



ECMC CPW CONSULTATIONS FOR HIGH PRIORITY HABITATS OPERATOR GUIDANCE FORM 2A AND FORM 4

**Multiple Rules (301.c.(2).B., 301.g.(1).B., 304.b.(2).B., 309.e.,
314.f.(4).B., 423.b.(1). and 423.b.(4)., 424.d.(1)-(3).B., 1200 Series)**

Document Control

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Rule Citation

There are many compliance Rules associated with proposed operations, new or amended Locations, within wildlife habitats. For the full text for the following rule citations, see Appendix B. For quick reference, see the following Rules:

- 301.c.(2).B. - Changes to Approved Oil and Gas Development Plans
- 301.g.(1).B. - Pre-Application Meeting Participants
- 304.b.(2).B. - Alternative Location Analysis Criteria
- 309.e. - Post-Completeness Consultation with CPW
- 314.f.(4).B. - Comprehensive Area Plans Consultation with CPW
- 423.b.(1). and 423.b.(4). - Noise
- 424.d.(1)., 424.d.(2)., and 424.d.(3).B. - Light
- 1200 Series - Protection of Wildlife Resources

Purpose of Guidance

This document addresses Colorado Parks and Wildlife's (CPW) consultation process for new or amended Locations that are permitted through ECMC's Oil & Gas Development Plan (OGDP) or Rule 314 Comprehensive Area Plan (CAP) process, where a consultation occurs for Locations or their proposed access roads, utility corridors, and/or pipeline corridors that are within CPW-mapped High Priority Habitats (HPH) and other areas identified in the ECMC rules for protection of wildlife resources.

The purpose of this document is to describe the roles and responsibilities of the Operator and CPW in the consultation process, to ensure consistent and productive engagement for proposed OGDPs and CAPs.

A separate Guidance Document for the CPW consultation process for operations at existing Locations in wildlife habitats is available: ECMC's Operator Guidance> CPW Consultation Process for Operations at Existing Locations in Wildlife Habitats.

Guidance/Requirements

CPW supports meaningful consultations through early and continuous communication with Operators. CPW's role is to share relevant information; provide guidance and feedback to Operators on ways to avoid, minimize, and mitigate impacts to wildlife resources; and to recommend conditions of approval (COAs) necessary and reasonable to avoid, minimize, and mitigate impacts. CPW's role in the permitting process is to provide ECMC with the information necessary to determine whether an application protects against adverse impacts to wildlife resources. Final permit approval authority rests with the ECMC Commission.

Rule 309.e.(2).A-F describes the conditions when consultation must occur with CPW. Summarized conditions are:

1. The proposed Location or associated new access road, utility, or Pipeline corridor that falls within HPH, a State Park, or a State Wildlife Area.

2. Additional consultation triggers include federally designated critical habitat, areas of known occurrences of federal or state listed species, and properties encumbered by conservation easements.
3. CPW requests a consultation when consultation is not otherwise required.
4. The Director may determine that consultation with CPW is necessary.

Pursuant to Rule 309.e.(2).G., the requirement to consult with CPW may be waived by CPW at any time in the permitting process. This waiver will be provided by CPW in a written statement communicating the findings by CPW that consultation is not necessary to protect Wildlife Resources.

Rule 309.e.(3).A.-E. describes the conditions when consultation is **not** required. An Operator may request in writing that CPW concurs with the Operator's finding that the Location does not require consultation. Under Rule 309.e.(3).C., the Operator may request that CPW review the Location if the Operator believes the conditions are such that consultation with CPW is not required. In these cases:

1. An Operator should provide CPW with the specific wildlife- and habitat-related information necessary to support the claim that the habitat is no longer present and unlikely to return, or that existing development at that location makes the area incompatible with wildlife habitat. Documentation of existing site conditions may include descriptions or photographs of the site, a report from a consultant or staff biologist, or other supporting documentation of site conditions. CPW may request an on-site consultation to field verify the claim.
2. CPW will respond in writing with either concurrence or the reasoning why the habitat is supportive of wildlife and consultation with CPW is required. If additional information is necessary for CPW to determine whether to waive consultation, CPW will inform the Operator. A timeline for response will be discussed and agreed upon between CPW and the Operator. Factors that may need to be considered include: the rationale provided with the

request, substance of the information provided by the Operator and available to CPW, as well as the potential need for a site visit and/or additional seasonal or survey data based on site specific details. In most cases, CPW's response should be available to the Operator within 15 days of the request being deemed complete by CPW.

