

# **CITY OF LONGMONT OIL AND GAS PROPOSED NO-SURFACE-USE AGREEMENT**

PUBLIC QUESTION-AND-ANSWER  
FORUM

MAY 15, 2018



# PRESENTATION OUTLINE

- The City Strives to Protect Its Residents and the Environment from Oil and Gas Operations.
  - Oil and Gas Regulations
  - Top Operating Master Contract
  - Litigation
  - Environmental Stewardship
- Proposed Cub Creek Energy and Top Operating Site Relinquishment and Lease Agreement

# NEW AGREEMENT, MAIN POINTS

- Move potential well sites out of the City.
- Plug and abandon existing wells promptly.
- Lease minerals to Cub Creek.
- Avoid imminent forced pooling.
- Compensate TOP for its release of rights, to be paid from the lease royalties.

# Longmont well site had benzene levels almost 100 times state limit

Contamination came years ago, but neighbors say no new wells until this one's closed

*By Scott Rochat Longmont Times-Call*

POSTED: 12/19/2011 09:48:25 PM MST | UPDATED: 3 YEARS AGO



The Rider well site sits north of Trail Ridge Middle School in Longmont on Monday, Dec. 19, 2011. For at least two years, the site recorded benzene levels that were above the maximum allowed. The site is of concern to fracking opponents, especially since a proposed consolidated well site is within a quarter to a half-mile of both Trail Ridge and Fall River Elementary. (Richard M. Hackett / Times-Call)

**LONGMONT --** A TOP Operating gas well near Trail Ridge Middle School had higher-than-allowed benzene levels for at least three years, at one point measuring almost 100 times the state limit, according to documents from the Colorado Oil and Gas Conservation Commission.

Groundwater testing near the Rider No. 1 well in 2006 found 491 parts per million of benzene at the site, far above the Colorado limit of five parts per million. The same testing site still showed 491 parts per million in 2009, the last tests completed. Updated test results are expected in about a month.

# JULY 17, 2012 COUNCIL MEETING

The Council approved:

- New City Regulations
- Top Operating Master Contract



# OIL AND GAS REGULATIONS

Voluntary Standard - Fast Track Review	Mandatory Standards - P&Z Hearing
750' Setback from Occupied Buildings	Residential Zoning Restriction
300' Setback from Water Bodies	Groundwater Monitoring
Closed Loop/Pitless Systems	Consolidated Well Sites and Horizontal Drilling Whenever Appropriate
Noise Mitigation	Visual Mitigation - Low Profile Tanks, Color and Relocation
	Cultural resources report, emergency planning, no temporary housing



# MASTER CONTRACT WITH TOP

- Consolidated potential oil and gas development on City properties in eastern Longmont.
- Complex business deal: property purchases, leases, reciprocal compensation, covenant not to sue, operating agreement.

**Legend**

**Oil & Gas Wells**

- Yellow circle: Potential Vertical Wellbore
- Green circle: Final Drill Hole Locations
- Red circle: Well Head Site
- Blue circle: Final Consolidated Drill Sites
- Black circle: Tank Battery Location

**Well Status**

- Green dot: Producing
- Black dot: Location

**Other Features**

- Green line: Access Road
- Black line: Gas Political Longmont City Limit
- Red line: Rider Property
- Blue line: Lindberg Property
- Red dashed line: Building 750 FT Setback
- Black dashed line: Main future 750 FT Building Setback
- Blue shaded area: Union Reservoir Expansion

**CONSOLIDATED DRILL SITES**

0 4000 1,600 2,400 3,200 Feet











# **NEW SLIDE! - REASONABLE ACCOMMODATION**

- “Severed mineral rights lack value unless they can be developed. For this reason, the owner of a severed mineral estate or lessee is privileged to access the surface and use that portion of the surface estate that is reasonably necessary to develop the severed mineral interest.”

Gerrity Oil & Gas Corp. v. Magness,  
946 P.2d 913, 926 (Colo. 1997).

# MASTER CONTRACT: KEY POINTS

- Rider well closure.
- Reduced potential drill locations to 11.
- 750-foot buffers from occupied buildings.
- Water quality monitoring; performance standards.
- New leases to TOP, and lease ratifications.
- \$1.1 million net reimbursement to TOP for added costs, to be paid from lease royalties as they accrued.





