11)(c)(III).

Rule 316 ensures continued progress in achieving the Governor's goals that CDPHE and the Commission adopt rules to reduce NOx emissions from the upstream oil and gas operations by 30% in 2025 and 50% by 2030. Consistent with House Bill 23-1294's emphasis on the need to address the impact of oil and gas operations on Colorado's ozone problem, and specifically cumulative impacts on disproportionately impacted communities, Rule 316 represents the Commission's acknowledgement and reliance on

CDPHE's significant work to date to address ozone precursor emissions from oil and gas operations. The Commission intends for Rule 316 to complement, rather than duplicate, the CDPHE's NOx Intensity Target rules adopted by the AQCC. Similarly, the enhanced systems and practices set forth in Rule 316.c represent a collaborative effort among the Commission, CDPHE, and stakeholders to consider the efficacy of current best management practices and to adopt an initial list that will be re-evaluated, periodically, to account for evolving design, operational procedures, and technologies. Overall, the Commission intends for Rule 316 to both demonstrate and foster more collaboration, cooperation, and consultation between the Commission and APCD, a goal the Commission recognizes is important to stakeholders and both agencies.

Rule 316.a.

In new Rule 316.a, the Commission created a process for operators to demonstrate whether they are meeting AQCC's Regulation No. 7 NOx Intensity Target, which was adopted to reduce the emission of ozone precursors sourced from the use and operation of fossil fuel-fired equipment at oil and gas well drilling and completion operations in the nonattainment area between May 1 and September 30. The Commission determined that in order to continue making meaningful progress toward achieving NOx reductions in oil and gas operations and advance environmental justice in Colorado, it is critical that the Commission's and AQCC's emissions reductions processes complement each other.

The process set forth in Rule 316.a requires an operator seeking approval of an OGDP for operations in the ozone nonattainment area between May 1 and September 30 to provide the same information as it has provided to APCD in its most recent interim and annual reports regarding its NOx Intensity Target status. As set forth in the rule, those operators will provide their NOx intensity calculation and state whether they are below, have met, or exceeded their intensity target. The Commission recognizes that there are certain operators who may not be subject to the target and has required that those operators provide a statement certifying the operator will comply with enhanced systems and practices for its activities along with a list of additional measure the operator will take to reduce emissions of NOx. As set forth in the rule, operators are also required to submit any corrected information on NOx intensity to the Commission. The information provided by each operator will be used by the Commission in its decision-making process for those OGDPs proposing pre-production operations within the ozone nonattainment area between May 1 and September 30. Pursuant to Rules 316.a.(4) and (5), the Director and Commission will review such information in considering an OGDP application and have the option to approve, limit, or deny such application based on the operator's compliance with its NOx Intensity Target.

The Commission acknowledges that AQCC Regulation No. 7 provides for the calculation of NOx intensity through a majority/minority operator controlling interest

designation, where emissions are only allocated to one operator for each May 1 through September 30 time period. Therefore, the Commission has mirrored the language contained in AQCC Regulation No. 7 concerning allocation of emissions and operator designations. This is necessary due to the corporate structure of various operators who may be considered separate operators for the purposes of the Commission's Rules, but whose controlling corporate entity is responsible for NOx emissions and compliance with the NOx Intensity target under AQCC's regulations. By taking this approach, the Commission aims to ensure that an operator's compliance with NOx Intensity Targets will be reported to the Commission in the same way as it is reported to APCD.

Rule 316.b.

The Commission adopted Rule 316.b to better understand and account for the potential cumulative NOx emissions anticipated in the ozone nonattainment area between May 1 and September 30. The pre-production phase of oil and gas development often has high levels of emissions that may pose unique and greater risks to public health. Therefore, the Commission determined that a unique review process was necessary in order to ensure all proposed and upcoming operations for approved Form 2As and Form 2s in the nonattainment area between May 1 and September 30 do not negatively impact oil and gas emissions reductions goals in Colorado.