CPW Pre-Application Consultation Process

An Operator considering a new Location (as part of an OGD or within a proposed CAP) is required by rule (Rule 301.f. and 301.g.) to participate in a Pre-Application Meeting. At the request of ECMC, the Operator, and/or the local government, CPW staff will participate in the pre-application meeting to the extent practicable. If unable to attend, CPW will be available for follow-up discussions to address wildlife issues raised at the pre-application meeting. Operators should contact CPW early in the planning stage to initiate consultation regarding wildlife impacts. Additional engagement with local governments on proposed Locations, prior to or after the Pre-Application Meeting, is considered part of the CPW consultation process. Contacts for CPW Regional Energy Liaisons can be found on the [ECMC's Interactive Online GIS map](#) or on the [CPW's Energy and Land Use map](#).

CPW is available for consultation discussions, virtual meetings, and/or site visits with an Operator regarding proposed OGDs that may impact HPH. CPW will participate in a site visit upon the request of the Operator. CPW consultation requires the Operator to share information on their proposed Location(s) and the rationale for siting those locations (i.e. Alternative Location Analysis (ALA)) with respect to operations and wildlife considerations, including factors identified in Rule 309.e.(1).A.-F. Operators should provide information on proposed site layouts and operation plans (i.e. schedule of operations, equipment planned for operations, etc.) with CPW and discuss intended site-specific Best Management Practices (BMPs) for addressing potential wildlife impacts. CPW will share site-specific habitat information about the proposed Location(s) and the potential impacts to wildlife from the proposed operations, and will address Operator site-specific questions on habitat and wildlife impacts.

In consultations with the Operators, CPW will discuss available evidence and/or resources used in support of the inclusion of a particular area within an HPH polygon, as identified on the ECMC's Interactive Online GIS map. This information may include field data and observations, habitat suitability, survey results, summary of collar studies, telemetry data, and/or any other data used in supporting the identification and mapping of HPH polygons. Site-specific information shared by CPW may be verbal or written (at the discretion of CPW), recognizing that in order to protect wildlife under certain conditions some data may not be available for full release. If the primary data relied upon by CPW to consider an area as HPH is not publicly available data, the Operator may make a request to CPW to obtain this data within a discrete area of interest, within the Operator's holdings. Upon review, CPW may share data or data summaries within the identified area after execution of a confidentiality agreement and subject to state statutes and CPW policy. The Operator is encouraged to provide any supplemental wildlife or habitat information to CPW at this time.

The pre-application consultation may include CPW Energy Liaisons and Land Use Specialists, the District Wildlife Manager, and/or Area Biologists during discussions or on-site visits. CPW Energy Liaisons will consult with relevant CPW staff regarding wildlife concerns at a proposed Location and include those staff members in meetings and discussions with the Operator to the extent possible. If individuals are unavailable to attend meetings or on-site consultations, the Energy Liaison will convey their input to Operators. Parties strive to conduct on-site visits of the proposed Location, as soon as practical, to consider such factors as site access, environmental conditions, wildlife use of the area, and permitting timeline.

[CPW's Recommendations to Avoid and Minimize Impacts to Wildlife from Land Use Development in Colorado](#) is available to give Operators an indication of what proposed BMPs CPW may consider for a particular HPH at a location. Any Operator-proposed alternative or modified BMPs will be evaluated by CPW against the existing recommendations, newly published research or scientific findings, and efficacy of the proposed alternatives in providing protections for wildlife resources at the location. BMPs and additional operational considerations should be discussed by CPW and the

Operator to address noise impacts (Rule 423.b.(1). & (4).), light impacts (Rule 424.d.(3).), truck traffic, and any other potential cause of impacts to wildlife and their habitat.

At the request of Operators, pre-application consultations may include CPW's review of the proposed Wildlife Protection Plan, Wildlife Mitigation Plan, Compensatory Mitigation Plan, CPW waiver requests, and/or other components of the Operator's OGDG application that pertain to wildlife issues. CPW is willing to work with the Operator to develop an initial written assessment of potential wildlife impacts based on the information shared and discussed during the pre-application stage of the process, upon request by the Operator for incorporation into the wildlife plan. Any change in conditions, plans, or new information not previously shared with CPW could result in changes to this initial assessment of potential wildlife impacts.

Rule 309.e. Post-Completeness CPW Consultation

The pre-application consultation process is followed by the Operator's OGDG application submission. Once the application is submitted and determined complete by ECMC, the post-completeness stage of the application process begins. The Operator, ECMC, or CPW may require additional consultation relating to the wildlife related OGDG application submitted materials. When additional CPW consultation is requested, this is referred to as the Post-Completeness CPW Consultation. This consultation phase is a continuation of the consultations that have already occurred for the proposed OGDG.

