

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

IN THE MATTER OF THE APPLICATION OF	)	CAUSE NO. 1
CRESTONE RESOURCES OPERATING LLC FOR	)	
AN ORDER TO: 1) ESTABLISH AND APPROVE A	)	
RULE 216 COMPREHENSIVE DRILLING PLAN	)	DOCKET NO. 170500189
FOR SECTIONS 1, 2, 3, 10, 11 AND 12, TOWNSHIP	)	
1 NORTH, RANGE 69 WEST, 6 <sup>TH</sup> P.M. AND	)	
SECTIONS 25, 26, 27, 34, 35 AND 36, TOWNSHIP	)	TYPE: GENERAL
2 NORTH, RANGE 69 WEST, 6 <sup>TH</sup> P.M. FOR THE	)	ADMINISTRATIVE
COMPREHENSIVE DEVELOPMENT AND	)	
OPERATION OF THE CODELL AND NIOBRARA	)	
FORMATIONS, WATTENBERG FIELD, BOULDER	)	
COUNTY, COLORADO, AND (2) TO APPROVE A	)	
RULE 502.b. VARIANCE TO COMMISSION RULE	)	
303.	)	

**BOULDER COUNTY’S COMMENTS TO FOURTH DRAFT PRELIMINARY  
COMPREHENSIVE DRILLING PLAN ELEMENTS**

The following comments are submitted on behalf of Boulder County by County staff members. For ease of reference, staff submitting these comments will be referred to below as “the County.” However, these comments are not the result of a full review of any kind, including a review under the Boulder County Land Use Code (“the Code”) by the Board of County Commissioners, which will be required even if the Comprehensive Drilling Plan (“CDP”) is approved by the COGCC. For purposes of the CDP process only, staff has compiled the following comments on Crestone Resources Operating LLC’s Fourth Draft Preliminary Comprehensive Plan Elements (“Fourth Draft”). The County incorporates all of its comments on prior drafts into these comments and further reserves the right to supplement or amend them at any time.

- I. An additional draft is necessary, prior to the Final CDP, because additional acreage recently became available for consideration of alternative surface sites.

On April 5, the County learned that Crestone and Extraction Oil & Gas closed on an agreement giving Crestone access to numerous additional mineral and surface acres that were allegedly not available for consideration in earlier versions of the plan. The County has previously urged COGCC to require that Crestone consider the entire CDP area in selecting its sites, and now that is a possibility. Now that this Extraction/Crestone conflict has been resolved, the CDP process should be expanded to allow time for full

consideration of *all* feasible sites within the CDP area. A public meeting should be required involving any future drafts, which meeting should be held in person so that all affected people have the chance to fully participate.

II. Crestone still has not demonstrated its right to extract the minerals in the CDP.

For the fourth time, the County points out that Crestone has failed to prove its leasehold rights to develop the minerals it proposes to drill in the CDP area. Through four drafts of its plan so far, Crestone has refused to provide comprehensive proof of its leasehold rights in the CDP area or proof of its assumption of the few leases it provided with its Third Draft.

With the CDP, Crestone proposes to place five massive oil and gas facilities on preserved, protected, agricultural lands in the county, against the desire of some surface owners and an overwhelming number of county residents. The only foundation for that proposal is Crestone's purported lease rights, yet that critical, foundational, element has not been shown.

Not only is the bare fact of Crestone's ownership of mineral rights necessary to support its proposed use of land, the documents in the chain of mineral title may define or limit what Crestone can do with the subject minerals or surface lands.

For example, the County has discovered that mineral leases to which the County is the successor lessor and Crestone is purportedly the successor lessee strictly limit the size of units into which the subject land can be incorporated and limit the use of the overlying surface to what is necessary to drill only the underlying minerals. All land and mineral owners in the CDP need the opportunity to review evidence of not only Crestone's mineral leaseholds, but its rights to use the surface set forth in those documents.

III. The County's Open Space program is a decades-old, robust effort enshrined in numerous governing documents and consistent with state and federal law.

Comments made by Crestone representatives at various times during the CDP development process suggest a misunderstanding of the County's Open Space program and the significance of its Open Space assets. The Open Space lands in the CDP, like those elsewhere in the county, represent a comprehensive set of values for county residents.

Starting in the mid-1960s, county residents have been deliberately working to "preserv[e] open space land in the face of rapid county development." Under the authority and directive of § 30-28-106, C.R.S., the county's Planning Commission enacted the Boulder County Comprehensive Plan (BCCP) to provide the policy basis and

guidance for enacting land use regulations that are consistent with and implement the intentions of the master plan. The BCCP guides all land use decisions affecting the county's lands in a coordinated and responsible manner. The BCCP lists specific goals for the Open Space program, which include: (i) protection of open space for quality of life; (ii) conservation of the rural character of the unincorporated county, which primarily means supporting agricultural activity; (iii) stewardship of open space through sound management practices.