# CITIZEN INITIATIVE, NOV. 2012

- By citizen initiative, Article XVI of the Longmont Municipal Charter prohibited fracking and the storage or disposal of fracking waste.
- City Council announced that the City would vigorously defend the charter amendment.

# Two Cases

- *COGCC v. Longmont*, challenging the ordinance
  - COGA joined.
- *COGA v. Longmont*, challenging the citizen-initiated charter amendment.
  - COGCC and TOP Operating Co. join.
- Citizen groups join the City to defend the lawsuits.

# City's Arguments in the Fracking Case

- Home rule authority:
  - Health/Environmental Impacts:
    - Air quality – asthma, cancer, birth defects
    - Water pollution, spills
    - Traffic fatalities, fires
    - Property values, quality of life
  - The City's Interest in Protecting Its Citizens and the Environment Outweighed the State's Interest in Allowing Fracking.

# City's Arguments in the Fracking Case

- The Charter Amendment Did Not Conflict with State Law.
  - Fracking is just one method for extraction.
  - The State does not expressly authorize fracking.
  - State law *also* requires protection of people and the environment. Now see *Martinez*.
- The City Demanded a Jury Trial on these Issues.





# Supreme Court

- Supreme Court Oral Arguments, Dec. 2015
- Supreme Court Opinion May 2, 2016
- Holding: State law preempts Longmont's fracking ban due to operational conflict.
- Result: Ban overturned.

# NEW! - PREEMPTION

Expre  
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Implie  
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Confli  
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# NEW SLIDE! - OPERATIONAL CONFLICT

- “[A] local law may be partially preempted where its operational effect would conflict with the application of the state statute.”

*Bd. of Cty. Comm'rs, La Plata Cty. v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1057 (Colo. 1992).

- “Materially impede” vs.  
“forbids/authorizes”

# NEW SLIDE! -

## OPERATIONAL CONFLICT

- “Any determination that there exists an operational conflict between the county regulations and the state statute or regulatory scheme, however, must be resolved on an ad-hoc basis under a fully developed evidentiary record.”

*Bd. of Cty. Comm'rs, La Plata Cty. v. Bowen/Edwards Assocs., Inc., 830 P.2d 1045, 1060 (Colo. 1992).*



# **NEW SLIDE! - OPERATIONAL CONFLICT**

- “In virtually all cases, this analysis will involve a facial evaluation of the respective statutory and regulatory schemes, not a factual inquiry as to the effect of those schemes ‘on the ground.’”

City of Longmont v. Colorado Oil & Gas Ass'n, 2016 CO 29, ¶ 42, 369 P.3d 573, 583.

# Back to the Regulations Case

- Governor's Compromise, October 2014; the State and the industry dismiss all their claims and **covenant never to sue on them again.**
  - Would not likely apply to regulatory amendments.
- **Drilling and fracking under the Council-adopted regulations (the ones the State and industry originally sued over) has been**