The Post-Completeness CPW Consultation phase occurs in the 60 days after an OGDG has been deemed complete by ECMC Staff. When the pre-application consultation process has been implemented, as described above, this post-completeness consultation period can be used to finalize recommendations and documents reviewed or discussed during the pre-application planning stage. CPW will finalize the consultation process with the CPW Consultation Summary, which will address the consultation timeline, summarize any ALA discussions (Rule 304.b.(2).B.viii.), any Lesser Impact Area (LIA) Exemptions, any requested CPW Waivers, and agreed upon

BMPs and Compensatory Mitigation. This consultation summary will be sent to ECMC within 60 days of a permit passing completeness and will be incorporated onto the Form 2A by ECMC staff.

Rule 314.f.(4).B. Comprehensive Area Plan Consultation with CPW

Rule 314.f.(4).B. discusses the CPW consultation process specific to a CAP permit application. This rule requirement directs that CPW's input in CAP consultations is specific to Cumulative Impacts on Wildlife Resources and measures to avoid, minimize, and mitigate those impacts associated with the CAP, timing of operations, consolidation of infrastructure, and conveying the right of Operatorship in the area of the CAP. The CAP consultation with CPW does not replace the CPW consultation process (outlined and described above) for individual OGDs associated with the CAP, which occurs during the OGD review process.

Rule 1201. Wildlife Plans

Rule 1201.a.-b. describes what should be included in wildlife plans included on the Form 2A for a new or amended Location.

Rule 1202. Operating Requirements

The operating requirements of Rule 1202.a.-b. apply to all Oil and Gas Operations statewide, unless CPW waives a specific requirement. CPW will work with the Operator and ECMC staff to ensure Operator compliance with statewide operating requirements.

Rule 1202.c. outlines the limitations related to where Operators cannot conduct any new ground disturbance and/or Well work, including construction of a Location and access road, drilling and completion activities, and Flowline/utility corridor clearing and installation activities in HPH. Rule 1202.c.(2).C. does provide an exception for Access Road construction and Flowline/utility clearing and installation in certain Rule 1202.c. HPHs. CPW will review the Operator-proposed construction and operational

plans and BMPs for these activities and provide the Operator and ECMC with recommendations on BMPs and avoidance measures for construction in these habitats.

Rule 309.e.(5).D. specifies the HPH types and conditions where CPW may waive the application of and the Director may grant an exception to the Rule 1202.c. ground disturbance restrictions.

Rule 1202.d. identifies the specific HPH types considered when reviewing an OGDG for compensatory mitigation when the proposed Location causes the density of Oil and Gas Locations in the habitat to exceed 1 per square mile in the specified HPH types. Development densities exceeding 1 Location per square mile across the landscape result in unavoidable adverse indirect impacts to the species identified in Rule 1202.d.; therefore, increasing densities over 1 per square mile requires compensatory mitigation.

Rule 1203. Compensatory Mitigation for Wildlife Resources

Rule 1203.a. discusses the difference between direct and indirect compensatory mitigation. For Oil and Gas Development Plans within Rule 1202.d. HPH, compensatory mitigation may be required to offset direct and unavoidable adverse indirect impacts to wildlife resources. For development within Rule 1202.d. habitats, the Operator will provide CPW with the Oil and Gas Location acreage for the assessment of direct impacts, in addition to relevant information regarding construction, drilling, and operational plans to assist CPW in calculating potential adverse indirect impacts. CPW will determine the direct and indirect impacts of the proposed development (as described in ECMC's rules) and make written recommendations to the Director.

As outlined in Rule 1203, the Operator will choose to fulfill their mitigation requirement by completing their own compensatory mitigation project or by paying a habitat mitigation fee to CPW. If an Operator proposes a compensatory mitigation project to offset the impacted acres from the proposed development, CPW will review the components of an Operator-provided Compensatory Mitigation Plan as

described in Rule 1203.b.(1).A.-M. and will provide written comments to the Operator and ECMC. If an Operator elects to pay a fee to CPW under Rule 1203.d.(3).B., CPW will provide an estimate of costs to the Director for the location and a copy of those comments to the Operator.

Rule 1203.c. communicates the calculation used in determining the direct impact habitat mitigation fee. Direct impacts are considered at two different temporal scales:

1. Short-term disturbance is considered to be those areas that will receive interim reclamation in accordance with ECMC rules.
2. Long-term disturbance is considered to be those areas of the overall disturbance that are not immediately reclaimed and are required throughout the production phase of the proposed development.

