

November 3, 2018

Erie Board of Trustees  
645 Holbrook St.  
Erie, CO 80516

Dear Town of Erie Trustees,

We request that the Erie Board of Trustees, cease consideration of adopting the proposed Amended and Restated Operator Agreement with Crestone Peak Resources LLC (Operator Agreement).

We again question if the public process has been handled appropriately. Were provisions added without transparency, particularly in regards to the newly included ACME site? In addition, this vote is being put forward just before an election, which could impact any possible benefits of changes made as a result of a democratic vote. Lastly, the proposed Operator Agreement does not meet the conditions of protecting health, safety, and welfare.

We believe the reasons listed below should be reason enough to delay this vote to allow public engagement.

### **Colorado Open Meeting Laws**

*In order to continue the public confidence in the integrity of government officials and to promote trust of the people in the objectivity of their public servants, this open disclosure law is adopted. C.R.S. 24-6-201*

- This statement is from the Colorado Open Meeting Laws, and is important part of our democratic process.

*It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret C.R.S. 24-6-401. "The public meetings laws are interpreted broadly to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved. Cole v. State, 673 P.2d 345 (Colo. 1983).*

- We, the public, have requested to engage fully in the decision making process but still do not feel engaged with a second meeting within a week with little time provided to review updated materials.

### **Voting Before a State Election with Major Implications on Oil and Gas Development**

The Erie Board of Trustees has called an Emergency Meeting just days before an election.

- Residents do not understand the rush to push this agreement through before an election.

- Residents ask that the town NOT make commitments to any oil and gas operator until the results of the elections are known. Policy decisions should be made that support the results of the election.

### **Protection of Public Health and Safety**

The Colorado Oil and Gas Conservation Act states per §34-60-102(1)(a) that “It is declared to be in the public interest to: (I) Foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources”.

Therefore, this Operator Agreement must prioritize public health, safety, and welfare for ALL Erie residents and residents of surrounding communities. Protecting public health and safety cannot be arbitrarily applied and needs to be afforded to all residents.

The Operator Agreement does not meet the standards of protecting health and safety for the following reasons:

### **Nuisances**

The Operator Agreement must ensure that adverse impacts, including nuisances, are adequately addressed such that these items can be enforced during all phases of development and operation. Previous operations indicate the need to address excessive dust, odor, vibration, and noise in a manner that is enforceable by contract law:

- Dust: The Operator Agreement lacks a detailed plan for addressing and fully mitigating the nuisance of dust as a result of the site preparation, increase in traffic and general construction and operation of the ACME site.
- Odor: One of the most common complaints from Erie residents to the COGCC is odor. The smell of strong petroleum and solvents, as well as odors that burn the throat and nose, are especially concerning. The Operator Agreement does not address how the Town of Erie will hold Crestone accountable when residents are exposed to such smells and irritations.
- Vibration: In November of 2015, residents in Erie experienced continuous C-Scale noise and vibration over the Thanksgiving holiday weekend. Such vibration is a public health hazard - particularly impacting those with pacemakers and other major health sensitivities. More recently, residents near the Coyote site have expressed concerns about home vibrations including damage to their homes. The Operator Agreement must detail how Crestone will address this issue and ensure that it does not happen at currently operating sites and potential new sites.
- Noise: Noise can cause stress to impacted residents and must be properly addressed including special limits during night-time hours. The COGCC uses a 15 minute average which can allow for levels higher than anticipated. The Operator Agreement must include provisions to prevent loud noises during specific hours.

## Risk Analysis

In order to ensure “protection of public health, safety, and welfare, including protection of the environment and wildlife resources”, a comprehensive risk analysis should be required in any Operator Agreement. The preliminary risk analysis will demonstrate areas of risk that must be mitigated or avoided. The final risk management plan should indicate all methods of risk avoidance and mitigation methods implemented, and demonstrate that the resultant risk to residents is negligible for moderate to catastrophic impacts and near-negligible for nuisances. Avoidance of this requirement could result in public health, safety, and environmental risks, as well as financial risks, that the town is not required to undertake.

