

**DEED OF CONSERVATION EASEMENT
HARTMAN, FRENCH, AND HERNOR OPEN SPACE LANDS**

THIS DEED OF CONSERVATION EASEMENT is made this 26th day of October, 2016, by the City of Longmont, Colorado, a municipal corporation ("Grantor"), in favor of the Longmont Conservation District, a political subdivision of the State of Colorado ("Grantee").

RECITALS:

A. Grantor is the sole owner in fee simple of certain real properties in Weld County, Colorado, more particularly described in Exhibit A attached hereto and incorporated by this reference (collectively the "Property") along with any and all other water and water rights, ditches and ditch rights, reservoirs and reservoir rights, ponds and pond rights, springs and spring rights, wells and well rights, underground water rights, both tributary and non-tributary (including any and all inchoate non-tributary groundwater rights), whether decreed or not, on, underlying, appurtenant to, or at any time used on or in connection with the land (the "Water Rights"), which are necessary for protecting the conservation values of the land. Grantee did not contribute funds for the Grantor's acquisition of the Property, nor for this Deed of Conservation Easement.

B. The Property possesses conservation value of great importance to Grantor, the people of Longmont, of Weld County and of the State of Colorado. Namely, the Property includes the Hartman Open Space, the French Open Space and the Hernor Open Space. These three constituent properties are lands that provide agricultural acreage of state and national significance and possess open space values that provide unique visual corridors and provide urban shaping buffers which provide community buffers between municipal service areas. These features constitute the Property's primary conservation values ("Conservation Values").

C. Grantor intends to preserve the Property for open space uses.

D. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Property in perpetuity.

E. Grantee, as a governmental entity, is qualified to hold a conservation easement under section 38-30.5-104(2), C.R.S.

F. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein.

NOW, THEREFORE, in consideration of Grantor's payment of \$10,000.00 to the Grantee for perpetual monitoring and enforcement of this Easement, and the mutual covenants, terms, recitals, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular section 38-30.5-101, et seq., C.R.S., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its open space condition.

2. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

a. To prevent any activity on or use of the Property that is inconsistent with this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

b. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

3. Restricted and Allowed Uses. The following describes the extent to which certain uses are allowed or are restricted on the Property:

a. Agriculture. Continuation of agricultural uses, including but not limited to evolving agricultural practices, that are consistent with the NRCS Technical Guide and with the City of Longmont land use regulations in effect at the time of use, as those regulations apply to the Property, are allowed. The agricultural activities shall not result in the material degradation of any surface or subsurface waters. Grantor shall not forbid any lessee of the Property from using it for agricultural purposes.

b. Wildlife Controls. Control of predatory and problem animals by the use of selected control techniques whose effect shall be only upon specific animals or species that have caused or are likely to cause damage to crops, livestock or other property, is allowed. Such control techniques shall not have material detrimental impacts upon water quality and the continued permitted uses of the Property. The use of leg-hold traps is prohibited.

c. Construction of Buildings and Other Structures. Grantor may construct public or restricted-access trails in close proximity to the perimeter of the property, pond and wetland enhancements, wildlife habitat structures, landscaping screens, structures or infrastructure related to agricultural operations, and related signage on the Property. All other signage is prohibited, and the construction or reconstruction of any other building, structure, or improvement is prohibited unless it furthers an "open space function" listed in section 4.04.130(I) of the 2016 Longmont Municipal Code ("Open Space Functions"), reworded as follows:

- i. Preservation of natural areas, wildlife habitat, wetlands, agriculture and visual corridors;
- ii. Link and trails, access to public lakes, streams and other usable open space lands, stream corridors and scenic corridors along existing highways;
- iii. Conservation of natural resources including, but not limited to, forest lands, range lands, agricultural land, aquifer recharge areas, and surface water;
- iv. District parks devoted to low-impact recreational uses;

- v. Implementing a policy or strategy of the Longmont Area Comprehensive Plan related to greenways or open space;
- vi. Urban shaping buffers between or around municipalities or community service areas and buffer zones between residential and non-residential development,

except that community parks, recreation centers, or other public open areas containing structures that are not used solely for Open Space Functions are prohibited. Prior to construction, Grantee shall have the right to consult with Grantor regarding the purposes, scale, and siting of any construction.