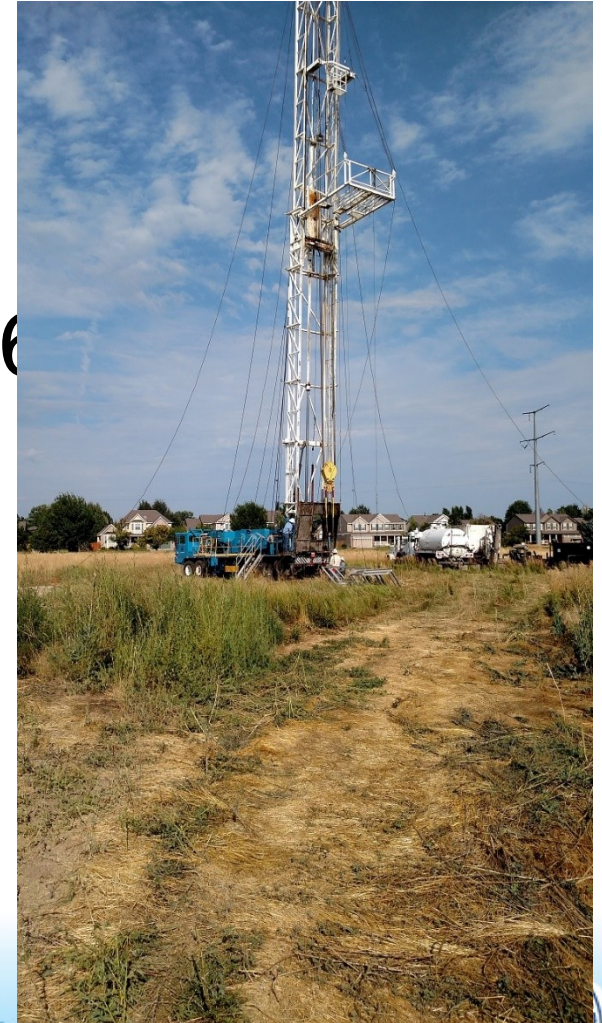
# Negotiations Continue

- Master Contract once again front and center.
- TOP and its new partner, Cub Creek Energy, approach the City about mineral development soon after the Supreme Court decision.
- We've now been negotiating for almost two years.
- TOP and Cub Creek started with some demonstrations of good faith...



# RIDER WELL

- Born: January 1982
- Put to Rest: August 2016





# LONGMONT 8-10K WELL

- Born: October 1994
- Flood Damage: 2013
- Put to Rest: April 2015



# OTHER STEWARDSHIP

- Air Quality Monitoring
- Water Quality Monitoring
- Soil Sampling
- Plugged and Abandoned Well Assessment
- Flow & Gathering Line Assessments
- Seismic Review
- Monitor the state of the law. *See Thornton.*

# NEW SLIDE! – FORCED POOLING

- “When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit.”
- § 34-60-116(6), C.R.S.

# **NEW SLIDE! – FORCED POOLING**

- “In the absence of voluntary pooling, the commission, upon the application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof.”
- § 34-60-116(6), C.R.S.