- The risk analysis must be performed prior to the finalization of a project such that proper siting is achieved and proper risk mitigation methods are able to be implemented. See the Citizen Risk Analysis for the 84 Well Plan in Broomfield for methods of analysis. All known and potential risks must be evaluated including but not limited to:
  - Fire/Explosion/Blowout
  - Pipeline Fire/Explosion
  - Leak/Spill
  - Water Pollution
  - Chemical Exposure
  - Water Contamination
  - Surface Water Pollution
  - Surface/Soil Contamination
  - Radioactive Exposure
  - Vehicle Spill
  - Radiological
  - Odor
  - Noise Pollution
  - Light Pollution
  - Ambulance Delays
  - Traffic on Roads
  - Truck Accidents
  - Silica Sand
  - Flood
  - Trespassing
  - Sabotage
  - Earthquakes
  - Worker Injury/Fatality
  - Use of Nitrogen
  - Property Values
  - Insurance Issues
  - Loss of Tax Revenue
  - Local Government Burden
  - Wildlife Habitat
  - SEC Financial
  - SEC Drilling
  - SEC Resources
  - SEC Laws
  - Inflated Estimates

## Setback Distance

The site is close to both Erie Airpark and Anthem residents and is an unsafe location for a 30 well megapad. The existing Operator Agreement provided for 1000 foot setbacks for residents. This requirement was waived in the proposed new Operator Agreement for certain sites, which decreases protections for public health and safety for Erie residents. This location also sets up tension between Erie and Broomfield as each town attempts to make its residents more safe. This potential tension fails to honor the successful collaboration between leadership and residents of the two municipalities in recent months. Neither residents nor leadership should have to choose whether to endanger one neighborhood over another.

## **Best Management Practices**

The Best Management Practices (BMPs) do not adequately address the increased concerns for large-scale oil and gas operations in close proximity to densely populated communities. These do not address heavy truck usage during peak hours; restricting the levels of air emissions; prohibition of specific chemicals; preparing and maintaining an emergency preparedness plan including evacuation routes and a system of notification; air quality monitoring and reporting; and the completion of a Risk Mitigation Plan including a full risk analysis for the cumulative impact of all wells over the life of the project.

## **Impacts on City of Broomfield**

Staff and officials from the City of Broomfield have reached out to the Town of Erie with specific requests for information and to engage in this process. The lack of response from the Town of Erie to date is concerning. We continue to request that municipalities work together to site locations away from residential communities and prioritize public health, safety, and welfare, and the environment.

The City of Broomfield sent a letter to the Town of Erie Community Development Department dated July 17, 2018, regarding ACME 31H-P168. The City of Broomfield did not receive a response to these questions. The City of Broomfield sent a second letter to the Town of Erie dated October 30, 2018, with additional concerns and requirements.

- Broomfield officials, staff, and residents request the opportunity to provide input on this project.
- This megasite is exempted from many of the BMPs that do exist, even though the project has not yet been approved and is well within the timeframe to enact application changes.

## **Shallow Mines**

There are shallow mines in the area of the proposed project that were a part of a State funded 2013 subsidence restoration project. The "experts" cited in the Operator Agreement proposal do not include the Colorado Geological Survey who are the foremost experts on the subsiding shallow mines in our town.

## **Proximity to Erie Municipal Airport**

The Erie Municipal Airport is owned by the Town of Erie and is located just north of Hwy 7 and about a half mile west of Bonanza Drive. Per the City's website, the number of takeoffs and landings per year is approximately 35,000. The main traffic pattern is approximately 500 feet west of the proposed ACME site. With a past history of aviation accidents related to this airport, if one of these incidents were to occur at the ACME site, the result could be catastrophic.

## **Right to Protest**

The residents would like the opportunity to address other concerns in the Operator Agreement like the town waiving its rights to call a hearing for applications 2 and 2A at the COGCC if staff feels the BMP's have been met, as this effectively precludes the residents' ability to challenge a project at the COGCC level.

## **Temperature Inversions and Drainage Winds**

This megasite is an area where its toxic emissions will be trapped under temperature inversions, which will exacerbate the polluting effects of the oil and gas processes. People in low-lying areas are particularly susceptible to the harmful effects of breathing the toxic effluents trapped under the inversion. Normal nighttime drainage winds will also add to adverse effects of the sites air pollutants.