d. Subdivision. Any division or subdivision of title to the Property is prohibited, whether by physical or legal process, except subdivision to facilitate disposition of a portion of the Property to a public entity for transportation corridor or utility purposes as described respectively in paragraph (g) or (h), below.

e. Timber Harvesting. Trees may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Dead trees may also be cut for firewood and other uses on the Property. Commercial timber harvesting on the Property shall be prohibited.

f. Mining. Disturbance of the surface of the Property due to the mining of soil, sand, gravel, rock, oil, gas, or any other mineral substance is prohibited unless a third party has preexisting rights to so disturb the surface. If Grantor has the opportunity to enter into a surface use agreement with a mining operator, Grantor shall not enter into any such agreement without first obtaining Grantee's approval of the terms of the agreement.

Notwithstanding the foregoing, Grantee acknowledges the execution by and between the Grantor and TOP Operating Company of the Master Contract Concerning Consolidated Oil and Gas Exploration and Production Facilities, Property Purchase, Oil and Gas Mineral Leases and Reciprocal Compensation, and the Operator's Agreement, both recorded in Weld County on August 16, 2012 at rec. no. 3866504 (collectively, "Preexisting Agreements"). Grantee assumes no rights under the Preexisting Agreements, and the Grantor may act independently to satisfy its obligations thereunder. Grantee's approval is not required before amending either of the Preexisting Agreements. Furthermore, third parties may exercise preexisting rights on the Property incidental to preexisting mining rights, including but not limited to the right to lay pipelines or construct access roads, without the prior approval of Grantee.

g. Roadways and Transportation Corridors. Grantee shall have the right to consult with Grantor regarding any new or expanded paved public roadway, or other public transportation corridor, on the Property. Grantor shall endeavor to minimize the environmental, aesthetic, and recreational impact of any construction of such roadways or corridors. Grantor shall not construct or expand any roadway through the Property and shall not construct or expand any public transportation corridor, except along the periphery of the Property immediately adjacent to existing public transportation corridors.

h. Utilities. Grantor may construct, or permit third parties to construct, utilities that serve the Property's permitted uses, but construction of new above ground utility transmission

mains, lines, or other utility facilities on the Property, except as allowed under any existing utility easements, or under any additional utility easements that may be established pursuant to an exercise of eminent domain, or as is necessary to conduct any of the permitted uses of this Easement, is prohibited. Any such permitted utilities shall be constructed so as to minimize any adverse impacts on the Conservation Values of the Property. Notwithstanding the foregoing, the erection, construction, installation, relocation or use of a communication facility, a telecommunication facility, a network element, telecommunication equipment, or any other equipment (except for Customer Premises Equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in the Federal Telecommunication Act of 1996 is prohibited. Also notwithstanding the foregoing, Grantor may construct, or permit third parties to construct, new underground utilities or pipelines to serve uses on or outside the Property, so long as Grantor reclaims all surface impacts to a former or better condition.

i. Water Rights. The degradation, pollution, or draining of any surface or sub-surface water on the Property is prohibited. The transfer, encumbrance, lease, sale, or other separation from the Property of any surface or sub-surface water rights that are appurtenant to the Property is prohibited. Grantor shall not interfere with, impede, delay, or otherwise prevent water that has historically crossed the Property to serve other properties from crossing the Property, even if said crossing is not memorialized by written easement. Grantor shall retain, reserve the right to use, and use the Water Rights in current or future agricultural production on the Property, and shall not transfer, lease, sell, or otherwise separate the Water Rights from the Property; provided, however, that in the event Grantor cannot use the Water Rights on the Property in any given year, Grantor shall notify Grantee, and Grantee may proceed to enforcement under the terms of this Easement, in Grantee's sole discretion. The foregoing notwithstanding, Grantor may use the Water Rights on other real properties owned by Grantor that have been acquired as open space through the provisions of Longmont Municipal Code Section 4.04.130. When requested by Grantee, Grantor shall provide Grantee with evidence that the Water Rights are being beneficially used, including, but not limited to, copies of reports, if any, filed with or produced by district and state water officials proving water diversions and water usage, and copies of any reports confirming crop production. If Grantor receives notice of abandonment of any component of the Water Rights, Grantor shall notify Grantee in writing within thirty (30) days of receiving such notice, and Grantor shall act affirmatively and shall cooperate with Grantee in taking any and all actions reasonably necessary to defend use of the Water Rights on the Property to prevent abandonment or forfeiture.

j. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property is prohibited, including but not limited to hazardous chemicals; provided, however, that agricultural equipment and machinery used on the Property for the permitted uses and that products and by-products produced on the Property may be placed or stored on the Property, so long as such placement or storage is consistent with public health standards, all applicable government laws and regulations, and sound agricultural practices.

k. Commercial, Industrial, and Residential Activity. No commercial, industrial, or residential uses shall be allowed on the Property.

l. Public Infrastructure. Public utility infrastructure may be placed on the Property to service such uses outside the Property only if the infrastructure, once installed, will be entirely underground and reclaimed.

m. Works of Art. Grantor may install or create works of art on the Property, including through its Art in Public Places program, but only upon Grantee's approval of the plans for any particular work of art. Grantor's intent is not to add structures of immoderate size that might detract from the Conservation Values, but instead to preserve the potential to enhance the public appreciation of the Conservation Values through artistic expression.

4. Reserved Rights. Grantor reserves to itself, and to its agents, successors, and assigns, all rights accruing from its ownership of the Property, including mineral rights, and including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein.

5. Baseline Report. To establish a complete inventory of the present conditions of the Property and its Conservation Values as of the date of this Easement to enable Grantee to properly monitor future uses of the Property and ensure compliance with the terms hereof, Grantee has prepared, and Grantor has signed, an inventory of the Property's relevant features and conditions ("Baseline Report"). The Baseline Report includes aerial photographs depicting various areas of the Property, a variety of maps showing important aspects of the Property, and other information important for establishing the Property's condition as of the date of this Easement. The Parties acknowledge and agree that, in the event a controversy arises with respect to the nature and extent of Grantor's use or the physical condition of the Property subject to this Easement, the Parties may use the Baseline Report and all other relevant or material documents, surveys, reports, and other evidence to assist in resolving the controversy.

6. Notice of Intention to Undertake Certain Permitted Actions. Whenever Grantee has an aforementioned right to consult on a particular activity of Grantor, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity.

7. Enforcement. Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Deed. Grantee may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Property to its condition prior to the violation or (b) provide a written explanation to Grantee of the reason why the alleged violation is permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action. Grantor shall discontinue any activity which could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, Grantee may, at its discretion,

take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may request an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation.

8. Costs of Enforcement. If Grantor is required to restore any portion of the Property affected by a prohibited activity to the condition that existed prior to the undertaking of such prohibited activity, those costs shall also be borne by Grantor.

9. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

10. Acts beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property, or to human health or safety, resulting from such causes, so long as the Property is restored to its original or better condition if damaged by Grantor's actions under emergency conditions.

11. Costs and Liabilities. Grantor retains all responsibilities related to the ownership, operation, upkeep, and maintenance of the Property. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

12. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of this Easement and shall furnish Grantee with satisfactory evidence of payment upon request.

13. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall hold Grantor harmless for any damage to Conservation Values resulting from the condemnation, and Grantee shall not be entitled to any proceeds arising from such event. It is the parties' intent that Grantor use all proceeds from any such condemnation to acquire additional property that fulfills one or more of Grantor's Open Space Functions, as defined in Paragraph 3(b).

14. Assignment. Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Colorado law, and only if the Grantor, in its reasonable discretion, approves the assignment. As a

condition of assignment, Grantee shall require that this Deed's conservation purposes continue to be carried out.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:
City of Longmont
7 S. Sunset Street
Longmont, CO 80501

with a copy to:
City Attorney's Office
408 Third Ave.
Longmont, CO 80501

To Grantee:
Longmont Conservation District
9595 Nelson Rd., Box D
Longmont, CO 80501

or to such other address as either party from time to time shall designate by written notice to the other.