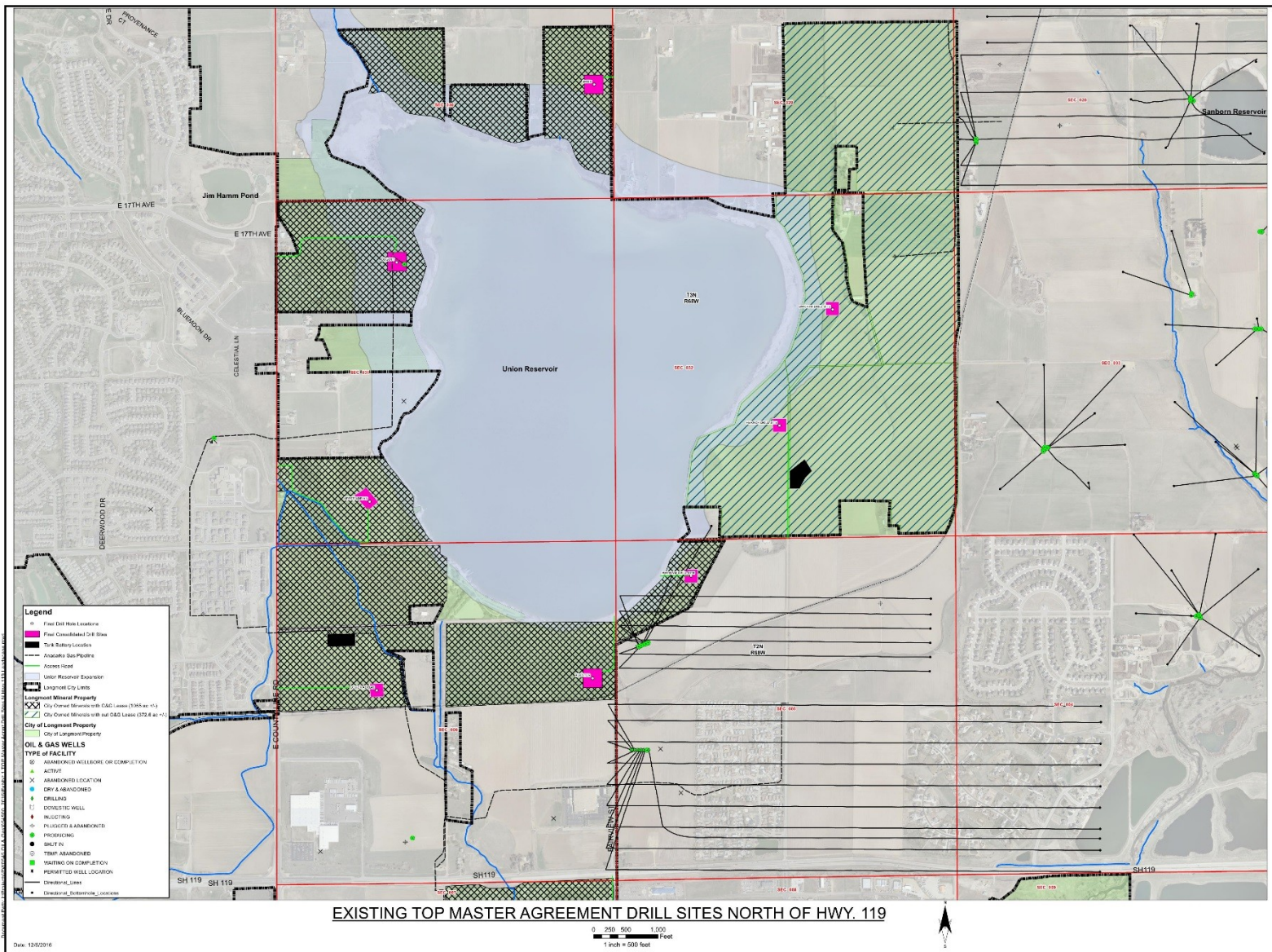
# NEW SLIDE! – FORCED POOLING

- “A nonconsenting owner of a tract in a drilling unit which is not subject to any lease or other contract for the development thereof for oil and gas shall be deemed to have a landowner's proportionate royalty of twelve and one-half percent . . . and then be liable for further costs as if he had originally agreed to drilling of the well.”
- § 34-60-116(7)(c).

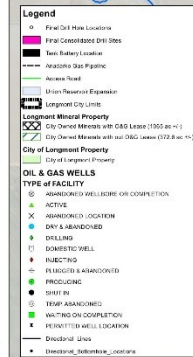


# **Proposed Cub Creek Energy and Top Operating Site Relinquishment Agreement**









# CUB CREEK & TOP NO DRILL PROPOSAL

- **Desired Outcome:** Protect the Public Health of Our Community
- **Proposed Solution:** End oil and gas operations within the Longmont city limits, in return for a cash payment to TOP of \$3 million from future mineral royalties, and a lease of City-owned mineral rights to Cub Creek



# PLANNING OUT OF OIL AND GAS FACILITIES

## Sites

## Removed:

- Sandstone
  - Evans
  - Sherwood
  - Bogott
  - Dworak
  - Upper
- Adrian

- Hernor
- Pietrzak
- Sowter

**Sources**

**Remainder:**

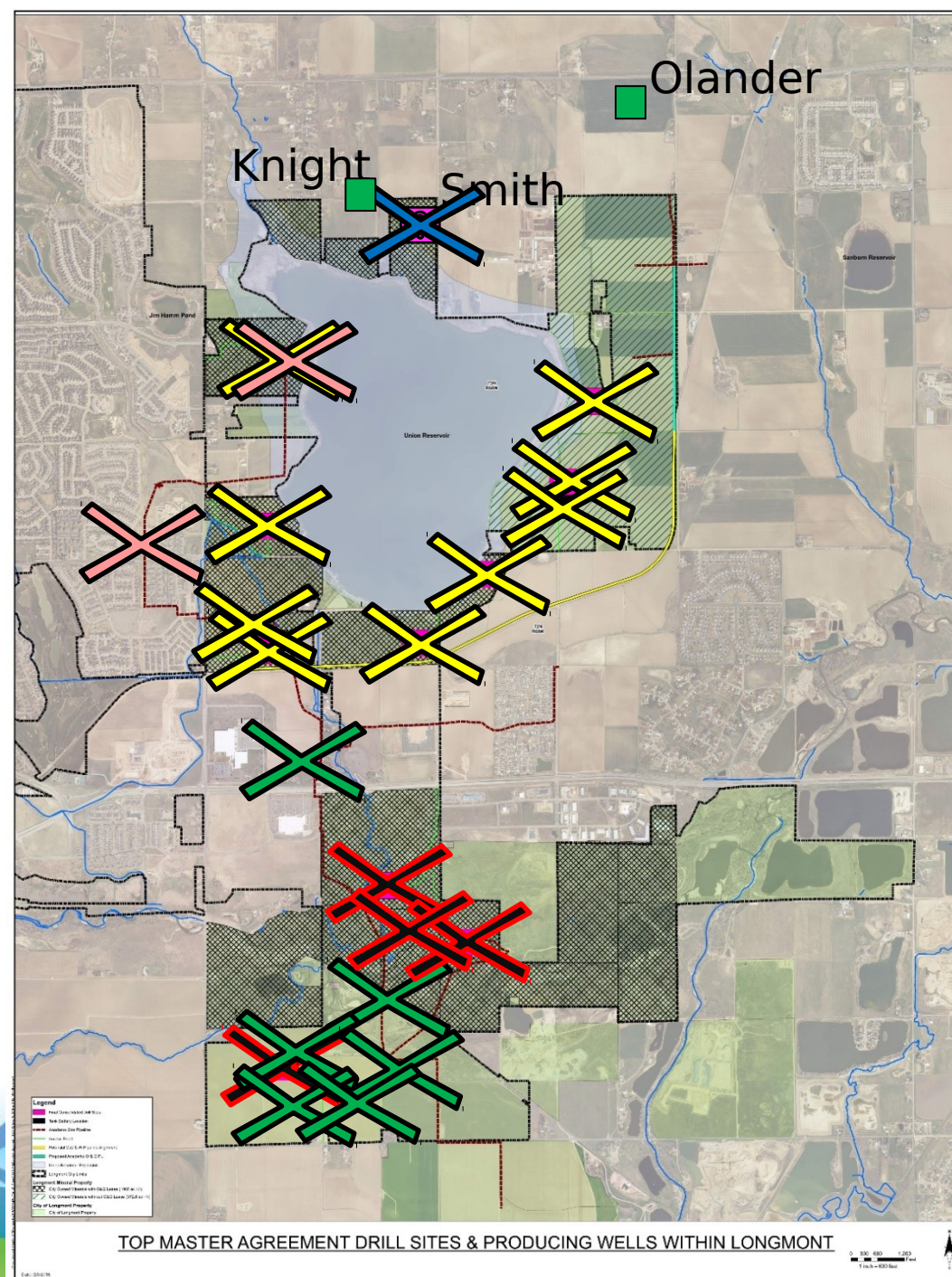
- Oughter
- Smith?