CPW considers both long-term and short-term disturbances and timelines for reclamation activities when calculating direct impacts. The total direct impact disturbance considers all acres associated with the Location, including access roads and pipelines. If the total direct impacts are 11 acres or greater, CPW will calculate a mitigation fee based on the amount of long-term and short-term direct impacts based on plan details and acreage of impacts supplied by the Operator and associated costs per acre for these disturbance categories. If the total direct impact disturbance is less than 11 acres, the Operator may elect to pay the flat fee mitigation payment for direct impacts included in the 1200 Rule Series, Table 1203-1. An Operator may elect to include those direct impact acres in their own compensatory mitigation plan, rather than pay the fee.

For locations within Rule 1202.d. High Priority Habitats, where the density of locations exceeds 1 location per square mile but is less than 5 per square mile, CPW will recommend to the Director whether compensatory mitigation is required to address the unavoidable adverse indirect impacts. The determination regarding whether the proposed Oil and Gas Location is within an area with a location density under 5 per square mile will be made during the CPW consultation process. The

methodology utilized in that determination is provided in detail in Appendix A. The ECMC's Interactive Online GIS map has a layer that illustrates areas less than and greater than 5 Locations per square mile, which should be referenced by the Operator when preparing for the CPW consultation. This map layer will be updated annually by CPW and is intended for informational purposes only, as the data used to produce the map changes rapidly. Field verifications should be conducted to confirm the accuracy of this map layer prior to the submission of an OGDG or other permit applications.

For locations that meet the criteria for indirect impacts, CPW will assess the Location and Operator-provided site development plans to determine whether indirect compensatory mitigation will be recommended to the Director to address unavoidable adverse indirect impacts. In addition to the proposed operational plans, CPW's assessment of indirect impacts will consider:

1. The acres that will be impacted by fragmentation or behavioral avoidance resulting from the development,
2. The proportion of the indirect impact analysis area mapped as HPH,
3. The forage availability and range condition within that area of impact,
4. The availability and distance to escape terrain for the species (if applicable),
and
5. Existing disturbance in the vicinity of the proposed operations.

CPW will provide a summary of their findings and determination of acres of impacted habitat from that assessment to the Operator and ECMC.

Waiver Authority

There are specific Rules where the Commission has granted CPW the discretionary authority to grant waivers.

1. 304.b.(2).B.viii. Alternative Location Analysis

2. 309.e.(2).G. When Consultation Must Occur
3. 309.e.(5).C-D. Result of Consultation
4. 1202.a. Operating Requirements
5. 1202.b. Operating Requirements

Operators seeking a CPW-issued waiver should identify the specific rule requesting to be waived, document the justification and supporting evidence for the requested waiver, and communicate the proposed alternative avoidance, minimization, and mitigation measures. Operators should consult CPW in the development of this document and submit the final justification to CPW. CPW will provide their determination on the waiver issuance and rationale in writing. Include this documentation in the OGD application as a separate attachment to the Form 2A and indicate it on the applicable Form 2A data field.

Additional Information

Common Errors and Issues Encountered by ECMC Staff

1. N/A

General Notes

1. Operators may find it useful to review other ECMC Commission-approved OGDs and their respective Wildlife Protection and Wildlife Mitigation Plans to familiarize themselves with BMPs and other requirements agreed upon through the CPW consultation process.
2. CPW provided a presentation called “Determining When Rules 1202.d. and 1203.c. Apply” at the January 28, 2021, Operator Meeting, which can be used as a reference. Operator meetings are recorded and accessible on the ECMC website, under Operator Guidance.

Frequently Asked Questions

1. Where can I find more information?

CPW's recommendations for avoidance and mitigation by species:

https://cpw.state.co.us/Documents/Conservation-Resources/Energy-Mining/CPW_HPH-Map-Layers.pdf

Map of CPW's Energy Liaisons and Land Use Specialists:

<https://cpw.widencollective.com/assets/share/asset/5bg4obd1mx>

US Fish & Wildlife Service Environmental Conservation Online Map System:

<https://ecos.fws.gov/ecp/report/table/critical-habitat.html>

Document Change Log

Change Date	Description of Changes
May 29, 2025	Updated to reflect Dec. 2024 Rules changes
July 27, 2025	Reviewed
August 28, 2025	Verified ADA accessibility, prepared for publication

Appendix A - Calculation for Location Density

The 1200 Series Rules contain references to density of oil and gas locations with regards to compensatory mitigation. CPW uses the following calculations to determine density of locations during consultation and is providing this information so that Operators may conduct their own density assessment, and to allow for more productive discussions between CPW and Operators. CPW presented these procedures at the [Operator Meeting on 01/28/2021](#).