Rule 316.b requires operators to request approval to conduct permitted pre-production operations within the ozone nonattainment area between May 1 and September 30. As part of such request, the operator will submit a new Form 2D, Emissions Intensity Assessment, which will include a summary describing (1) the operator's most recent annual and interim NOx intensity information or a statement certifying that the operator is not subject to the NOx Intensity Target; (2) an anticipated list of all pre-production operations; (3) a narrative description of enhanced systems and practices; (4) a narrative description of how the operator will not exceed its NOx Intensity Target if its request is approved; (5) other potentially relevant information; and (6) a certification that the information provided in the Form 2D is true and correct to the best of the operator's knowledge and belief. Beginning in 2025, the requests must be submitted by February 15 of the year such pre-production operations are planned.

As set forth in Rule 316.b.(4), the Director will determine whether to approve, conditionally approve to limit operations to between October 1 and April 30, or deny an operator's request based on the information provided on the operator's Form 2D. To address situations where the operator's Form 2D indicates a discrepancy between the NOx intensity information in the operator's most recent annual and interim reports, the Commission has adopted a process whereby the Director will consult with CDPHE and the operator, and then, based on the results of that consultation, take action to approve, conditionally approve, or deny the operator's requested operations. The Commission intends for this process to assist its Staff in comprehensively evaluating

permitted activities in the ozone nonattainment area for each individual operator, as well as across all the operators, to better understand the potential cumulative amount of NOx emissions proposed between May 1 and September 30.

In Rule 316.b.(5), the Commission specified a procedure for changing already-approved operations in the ozone nonattainment area. Operators may request changes to previously approved pre-production operations in the ozone nonattainment area between May 1 and September 30, and changes requested after March 15 will be approved only if the requested change documents reductions to NOx emissions or operations, or a substitution of authorized comparable wells. Such request will be accomplished by submitting a Form 4, Sundry Notice, pursuant to Rule 301.c if applicable, and the Form 2D, in order that the Commission may reassess an operator's ability to not exceed its NOx Intensity Target for the upcoming "ozone season."

To ensure the Commission remains informed about upcoming and planned operations in the nonattainment area, Rule 316.b.(6) requires that, no later than April 15 annually, the Director will provide an annual report to the Commission summarizing planned operations in the ozone nonattainment area between May 1 and September 30. This report will include information about the cumulative impact of those operations authorized by the Commission to occur between May 1 and September 30, and what potential trends are emerging, if any, that might further inform Commission decisions on permits or policies in the future.

With the introduction of the new Form 2D, the Commission intends that Staff will promptly develop, test, and release the Form 2D by November 30, 2024, when these new Cumulative Impacts and Enhanced Systems and Practices Rules are anticipated to go into effect. Staff will also plan to issue guidance on the use of this Form on or prior to the effective date of the Rules.

Rule 316.c.

In new Rule 316.c, the Commission adopted specific operational and use requirements for oil and gas operations in the ozone nonattainment area. Pursuant to Senate Bill 24-229, the Commission must adopt rules that require "enhanced systems and practices" to avoid, minimize, and mitigate emissions of ozone precursors from operations at newly permitted oil and gas locations in the ozone nonattainment area. *See* C.R.S. § 34-60-106(11)(c)(III). The Commission is also required to specify an initial list of enhanced systems and practices considering the best management practices that have been recommended by CDPHE in consultation with operators, consider the proposed location's potential to contribute adverse impacts through emissions of ozone precursors, consider any available air modeling analyses, and periodically evaluate the potential for updates to the required enhanced systems and practices.

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Rules 316.c.(2) and (3) contains the list of required enhanced systems and practices for all new operations in the ozone nonattainment area. Certain listed practices are required year-round pursuant to Rule 316.c.(2).A. Other practices, as set forth in Rule 316.c.(2).B, are required only between May 1 and September 30, except for when the location is within a disproportionately impacted community, in which case, the practices are required year-round.