### Facilities Removed:

- Hernor Tank Battery
- Lower Adrian Tank Battery

**Active Wells to be P&A:**

- Powell #1 (within 120 days)
- Stamp 31-2C
- John Y. Mayeda #2
- Evans #6
- Sherwood #2
- Serafini #1
- Sherwood #1
- Longmont #1





# RELINQUISHMENT OF WELL SITES

- **Phase I:** Sandstone, Evans and

od

- **Phase II:**

- Hernor and Lower Adrian Tank Batteries

- Bogott, Lower and Upper Adrian,

- Knights, Pietrzak, Hernor and Dworak  
drill sites

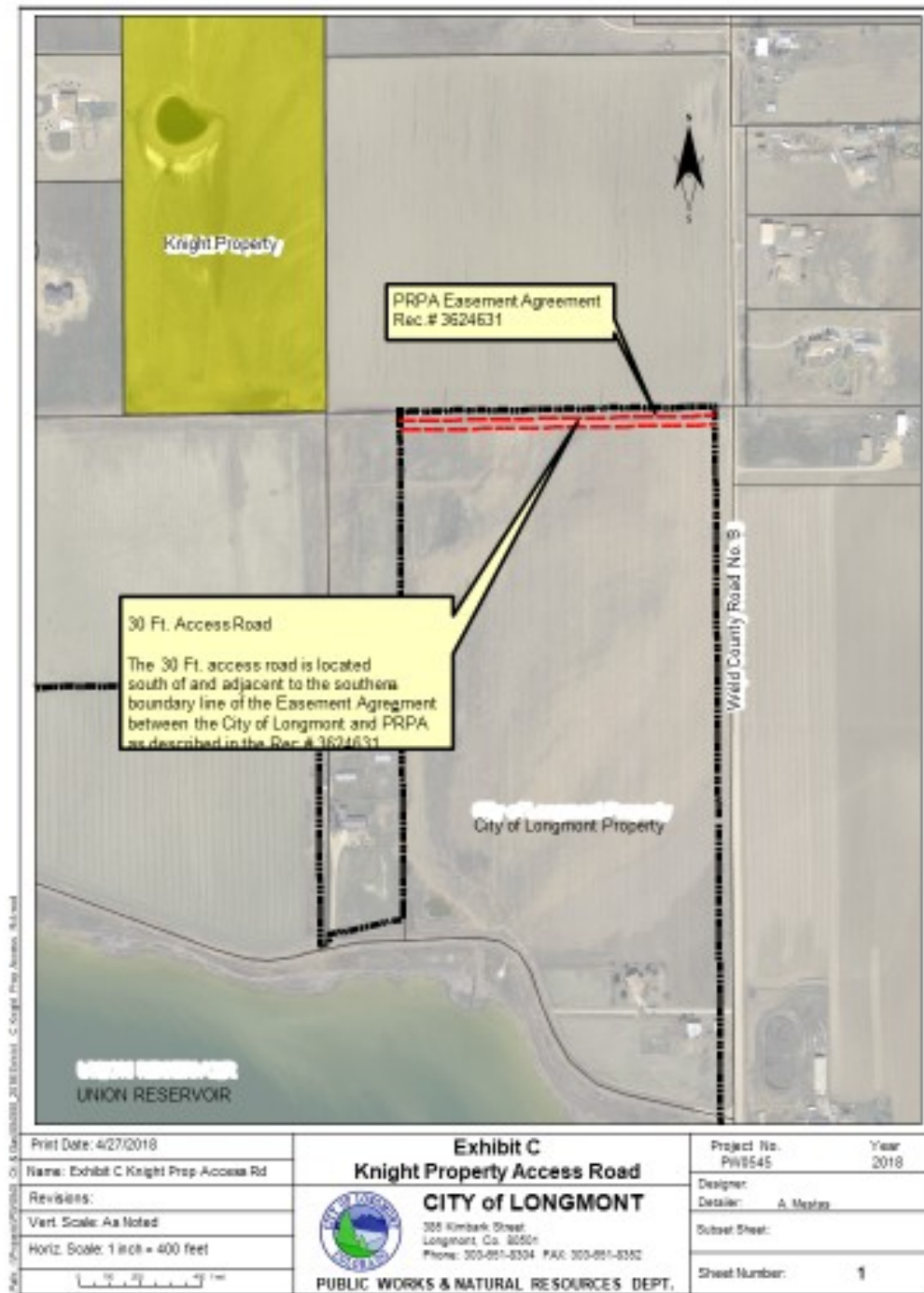
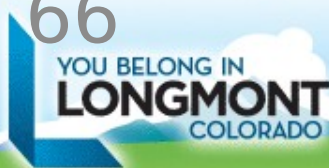
- **Phase III:** Effective upon production from a well from the Knight site – relinquishment the remaining Smith

# **KNIGHT SITE ACCESS ROAD**

- Providing an access road and revocable permit to cross the City owned Smith Property to the Cub Creek drill pad located outside of the City

# Access Road

- Crosses the northern portion of the City Owned Smith Property
- Connects with County Road 3
- Provides for safer access than access from State Highway 66



# PLUG AND ABANDON

## EXISTING ACTIVE WELLS

- **Phase I:** Plug and abandon the Powell well within 120 days of the execution of the agreement
- **Phase II:** Plug and abandon the Serafini well within two years of the execution of the agreement
- **Phase IV:** P&A Remaining 7 wells
  - Deactivate or remove all flow lines, gathering lines, and other facilities associated with the above wells



# AGREEMENT WITH CUB CREEK

- Lease of City Mineral Rights to Cub Creek
  - 516 acres - Hernor; Hartman; and French properties at a
  - Competitive royalty rate at 20% & \$1000/acre bonus
  - Non-surface disturbance
  - 20 year term with right of first refusal
- Amend existing oil and gas leases on city owned properties to non-surface disturbance;
- Withdrawal by Cub Creek of forced

# AGREEMENT WITH TOP OPERATING

- Amend the Royalty Account
- City payment of \$3 million from future city royalty proceeds upon Relinquishment Date:
  - Relinquish all 11 consolidated drill sites located on City property;

# AGREEMENT WITH TOP CONT'D

- Amend the leases to a non-surface disturbance status;
- Plug and abandon of all 8 active oil and gas wells; deactivate or remove all associated flow and gathering lines and facilities;
- Elimination of up to 80 new oil and gas wells in the City

