



***The Conservation
Easement Framework:
Surface Use Agreements
& Industry Best
Practices***



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Surface Use Agreements

- **What is a surface use agreement?**
 - Agreements between mineral interest owners and surface owners regarding reasonable use of the surface
- **Background law:**
 - “reasonable accommodation”
 - C.R.S. 34-60-127
- **Relative bargaining power of the parties will affect the terms**

Surface Use Agreements and Conservation Easements

- **Preserve tax benefits**
 - Allow only activities “not irretrievably destructive of significant conservation interests” with a “limited localized impact” on land
- **Preserve conservation values**
- **Clarify rights and obligations of all interest owners**

Timing of Surface Use Agreements

- **No severed estate?**
 - The conservation easement is binding on the mineral estate
 - SUA can be done at the time of the mineral lease/development
- **Severed estate?**
 - At the time of the conservation easement, if possible
 - At the time of the application for permit to drill
 - COGCC rules require notice and a “good faith” consultation (Rule 305, 306)
 - BLM authorization requires negotiation

No Surface Use Agreement?

- **No contractual mechanism for assuring compliance with conservation easement**
- **“reasonable accommodation” always applies**
- **COGCC Rules and Policies**
 - e.g., Rule 317B, Series 800, 1000, 1200
 - On Site Inspection Policy
 - <http://cogcc.state.co.us/>

Contents of a Surface Use Agreement

- **Parties**
- **Term**
- **Operations**
 - **Operation Areas/Wellsites**
 - **Scope of Access**
 - **Operation Restrictions**
 - **Surface facility restrictions**
 - **Hours of operation/noise/light**
 - **Remediation and reclamation**
 - **Notices**
- **Releases, indemnities, bonds, insurance**
- **Breach and remedies**
- **Recording**

Illustrations

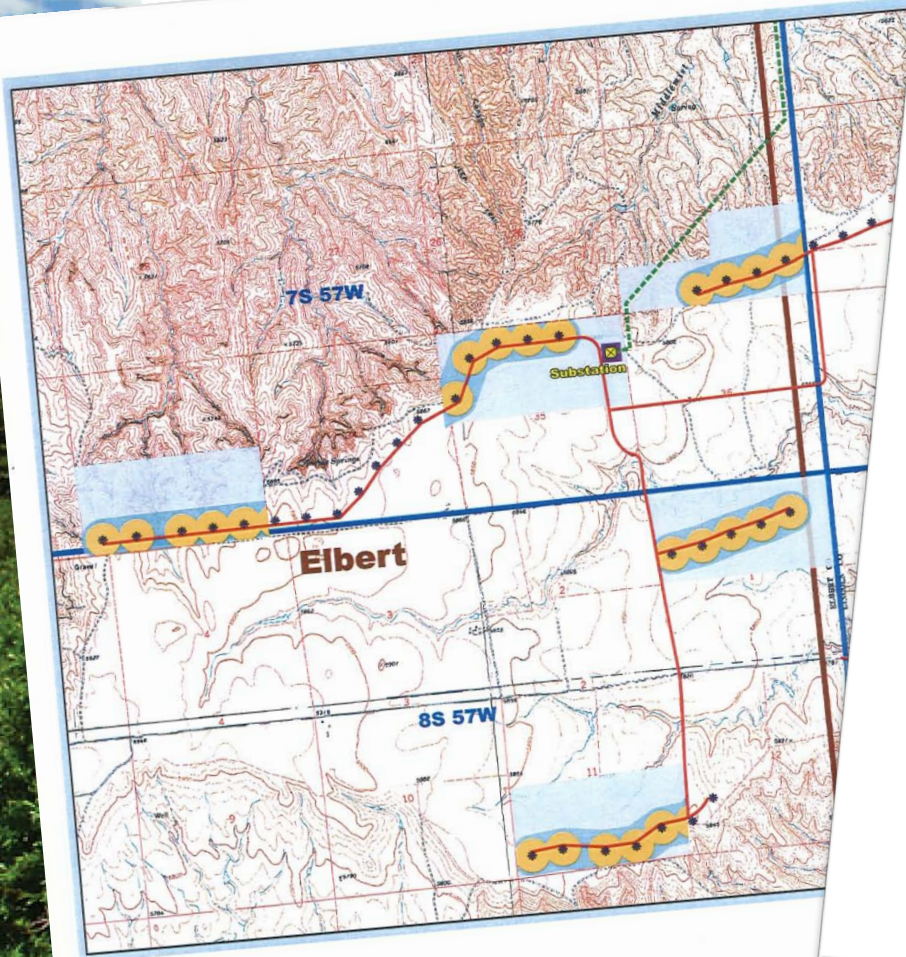
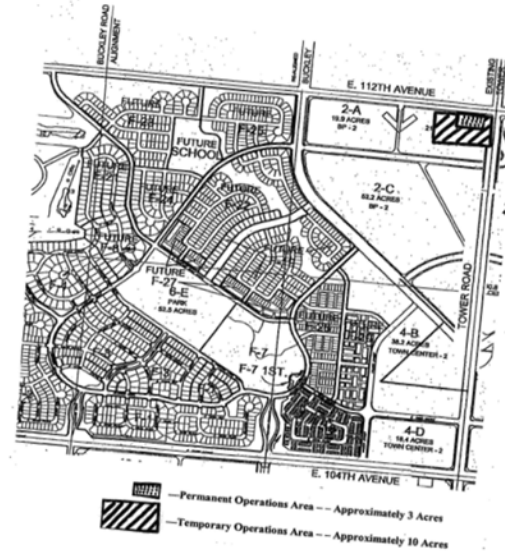


EXHIBIT C-2
MINERAL DEVELOPMENT SITES
Section 9, Township 2 South, Range 66 West



Practice Pointers

- **Know what, if any, interests the surface owner holds**
- **Integrate documents if possible**
- **Notice of activities to all parties**
- **Others?**

Questions

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