A core premise of the Commission's Rules intended to address disparate health outcomes within disproportionately impacted communities is the understanding that these communities have historically borne an unfair burden of pollution sources, while receiving fewer environmental benefits. Accordingly, in Rule 316.c.(3), the Commission has adopted *additional* enhanced systems and practices that operators will implement at locations within disproportionately impacted communities between May 1 and September 30. At all other oil and gas locations, these practices will be implemented between May 1 and September 30, where practicable. Rule 316.c.(4).B requires operators to explain their conclusions regarding practicability, and Rule 316.c.(4).C provides that the Director's Recommendation will include a discussion of the operator's chosen enhanced systems and practices and whether the Director agrees with the operator's conclusions on practicability.

Rule 316.d.

New Rule 316.d is reflective of Senate Bill 24-229's grant of authority to the Commission to take such actions between May 1 and September 30 of each year as appropriate to reduce emissions of NOx generated from production and pre-production operations. In this rule and pursuant to C.R.S. § 34-60-106(3)(d), the Commission has focused its efforts on providing a process to hold individual operators to account if they fail to comply with their NOx Intensity Targets. If information submitted to the Commission indicates an operator failed to comply with its NOx Intensity Targets, the Director may require the operator to take actions including, but not limited to, implementing additional enhanced systems and practices, shutting in one or more wells, plugging and abandoning one or more wells, or other actions the Director deems necessary to assure compliance with the NOx Intensity Targets. Prior to requiring an operator to take action pursuant to this rule, the Director will consult with CDPHE. In order to ensure due process, the Commission adopted Rule 316.d.(3) to provide appeal rights from the Director's decision.

Several stakeholders suggested that the Commission enact a program whereby the Director may take enforcement action against all operators for failing to meet "sector-wide" NOx intensity goals. The Commission did not adopt this suggestion because there are no sector-wide NOx intensity targets in AQCC Regulation No.7, which sets forth the NOx intensity program. *See* AQCC Regulation No. 7, Part B.VI.E.2. Instead, the NOx intensity program includes targets for individual operators, which are designed to meet sector-wide goals outlined and identified in the Governor's

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March 16, 2023 letter. Because there is no sector-wide NOx intensity target, the Commission determined it was not prudent to adopt a process that could result in punitive measures against all operators for the failures of individual operators. Furthermore, Senate Bill 24-229 provides that the Commission will require operators to take actions "appropriate to assure compliance with (I) NOx Intensity Targets; and (II) other NOx rules that [AQCC] adopts by rule to achieve sector-wide compliance with the State's 2030 goals for NOx emission reductions." C.R.S. § 34-60-106(3)(c). As the AQCC has not yet conducted the rulemaking identified in Senate Bill 24-229, C.R.S. § 25-7-109(10)(d), it would not be consistent with statute for the Commission to enact a sector-wide compliance process prior to that time. The Commission acknowledged that taking action against noncompliant operators should ultimately yield sector-wide compliance.

800 Series – Underground Injection for Disposal and Enhanced Recovery Projects

Rule 803

The Commission revised Rule 803.b.(2).A to update the reference to the Form 2B requirements, as that information was moved to Rule 315.a. No substantive changes were made to the rule.

900 Series – Environmental Impact Prevention

Rule 904

Rule 904 was originally adopted during the Mission Change Rulemaking to implement the Commission's obligation under Senate Bill 19-181 to evaluate cumulative impacts. The Commission introduced its CIDER as a baseline dataset used to facilitate the Commission's ongoing efforts to evaluate the cumulative impacts of oil and gas operations in Colorado. In Rule 904.a, the Commission updated references to new concepts introduced in these rules, including the NOx and Greenhouse Gas Intensity Targets, and defined terms.

1200 Series – Protection of Wildlife Resources

Rule 1201

The Commission revised Rule 1201.b.(1) to update the rule reference related to alternative location analyses. No substantive changes were made to the rule.

Conforming Changes

Conforming changes are described in the "Identification of New and Amended Rules" section above, and in the discussion of each Rule.

APPENDIX B

Effective Date

The Commission adopted the proposed amendments during rulemaking hearings held September 3 through 13, 2024. Pursuant to C.R.S. § 24-4-103(5), these amendments will become effective on November 30, 2024, unless otherwise specified in the Rule.

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