Rule 1202.d

The determination regarding whether the proposed Oil and Gas Location is within an area with an active location density under 5 per square mile will be made during the Rule 309.e. consultation process. The methodology utilized in that determination is provided below.

- The point density tool in ArcGIS will be used to calculate the density of active Oil and Gas Locations per square mile. The dataset can include: Producing Wells, Injection Wells, Active Wells, Shut-in Wells, Drilling, Waiting on Completion, and Temporarily Abandoned Well.
- The parameters used in the calculation are a cell size of 0.03 square miles or (278.75 meters). This is equivalent to each cell covering an area of approximately 19 acres, intended to represent an area similar to the area of disturbance of a large new oil and gas location.
- The density calculation area is a circle with a radius of 1609.34 meters, which is equal to a 1-mile radius circle.
- The area units are square Miles resulting in a raster layer where each cell has a calculation of the Oil and Gas Location density per square mile for a 1-mile radius around and including that cell.

- The parameters are entered into the tool in meters which are the map units.
The data is in UTM, Zone 13, NAD83.

Per Rule 1202.d. Operators will make a determination of whether or not a proposed Oil and Gas Development Plan will result in the density of Oil and Gas Locations to exceed 1 per square mile in the High Priority Habitats listed in Rule 1202.d.(1)-(10). The determination regarding whether the Oil and Gas Location density exceeds 1 per square mile should be made using the following process:

- Using ECMC's online GIS mapping tool, determine whether or not your proposed Oil and Gas Location is within one of the Rule 1202.d.(1)-(10) High Priority Habitats
- Use the distance tool to measure the linear distance from the nearest active Oil and Gas Location to your proposed Oil and Gas Location.
- If the distance is less than 1.12 miles, the proposed location is in an area where the density of Oil and Gas Locations exceeds 1 per square mile within the affected Rule 1202.d. High Priority Habitat(s) and Rule 1202.d applies. If the distance is 1.12 miles or greater, Rule 1202.d does not apply.
- Why 1.12 Miles? Based on the area of a square mile, each Oil and Gas Location needs to be 1.12 miles apart or more to avoid areas on the landscape exceeding an Oil and Gas Location density of one per square mile.

Appendix B - Associated Rules

The full text of the rules in context may be found on the [ECMC's website](#).

Rule 301. General Requirements for Approval, Changes to Operations, and Filing Fees for Oil And Gas Operations

c. Changes to Approved Oil and Gas Development Plans.

(2) The Director will determine what applications, forms, and information are required for the review and approval of the proposed change, and whether:

B. The proposed change requires consultation with the Colorado Department of Public Health and Environment (“CDPHE”) or Colorado Division of Parks and Wildlife (“CPW”); or

g. Pre-Application Meeting Requirements.

(1) Director’s Pre-Application Meeting. Except as provided in Rule 301.f.(3), an Operator will submit a written request for, and participate in, at least one pre-application meeting with the Director prior to the Operator submitting an Oil and Gas Development Plan or CAP application to the Commission.

B. Participants. The Director’s pre-application meeting will include, at minimum, the Operator and the Director. The Operator will also invite following persons to attend:

i. All Local Governments within 1 mile of the proposed Oil and Gas Location(s);

ii. Any federal or state agency with land use jurisdiction over the application lands or minerals;

iii. CDPHE;

- iv. CPW; and
- vi. A Community Liaison, if the proposed Oil and Gas Location is within a Disproportionately Impacted Community.

Rule 304. Form 2A, Oil and Gas Location Assessment Application

- b. Information Requirements.** All Form 2As will include the following information, unless otherwise provided in a Commission Order approving a CAP pursuant to Rule 314.

(2) Alternative Location Analysis.

- B. Alternative Location Analysis Criteria.** An Operator will perform an alternative location analysis if:

- viii. The proposed Oil and Gas Location is within High Priority Habitat and the Operator did not obtain a waiver from CPW through a pre-application consultation;

Rule 309. Consultation

e. Colorado Parks and Wildlife.