In 1993, the first Open Space sales and use tax was passed by voters to support acquiring and managing land on which development would be severely restricted or prohibited. The county has purchased well over 100,000 acres of Open Space land under the program, including 25,000 acres of agricultural lands. All but a minority (mostly active agricultural parcels) are open for public use and access. Open Space lands are acquired and managed to serve one or more of several values or functions, including: preserving significant habitats and species; conserving and enhancing agricultural lands and especially those of national importance; providing scenic corridors; acting as buffers between communities; and protecting and manage water resources. The Open Space tax resolutions and ballot language approved by voters strictly limit the use of both the tax revenue and the lands purchased with it.

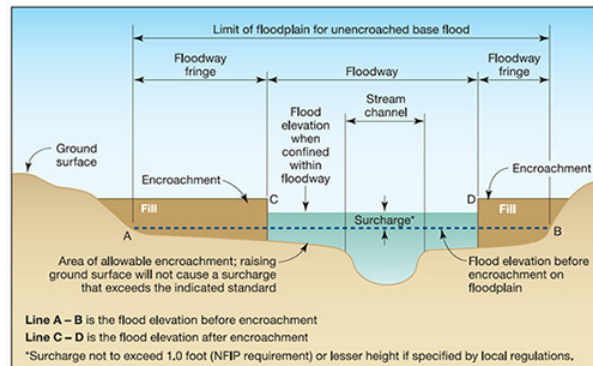
The Open Space program is consistent with state and federal law, which recognizes the importance of preserving both agricultural and natural areas. "It is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land," and the General Assembly recognizes "that units of local government may adopt ordinances or pass regulations that provide additional protection for agricultural operations." § 35-3.5-101, C.R.S. It is also the policy of the state "that the wildlife and their environment are to be protected, preserved, enhanced, and managed," § 33-1-101(1), C.R.S., and "that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed," § 33-10-101(1), C.R.S.

The County has repeatedly urged the COGCC and Crestone to seriously consider the importance of the County's Open Space lands, particularly where the County has purchased the mineral rights along with the surface, as it did with the Haley and Wheeler Open Space properties (Crestone's Section 3 and Section 1 proposed sites). Nonetheless, 112 of the currently proposed 140 wells in the CDP are still located on County-owned Open Space. Now that a new corridor of surface locations are unquestionably available for consideration, the County urges the COGCC to direct Crestone to provide another Draft showing examination of additional sites that have become options due to the agreement with Extraction.

IV. The Fourth Draft makes no improvement in adverse floodway and critical wetlands impacts.

While Crestone slightly adjusted the proposed wellsites on the Wheeler Open Space property (Section 1), the entirety of the proposed facility is still in the properly measured floodway. See 44 C.F.R. § 59.1 (defining “regulatory floodway” as the “channel of a river . . . and the adjacent land areas that *must be reserved* in order to discharge the base flood”) (emphasis added). The County has consistently and repeatedly informed Crestone and the COGCC that the floodway is much wider than Crestone’s maps have depicted it. In its comments to the First Draft, at page 4, the County explained that the floodway used by Crestone in its mapping was not the six-inch water rise standard used by the Colorado Water Conservation Board (CWCB). In its comments to the Second Draft, at page 5, the County elaborated that it had presented the CWCB floodway standard as the “Best Available Information” in contrast to the effective FEMA maps to properly delineate the floodway and pointed out that Crestone was still not using it as they should to avoid a hazardous area. In its comments to the Third Draft, starting on page 3, the County explained the CWCB-adopted six-inch floodway at length, giving detailed information about its genesis, the implications of the new and better modelling of the floodway in the Section 1 area, the way in which the County uses the newest and best data, and why the floodway (as delineated by Best Available Information) should be avoided for any development, much less a large-scale oil and gas facility. Moreover, the County explained that the floodplain and floodway designations on the Wheeler Open Space were contributing factors in its decision to purchase (for \$8,000,000) and preserve the property, and its accompanying mineral rights, as open space protected from development.

Because the new modeling of the six-inch standard widens the floodway to cover most of what was delineated as floodplain in the Wheeler area, it is important to note that the floodway is nonetheless a segment of the floodplain, as demonstrated by this FEMA graphic:



See also, Army Corps of Engineers explanation at <https://www.youtube.com/watch?v=Pqyessf4xBA>. Thus, the often-narrower and more hazardous floodway is considered a particularly sensitive portion of the floodplain. COGCC still has regulatory authority over the floodway area since the floodway is a higher risk zone designated within the FEMA-defined Special Flood Hazard Area, which encompasses the 100-year floodplain; however, COGCC's current rules are not well-designed to handle the heightened hazard in this segment of the floodplain.