# A METRIC

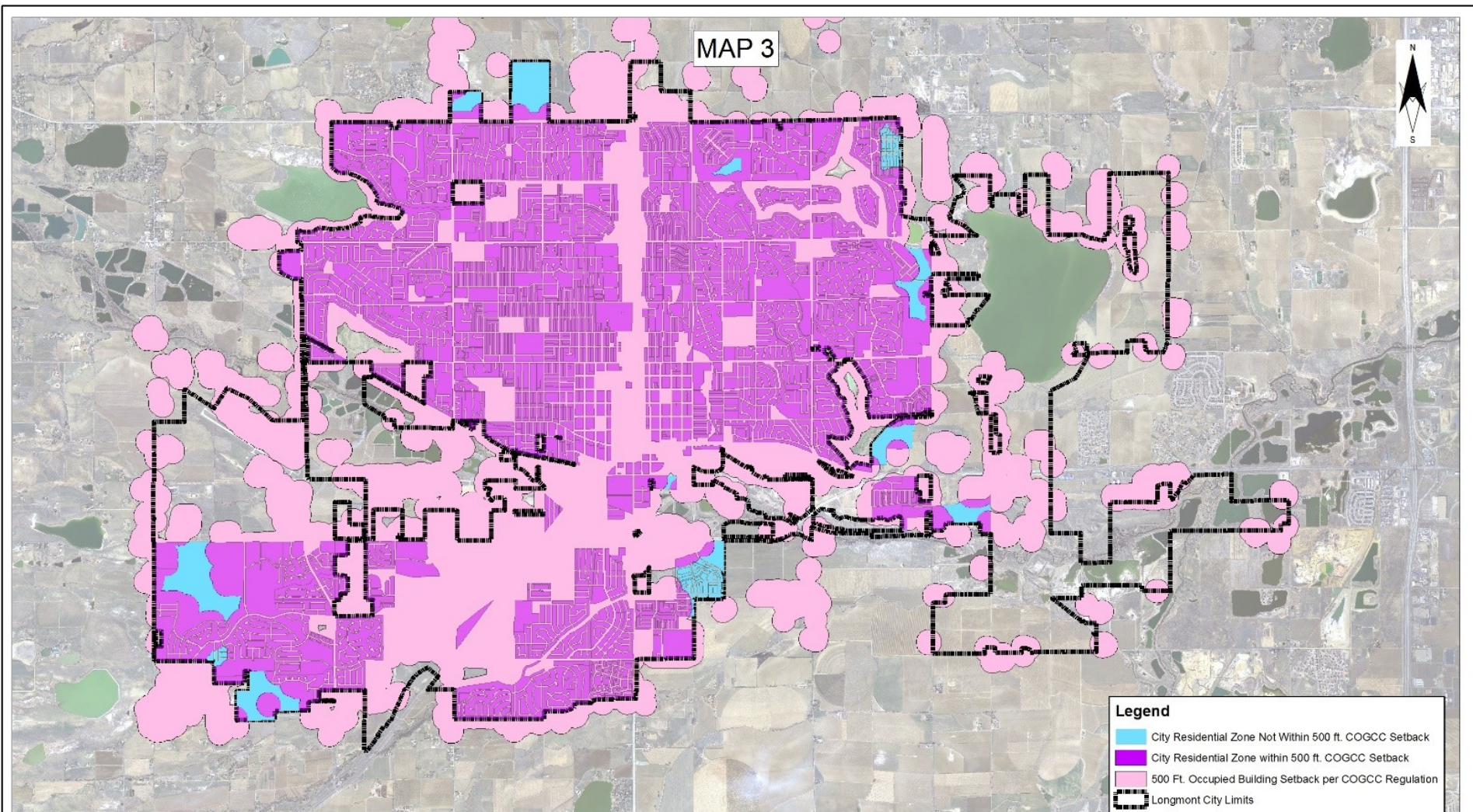
Potential Number of New Oil and Gas Facility Locations in Weld County Portion of Longmont City Property





# Council Questions and Discussion





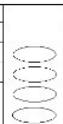
#### Legend

- City Residential Zone Not Within 500 ft. COGCC Setback
- City Residential Zone within 500 ft. COGCC Setback
- 500 Ft. Occupied Building Setback per COGCC Regulation
- Longmont City Limits

Print Date: 12/10/2013

File Name: Map 3

Horiz. Scale: 1" = 2,000'



#### As Constructed

Date:	Comments	Init.



#### CITY of LONGMONT

385 Kimbark Street  
Longmont, Co. 80501  
Phone: 303-651-6304 FAX: 303-651-8352

PUBLIC WORKS & NATURAL RESOURCES DEPT.

#### As Constructed

No Revisions:

Revised:

Void:

#### MAP 3

Designer:

Detailer: A. Mesias

Comments:

#### Project No.

PW0545

#### Sheet

3 of 4

YOU BELONG IN  
**LONGMONT**  
COLORADO