17. Recordation. Grantee shall record this instrument in timely fashion in the official records of each county in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Easement.

18. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado. Venue shall lie only in Boulder County.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of section 38-30.5-101, C.R.S., et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose

of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

g. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that any such amendment shall be consistent with the purposes of this Easement and that no amendment shall be allowed that will affect this Easement's perpetual duration or the qualifications of this Easement under any applicable laws. Any such amendment shall be recorded in the office of the Clerk and Recorder of each county in which the Property is situated.

j. Financial Obligations. The parties' obligations under this Easement are contingent upon appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Easement shall be deemed a debt, direct or indirect, multi-year fiscal obligation on the part of either party, a pledge of credit, or a payment guarantee.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have executed this Deed of Conservation Easement on the day and year first above written.

GRANTOR:

CITY OF LONGMONT,
a Colorado municipal corporationDennis L. Coombs
MAYOR

ATTEST:

Valeria B. Stett
CITY CLERK10/27/16
DATE

APPROVED AS TO FORM:

[Signature]
ASSISTANT CITY ATTORNEY10/13/16
DATEP. Petrucci
PROOFREAD10/13/16
DATE


APPROVED AS TO FORM AND SUBSTANCE:

Dan A. Radman
ORIGINATING DEPARTMENT10/25/2016
DATE

CA File: 10109

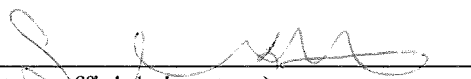
GRANTEE:

LONGMONT CONSERVATION DISTRICT,
a political subdivision of the State of Colorado

By: 
Mike Litzenberger, President

State of Colorado
Longmont Conservation District

The foregoing instrument was acknowledged before me this 21 day of October, 20 16
by Mike Litzenberger, President of the Longmont Conservation District


(Notary official signature)

3/30/2018
(Commission expiration)

SARA L. NITKE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20104008620
MY COMMISSION EXPIRES 03/30/2018

EXHIBIT A-1

Legal Description of Property

Hartman Open Space

Lot B of recorded Exemption No. 1207-29-4RE459, recorded October 22, 1980, in Book 918, as Reception No. 1839557, being a part of the Southeast Quarter of Section 29, Township 3 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado, Being more particularly described as follows:

Beginning at the Southeast corner of said Section 29, thence along the South line of the Southeast Quarter South 89°36'36" West 1707.53 feet to the Southeast corner of Lot "A" of recorded Exemption No. 1207-29-4-RE459; thence along the boundary lines of said Lot "A" the following five courses, North 01°28'37" East 364.98 feet; South 89°42'55" East 104.07 feet; North 00°13'11" West 341.45 feet; South 89°37'19" West 297.12 feet; South 00°53'48" West 705.25 feet to a point on the aforesaid South line; thence South 89°36'36" West 755.22 feet to the South one-quarter corner of said Section 29; thence North 00°01'20" East 2647.50 feet to the center of said Section 29; thence North 89°30'25" East 2664.02 feet to the East one-quarter corner of said Section 29; thence South 00°08'07" West 2652.34 feet to the point of beginning, containing 157.882 acres more or less.

French Open Space

Lot B Recorded Exemption No. 1207-31-1-RE-2516, a portion of the NE 1/4 of Section 32 Township 3 North, Range 68 West of the 6th Principal Meridian, Weld County, Colorado, containing 86.02 acres more or less.

Hernor Open Space

Lot B of Recorded Exemption No. 1207-32-4 RE-3163, according to the map recorded September 26, 2001 as Reception No. 2886587, being located in the SE ¼ of Section 32, Township 3 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado, containing 147 acres more or less.