- (1) The Purpose of Consultation.** The purpose of consultation with CPW is to provide the Director the information necessary to determine whether an application protects Wildlife Resources and whether conditions of approval are necessary to Avoid, Minimize, or Mitigate Adverse Impacts to Wildlife Resources associated with High Priority Habitats, and protect against adverse impacts to Wildlife Resources resulting from Oil and Gas Operations. Factors that CPW may take into consideration during consultation include, but are not limited to, the following:

- A.** Anticipated adverse impacts of the proposed Oil and Gas Operations on Wildlife Resources;
- B.** The extent to which the proposed siting of facilities Avoids or Minimizes Adverse Impacts;
- C.** The extent to which the proposed Oil and Gas Operations incorporate the use of existing facilities, roads, and Pipeline corridors and limit new surface disturbance and habitat fragmentation;
- D.** The extent to which the proposed Oil and Gas Operations use technology and Best Management Practices which are protective of Wildlife Resources, including but not limited to seasonal construction and drilling limitations, noise limitations, remote operations, equipment disinfection, and transporting and storing liquids through Pipelines and large Tanks or other measures to reduce traffic volumes;
- E.** The extent to which the proposed Oil and Gas Operations are within land used or designated to be used for residential, industrial, commercial, agricultural, or other purposes, and the existing wildlife disturbance associated with such use; and
- F.** The extent to which the proposed Oil and Gas Operations occur on federal or private lands for which the use and access of the lands in question may already be incorporated into a federal planning document, or the private Surface Owner designates the use of the land based on the function and utility of multiple use designations.

(2) When Consultation Must Occur. The Operator will consult with the Surface Owner (unless the Surface Owner has waived their right to participate pursuant to Rule 309.e.(4).C) and with CPW about a Form 2A, Oil and Gas Development Plan, CAP, or other matter where:

- A.** A proposed Oil and Gas Location or associated new access road, utility, or Pipeline corridor falls within High Priority Habitat, a State Park, or a State Wildlife Area;
- B.** A proposed Oil and Gas Location or associated new access road, utility, or Pipeline corridor falls within federally designated critical habitat or an area with a known occurrence for a federal or Colorado threatened or endangered species;
- C.** A proposed Oil and Gas Location or associated new access road, utility, or Pipeline corridor falls within an existing conservation easement established wholly or partly for wildlife habitat;
- D.** CPW requests consultation or because consultation is necessary to Avoid, Minimize, or Mitigate reasonably foreseeable direct, indirect, or cumulative Adverse Impacts to Wildlife Resources from a Form 2A, Oil and Gas Development Plan, CAP, or other matter where consultation is not otherwise required;
- E.** The Operator seeks a variance pursuant to Rule 502 from a provision in the Commission's 1200 Series Rules, or from wildlife-specific conditions of approval or Best Management Practices approved on a Form 2A; or

- F.** The Director determines that consultation would assist the Director in determining whether to recommend approving or denying an Oil and Gas Development Plan or CAP.
- G.** Notwithstanding the foregoing, the requirement to consult with CPW may be waived by CPW at any time. Any waiver will be based on a written finding by CPW that consultation is not necessary to protect Wildlife Resources from quantifiable adverse direct, indirect, or cumulative impacts from Oil and Gas Operations.

(3) When Consultation is Not Required. Consultation will not be required if:

- A.** The Director has previously approved a Form 2A or CAP and associated Wildlife Protection Plan or Wildlife Mitigation Plan that addresses the proposed Oil and Gas Location and the proposed operations are in compliance with previously approved plans.
- B.** CPW has previously approved, in writing, a Wildlife Protection Plan, Wildlife Mitigation Plan, or other conservation plan that remains in effect for the area that includes the proposed Oil and Gas Operations and the Oil and Gas Location is in compliance with such plan.
- C.** The Operator demonstrates and CPW agrees in writing that:
 - i. The identified habitat and species triggering the consultation is no longer present and unlikely to return to the area; or
 - ii. The proposed Oil and Gas Location is within an area either primarily or completely developed for residential,

agricultural, commercial, or industrial use that makes the area incompatible with wildlife habitat.

- D.** The proposed new Oil and Gas Location would involve a one-time increase in surface disturbance of 1 acre or less contiguous with an existing Oil and Gas Location with a Wildlife Mitigation Plan or other conservation plan that remains in effect for the area.
- E.** A Commission Order limits the density of Oil and Gas Locations within a Drilling and Spacing Unit to 1 per section, and the Order includes a Wildlife Mitigation Plan or other conservation plan that remains in effect for the area.

(4) Procedures for Consultation.

A. The Operator will provide:

- i.** The Oil and Gas Development Plan or CAP, if applicable, or for consultations that do not involve an Oil and Gas Development Plan or CAP, a description of the proposed Oil and Gas Operations, including their location and the phasing and duration of operations consistent with Rules 303 & 304, and, if applicable Rule 314; and
- ii.** Any other relevant available information about the proposed Oil and Gas Operations and the affected Wildlife Resources, including the wildlife habitat drawing pursuant to Rule 304.b.(7).C and information required by Rule 1201.