## **Highway 7 Coalition**

The long-term vision of the Highway 7 Coalition is to make Highway 7 safer, reduce traffic congestion and introduce more public transportation options as communities served by Hwy 7 continue to grow. This route is already over capacity and therefore this coalition must study and provide input on the resultant impacts of the significant increase in volume of large truck traffic related to this project.

In exercising its authority over its highways, a state is not limited to the raising of revenue for maintenance and reconstruction or to regulating the manner in which vehicles shall be operated, but may also prevent the wear and hazards due to excessive size of vehicles and weight of load.<sup>1</sup>

The Operator Agreement must include input from the Hwy 7 Coalition to address the following traffic impacts:

- Detailed plan to eliminate impacts on traffic flow for the thousands of additional heavy duty and/or special-duty truck trips required to deliver sand, chemicals, and supplies to the proposed ACME Site;
- Evaluation of potential for increased truck accidents and fatalities with the increase of heavy trucks on route predominantly travelled by commuter cars;
- Evaluation of current impact fees based on proposed toxic chemicals to be transported on Hwy 7 and potential change to fee structure;
- Cost Analysis for anticipated road repairs and method to ensure the operator pays for

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<sup>1</sup> Accordingly, a statute limiting to 7,000 pounds the net load permissible for trucks is not unreasonable. *Sproles v. Binford*, 286 U.S. 374 (1932).

these increased repairs - not the neighboring jurisdictions;

- Avoid heavy duty and/or special-duty truck traffic during peak traffic hours; and
- Analysis of impact on emergency response time and plan to avoid those delays.

### **Emergency Preparedness**

The isolation and initial evacuation zone for large oil and gas fires or explosions is 2,500 feet. If oil and gas operations are planned within 2,500 feet of occupied structures, roads, walkways, playgrounds, or areas where people congregate, the emergency evacuation of such areas requires plans for immediate and effective evacuation and plans to immediately rescue victims of the fire and/or explosion.

In addition to the evacuation of the isolation area, plans must be in place to efficiently evacuate densely populated neighborhoods including a pre-established method of communication to inform residents whether they should shelter in place or evacuate.

### **Due Process**

It is necessary to slow down, review, and make transparent the process used in order to make it inclusive, equal, and accessible by the residents who are impacted by the proposed operations. If the Town of Erie is using the quasi-judicial process, then closed door communications with Crestone would indicate ex-parte communications have occurred by town officials. Therefore, it is presumed that the negotiations should be considered a legislative process, and the residents must not be excluded.

The impacted residents of Broomfield, including those impacted by the proximity of these large-scale industrial operations to their home, as well as those who will be impacted by increased air pollution and heavy truck traffic, must be included in this legislative process.

Documents excluded from the process have included myriad letters from the City of Broomfield, residents of Broomfield and Erie, and the ACME application itself, including more than one version, referrals, revisions, and changes in the application process since they rescinded their important waiver requests (if they did, in fact, rescind them, which is unclear and unknown by the Board). The Board (the judges in a quasi-judicial process) are voting on a case without sufficient evidence.

While we appreciate the effort made by certain Board members to right the potential wrongs made in these legislative and quasi-judicial processes, such process errors cannot be remedied by further rushing through public comment opportunities and a second vote. Over 600 residents who signed the recent petition have requested that you pause this process, and the original vote on Tuesday should stand. Indeed, the quasi-judicial portion of this legislative process must be removed and treated separately, residents must have adequate opportunity (more than a few days) to review relevant documents, and the Board must have the opportunity to review all evidence on which they are voting. Reviewing all evidence requires that the Board read all application materials and communication from the previous months

about ACME, and that ACME be discussed and voted on as its own case outside of the Operator Agreement.

Sincerely,

Erie Health and Safety  
Democrats at Anthem Ranch  
301 Broomfield Health and Safety First  
Broomfield Clean Air and Water  
One Broomfield Indivisible  
Broomfield Concerned: A Coalition of Neighborhoods  
Broomfield Moms Active Community  
League of Oil and Gas Impacted Coloradans