EXHIBIT A-2

Conservation Easements held by Longmont Conservation District

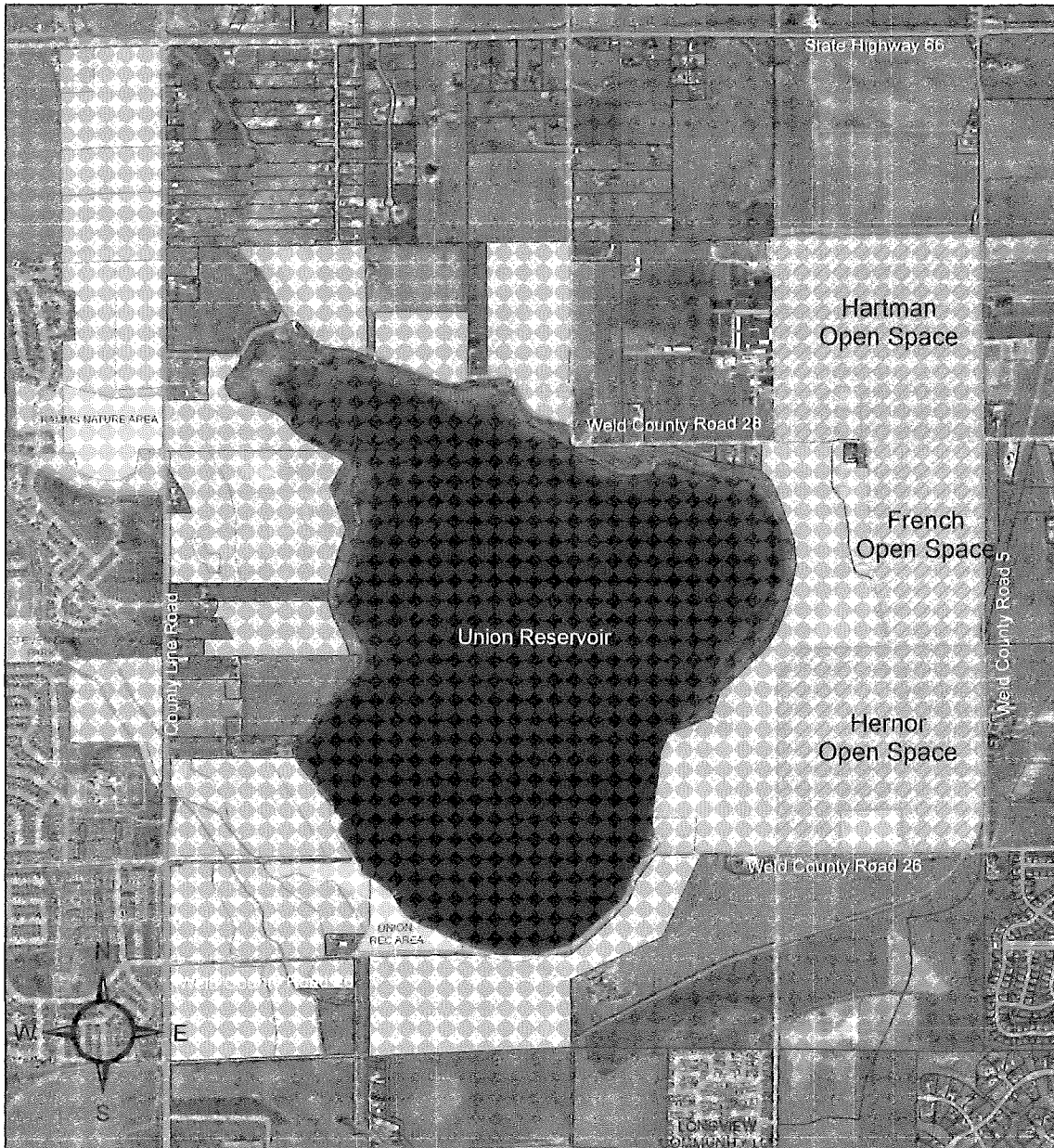
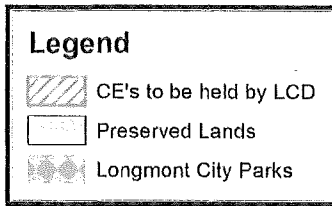


EXHIBIT A-3

Water Rights

Hartman Open Space

Highland (5 shares), CBT (17 units), McIntosh Reservoir (20 shares)

French Open Space

Highland (5.5 shares) , CBT (6 units), McIntosh Reservoir (32 shares)

Hernor Open Space

Highland (5 shares), CBT (100 units), McIntosh Reservoir (20 shares), Starbird Lateral
Ditch (Carrier Ditch Only)