

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF AN APPLICATION BY 8 NORTH,
LLC FOR AN ORDER AUTHORIZING NINETEEN (19))
ADDITIONAL HORIZONTAL WELLS, FOR A TOTAL) CAUSE NO. 407
OF TWENTY (20) HORIZONTAL WELLS, FOR)
PRODUCTION FROM THE CODELL AND)
NIOBRARA FORMATIONS IN AN APPROXIMATE) DOCKET NO. 171200773
1,280-ACRE DRILLING AND SPACING UNIT)
PROPOSED FOR SECTIONS 35 AND 36,)
TOWNSHIP 1 NORTH, RANGE 69 WEST, 6TH P.M.) TYPE: DENSITY
WATTENBERG FIELD, BOULDER COUNTY,)
COLORADO)

**AMENDED PROTEST AND INTERVENTION BY BOULDER COUNTY
AND CITY OF LAFAYETTE**

Pursuant to Commission Rule 509, the Board of County Commissioners of the County of Boulder (the "County") and the City Council of the City of Lafayette (the "City"), by their undersigned counsel, file this amended protest and intervention by right ("Protest") to the above-referenced Application submitted on September 25, 2017, by 8 North, LLC ("Applicant").

**A. GENERAL STATEMENT OF FACTUAL AND/OR LEGAL BASIS
FOR THE AMENDED PROTEST AND INTERVENTION**

1. The County is a body corporate and politic in the state of Colorado with powers conferred under applicable law, including §30-11-101, C.R.S.
2. The City is a home rule city established pursuant to applicable law, including § 31-2-201 et. seq., C.R.S. and Article XX, Section 6 of the Colorado Constitution.
3. The County and the City are the Local Governments with land use jurisdiction for the Application Lands and have elected to intervene as a matter of right on behalf of their citizens pursuant to Rule 509. In their capacity as regulators of land use, the County and the City state: (i) that the public issues raised by the Application reasonably relate to significant adverse impacts to the public health, safety and welfare of citizens, including environment and wildlife resources, that are within the Commission's jurisdiction to remedy; (ii) that potential impacts are not adequately addressed by the Application; and (iii) that the potential impacts are not adequately addressed by the Rules and Regulations of the Commission. These impacts may adversely affect public health, safety and welfare, damage private and public mineral and surface rights, allow the drilling of unnecessary and uneconomic wells, damage important

environmental and agricultural resources, create waste and damage correlative rights.

4. The City has significant ownership and regulatory interests in the Application Lands, which, as will be shown at the hearing on the Application, are likely to be affected by the proposed development.
 - a. The Application Lands encompass a large portion of the City of Lafayette, which includes areas of significant concern for protection, including but not limited to:
 - i. Pioneer elementary school;
 - ii. The Great Bark Dog Park;
 - iii. Hundreds of residential units;
 - iv. The City of Lafayette Recreation Center;
 - v. The City of Lafayette Cemetery; and
 - vi. Numerous public trails.
 - b. The Application Lands encompass undeveloped land owned by Lafayette that is designated for future development as a park (the Great Park).
5. The County has significant ownership and regulatory interests in the Application Lands, which, as will be shown at the hearing on the Application, are likely to be affected by the proposed development.
 - a. The County owns dozens of acres of important agricultural land in the Application Lands, which was purchased with taxpayer dollars for preservation of agricultural and open space values.
 - b. The Application Lands encompass multiple important wetlands areas that the County protects through its land use power.
 - c. The Application Lands encompass sensitive raptor foraging areas that the County protects through its land use power.
 - d. County roads in the Application Lands will be affected by development.
6. Applicant is requesting an order that authorizes 19 additional wells in a spacing unit requested in Docket No. 171000694 (the "Spacing Application"). That spacing unit has not yet been established by Commission order, no Form 2A or Form 2 permits

have been issued to Applicant for that unit and no resulting well has been drilled by Applicant. Nonetheless, Applicant now requests the right to drill additional wells in the proposed unit “to economically and efficiently recover resources,” which is inconsistent with the Oil and Gas Conservation Act for the following reasons:

- a. The proposed unit in which the additional wells are requested has not yet been established.
 - b. If the Commission does issue an order establishing the unit, the order “*shall* permit only one well to be drilled *and produced*.” § 34-60-116(3), C.R.S. (emphasis added). The Spacing Application properly requests authorization for a single well and the statute makes clear that only that well can drill and go into production once an order establishes the unit.
 - c. Additional wells may *thereafter* be authorized in “the *established* units” to prevent waste. § 34-60-116(4), C.R.S. (emphasis added). The only way the Commission can determine if the additional wells sought by the Application are necessary to prevent waste is by considering the efficiencies of the original well drilled and producing in the unit. Only on evidence that the single well, after it is in production, is not able to effectively drain the resource in that area can additional wells be authorized under the Act.
7. The County and City object to the Application because it fails to allege facts that satisfy the standard set by the Colorado Court of Appeals in *Martinez, et al. v. Colorado Oil and Gas Conservation Commission, et al.*, 2017 COA 37 (March 23, 2017), *cert. granted January 29, 2018*.
 8. The Commission has a duty to foster the responsible, balanced development of oil and gas natural resources and to protect public health, safety and welfare. It also has the authority to prevent waste and the drilling of unnecessary or uneconomic wells, and to protect correlative rights. *See* C.R.S. §§34-60-102, 116.
 9. It is widely recognized that current market conditions are not favorable to the owner of mineral interests. As the owner of mineral interests within the Application Lands, the County does not find it economically beneficial to move forward with development of its mineral interests at this time. Granting the Application may lead to the County’s mineral rights being statutorily pooled without due process of law and just compensation and in violation of the United States and Colorado Constitutions and the imposition of a joint ownership relationship that violates Article XI, Sec. 2 of the Colorado Constitution.
 10. The County and City reserve all other objections which it has the right to present, as well as its right to amend this Protest.

11. The County and City request that the Commission deny the Application for the reasons set forth above.

B. RELIEF REQUESTED

WHEREFORE, the County and the City respectfully request the following:

1. That Boulder County and the City of Lafayette be allowed to participate in their capacities as both the local governments with land use jurisdiction and as surface owners in this matter; and
2. That the Commission deny the Application and enter such other findings and orders as the Commission may deem proper or advisable in this matter.

C. RESERVATION OF RIGHTS

The County and City reserve all rights to supplement this Protest with additional factual information and/or legal arguments and to request additional relief. The County and City further reserve the right to require Applicant to prove its case, and to file any motions or other responsive pleadings to the Application based upon this Commission's Scheduling Order.

D. REQUEST FOR IMMEDIATE SCHEDULING ORDER

The County and City respectfully request that the Commission Hearing Officer issue a Scheduling Order including, but not limited to, the following dates:

1. Motions Deadline, including dates to file motions, responses to motions and replies to motions and any necessary briefs in support;
2. Disclosure and Discovery Schedule;
3. Pre-Hearing Statement Deadline;
4. Witness List Deadline;
5. Exhibit List and Submission of Exhibit Deadline; and
6. Deadline for Submission of Draft Order.

The County and City respectfully request that they be provided with a complete list of all interested parties in this Docket.

E. DESCRIPTION OF INTENDED PRESENTATION

1. The County and City will present testimony and evidence in support of the facts and arguments stated within this Protest.
2. The County and City may present representatives to identify their interests, land witnesses, geology and hydrology witnesses and an oil and gas operations expert. They reserve the right to present additional witnesses as necessary to supplement the above facts and/or rebut any evidence, argument or witness testimony presented by 8 North at its hearing.

F. TIME ESTIMATE FOR PROTEST

The County and City estimate that they will require approximately one hour to present evidence and testimony in support of this Protest and in response to Applicant's case.

Dated this 20th day of March, 2018.

Respectfully submitted,

BOARD OF COUNTY COMMISSIONERS
BOULDER COUNTY

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ATTORNEYS FOR BOULDER COUNTY

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**ATTORNEYS FOR
CITY OF LAFAYETTE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **AMENDED PROTEST AND INTERVENTION BY BOULDER COUNTY AND CITY OF LAFAYETTE** has been mailed or served electronically this 20th day of March, 2018, to the following entities that require notice of such filing and an original and two copies have been sent or filed with the COGCC:

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