B. The Operator, the Director, the Surface Owner, and CPW will have 60 days to conduct the consultation required by this Rule 309.e, recognizing that pre-consultation or consultation with

Relevant Local Governments or federal land management agencies may shorten the process. The time period for consultation will begin at the start of the Rule 303.d.(1) or 314.f.(1).A public comment period, or when an Operator requests a variance. If the Operator has made no reasonable accommodation for consultation within such 60-day period, the Director will have discretion to postpone making a decision about an Oil and Gas Development Plan or CAP in order to allow consultation to occur if the Director believes the information from consultation is necessary to determine how to protect and Avoid, Mitigate, and Minimize Adverse Impacts to Wildlife Resources.

- C.** The Surface Owner may waive its right to participate in the consultation and is not obligated to provide access to its surface for such consultation. If access to the surface is not granted, the Operator will arrange a consultation meeting with CPW at a mutually agreeable time and location and the consultation will be based on best available data.

(5) Result of Consultation.

- A.** As a result of consultation required by this Rule 309.e, CPW may make written recommendations to the Director about how to protect Wildlife Resources and conditions of approval that are necessary and reasonable to Avoid, Minimize, or Mitigate direct, indirect, and cumulative Adverse Impacts to Wildlife Resources from Oil and Gas Operations pursuant to Rules 1202 & 1203.
- B.** CPW may also recommend, in writing, that the Commission deny an Oil and Gas Development Plan, Form 2A, Wildlife Protection

Plan, Wildlife Mitigation Plan, Compensatory Mitigation Plan, or CAP due to reasonably foreseeable risks or Adverse Impacts to Wildlife Resources that cannot be Avoided, Minimized, or Mitigated to the extent necessary to protect these resources from Oil and Gas Operations.

C. Except for Rule 1202.c, CPW may waive, in writing, any operating or mitigation requirements otherwise required by Rules 1202 or 1203 based on CPW’s analysis of potential Unavoidable Adverse Impacts.

D. For Rule 1202.c:

i. CPW may waive the application of and the Director may grant an exception to Rule 1202.c.(1).R for any new ground disturbance that meets the criteria of Rule 1202.c between 300 feet and 500 feet from the Ordinary High Water Mark (“OHWM”) of cutthroat trout designated crucial habitat, and native fish and other native aquatic species conservation waters, if the Operator adheres to the following Best Management Practices:

aa. Contain Flowback and Stimulation Fluids in Tanks that are placed on a Working Pad Surface in an area with downgradient perimeter berming;

bb. Construct lined berms or other lined containment devices pursuant to Rule 603.o around any new crude oil, condensate, and produced water storage Tanks that are installed after January 15, 2021;

- [illegible]

produced water storage Tanks that are installed after January 15, 2021;

3. Inspect the Oil and Location on a daily basis, unless the approved Form 2A provides for different inspection frequency or alternative method of compliance;
4. Maintain adequate Spill response equipment at the Oil and Gas Location during drilling and completion operations; and
5. Not construct or utilize any Pits, except that Operators may continue to utilize existing Pits that were properly permitted, constructed, operated, and maintained in compliance prior to January 15, 2021.

bb. For ephemeral and intermittent streams, if the Operator adheres to the following Best Management Practices:

1. Contain Flowback and Stimulation Fluids in Tanks that are placed on a Working Pad Surface in an area with downgradient perimeter berming;
2. Construct lined berms or other lined containment devices pursuant to Rule 603.0 around any new crude oil, condensate, and

produced water storage Tanks that are installed after January 15, 2021;

3. Inspect the Oil and Location on a daily basis, unless the approved Form 2A provides for different inspection frequency or alternative method of compliance;
4. Maintain adequate Spill response equipment at the Oil and Gas Location during drilling and completion operations; and
5. Not construct or utilize any Pits, except that Operators may continue to utilize existing Pits that were properly permitted, constructed, operated, and maintained in compliance prior to January 15, 2021.

iii. CPW may waive the application of Rule 1202.c.(1).T.

iv. CPW may waive the application of and the Director may grant an exception to Rule 1202.c.(1) for a proposed location within an approved CAP that includes preliminary siting approval pursuant to Rule 314.b.(5).

E. Where applicable, CPW may also make written recommendations on whether a variance request pursuant to Rule 502 should be granted, under what conditions, and the reasons for any such recommendations, including requests for variances from Rule 1202.c.(1).Q-S. The Commission will consider the written recommendations of CPW and the relevant federal land

management agency, if applicable, including recommended or final federal stipulations and conditions of approval.

(6) Conditions of Approval.

- A.** If the Director agrees that the conditions of approval or denial as recommended by CPW are necessary and reasonable to Avoid, Minimize, or Mitigate Adverse Impacts to Wildlife Resources, the Director will incorporate CPW's recommended conditions into the Director's Recommendation on an Oil and Gas Development Plan, Form 2A, or CAP.
- B.** The Director will not incorporate conditions of approval to Avoid, Minimize, or Mitigate Adverse Impacts to Wildlife Resources into the Director's Recommendation without consent of the affected Surface Owner. This provision does not apply to conditions of approval to Avoid, Minimize, or Mitigate Adverse Impacts to Wildlife Resources that do not directly impact the affected Surface Owner's property or use of that property including, but not limited to, off-site compensatory mitigation requirements.
- C.** If the Director determines that any conditions of approval or denial as recommended by CPW are not necessary to Avoid, Minimize, or Mitigate Adverse Impacts to Wildlife Resources, the Director will explain the grounds for the disagreement in the Director's Recommendation.
- D.** The Commission will determine whether to follow CPW's recommendation when making a final decision to approve or deny an Oil and Gas Development Plan or CAP.

- (7) Notification of Decision to Consulting Agency.** Where consultation occurs, the Director will provide the Director's Recommendation to CPW on the same day that it posts the decision to the Commission's website pursuant to Rule 306.c. CPW may petition the Commission to review the Director's Recommendation.

Rule 314. Comprehensive Area Plans

f. Public Review Process

- (4) Consultation.** Consultation about a CAP will allow the consulting entities to provide input about the cumulative impacts associated with the CAP, timing of operations, consolidation of infrastructure, and conveying the right of Operatorship in the area of the CAP. Consultation about a CAP is intended to be limited to these topics, and is not a replacement for consultation otherwise required for individual Oil and Gas Development Plans.

B. CPW

- i. During the public comment period, the Director will engage in a Formal Consultation Process with CPW, unless CPW waives its right to consultation.
- ii. The Formal Consultation Process with CPW may address any relevant topic, but will address the proposed CAP's cumulative impacts on Wildlife Resources and measures to avoid, minimize, and mitigate those impacts.

Rule 423. Noise

- b. A preliminary plan for how the Operator will conduct background ambient noise surveys to establish baseline conditions for noise levels on the site, for both A-

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

- (1) All Oil and Gas Operations will comply with the following maximum permissible noise levels in Table 423-1 unless otherwise required by Rule 423. The Director may require Operators to comply with a lower maximum permissible noise level based on the consultation process with Relevant and Proximate Local Governments, CDPHE, or CPW pursuant to Rules 302.g, 309.e, & 309.f.

Table 423-1 - Maximum Permissible Noise Levels

Land Use Designation	7:00 am to next 7:00 pm	7:00 pm to next 7:00 am
Residential/ Rural/State Parks & State Wildlife Areas	55 db(A)	50 db(A)
Commercial/Agricultural	60 db(A)	55 db(A)

Light Industrial	70 db(A)	65 db(A)
Industrial	80 db(A)	75 db(A)
All Zones	60 db(C)	60 db(C)

- (4) When operating in High Priority Habitat, Operators will consult CPW and, on federal lands, the Bureau of Land Management, or United States Fish and Wildlife Service, to determine the acceptable noise limits and monitoring protocols.

Rule 424. Lighting

d. Production Phase Facility Lighting When Personnel Are On-Site.

- (1) After the Commencement of Production Operations, at all Oil and Gas Facilities with active operations involving personnel, Operators will provide sufficient on-site lighting to ensure the safety of all persons on or near the site.
- (2) After the Commencement of Production Operations, when active operations involving personnel are occurring, Oil and Gas Facilities will not exceed the following maximum permissible light levels.

LAND USE	Lumens per square foot of Working Pad Surface
Residential /Rural/State Parks/State Wildlife Areas/High Priority Habitat/Wilderness Areas/National Park/National Monument	1.25
Commercial/Agricultural	2.5
Light Industrial	5.0
Industrial	7.5

(3) The basis for determining land use designation pursuant to be Rule 424.d.(2) will be the Relevant Local Government's land use or zoning designation. The Director may consult with a Relevant or Proximate Local Government to identify the type of land use of the Oil and Gas Location and its surrounding area, taking into consideration any applicable zoning or other local land use designation.

B. The Director may require Operators to comply with a lower maximum permissible light level based on the consultation process with Relevant and Proximate Local Governments, CDPHE, or CPW required by Rules 302.g, 309.e, & 309.f.

1200 Series - Protection of Wildlife Resources

[Full text of the 1200 Series Rules may be accessed at the ECMC website.](#)