Since 2015, CWCB has been updating flood hazard information within the county. Based on CWCB's prior adoption of the six-inch standard, CWCB has prepared a six-inch floodway model and associated mapping specifically for Boulder Creek in eastern Boulder County and will be submitting this data to FEMA for its review within a month of the submission of these comments. Simultaneously, the County will undergo its local adoption process which includes an expected designation of the data from the CWCB in mid-July 2018, at which time the six-inch floodway model will be effective in the affected portion of the County. For that reason, not only is the six-inch rise the Best Available Information, before the CDP is approved and before any local permits are issued, it is expected to be the County's fully adopted floodway document. A depiction of the six-inch rise model is shown on Exhibits A and B to these comments, with the proposed Wheeler Open Space property pads fully within its scope. Moreover, the proposed pipeline and access road to the multi-well pads on Wheeler Open Space are right next to Boulder Creek and wholly within even the more conservative, obsolete 12-inch rise floodway model.

The floodway issue is critically important to the County because of the public health and safety risks that stem from development in the floodway. As the County pointed out in its comments to the Third Draft, the existing Wheeler G Unit #1 well on the Wheeler Open Space property was notably damaged during the 2013 Flood in Boulder County, which was considered only a 50-year event in that particular stream reach. The County is still spending innumerable dollars and staff hours recovering from the 2013 Flood and is acutely aware of the devastation that can occur when flood waters travel through the floodway.

With more land in the CDP area now available for consideration, there is no reason for Crestone to continue proposing sites in the floodway.

V. The proposed sites violate Rule 318A related to drilling windows in the Greater Wattenberg Area ("GWA").

Under Rule 318A.a, Crestone can only place surface well sites outside of defined GWA drilling windows with surface owner agreement or by showing the COGCC good cause for a variance. No surface use agreement has been reached with the County for well locations on its Open Space lands. When Crestone contacted the County for consultation to use its Open Space lands as drilling and facility locations for oil and gas

development, the County responded in September 2017 “without waiving any statutory or regulatory rights, Boulder County declines to discuss Crestone’s proposed uses . . . because those discussions are premature in the absence of county Special Use Review of proposed sites under its Land Use Code.” Since that initial contact and response, Crestone’s proposed sites have been modified twice but it has not repeated its request for County consultation. In its September 2017 letter, the County was clear that it “reserve[d] its landowner’s statutory right to be consulted and request an on-site meeting.” Any suggestion that the County has outright refused to discuss use of its Open Space with Crestone is inaccurate. However, until those consultations have taken place in good faith, the County cannot be said to have either refused to consult or granted permission for surface locations to be outside the prescribed GWA drilling windows.

The Fourth Draft says Crestone will seek a variance from the GWA drilling window requirement for the Wheeler Open Space property, in which case, under Rule 502.b(1), it must show “a good faith effort to comply, or [that it] is unable to comply with the specific requirements” of 318A.a. In the absence of a surface use agreement with the County, the County opposes any such variance because, given the entirety of the CDP area now available to it, Crestone cannot show a good faith effort or inability to comply with the GWA drilling window requirement. Moreover, COGCC staff has acknowledged that the Commission has never granted a variance for facilities outside the GWA windows in the absence of landowner permission.

The proposed large-scale facilities on the Wheeler Open Space property are not within GWA drilling windows. The proposed large-scale facilities on the Haley Open Space property are partially inside and partially outside the GWA windows. The drilling window requirement applies to “all surface wellsites,” and “well site” is defined in the 100 series to include “the areas that are directly disturbed” or are “affected by production facilities” during drilling and operation. Only the proposed wells themselves on the Haley Open Space property are within the windows, leaving significant areas that are disturbed or affected by production facilities outside of the necessary windows in violation of Rule 318A. Until the County has given a final refusal to consult or such consultations have taken place in good faith, *all* drilling production disturbance areas must be located in Rule 318A windows. No variances should be granted by the COGCC for any Open Space property when alternative locations exist.

VI. The COGCC should ensure that Crestone has its gas pipelines in place before wells begin producing to prevent waste of the resource and air quality impacts from unnecessary flaring.

As the Commission discussed at its March 19, 2018, meeting, significant issues arise when natural gas is unnecessarily flared due to the lack of existing infrastructure to transport the gas. Volumes of natural gas are wasted and the flaring creates NOx compounds that aggravate the Front Range ozone non-attainment status.

The Fourth Draft vaguely refers to third party gathering services to transport natural gas but provides no information on the timing or capacity of that system. To

avoid the problems that go with gas production outpacing takeaway capacity, COGCC should require Crestone to ensure (and later to prove) the existence and capacity of its gas pipeline midstream system before it can drill any wells under the CDP.

VII. The Fourth Draft does not address important issues raised by stakeholder comments to earlier drafts and the CDP should not be finally approved without sufficient response on these issues.

In its comments to each of the CDP drafts, the County has pointed out significant adverse impacts to agriculture, natural resources, wildlife, public health and individual residents in the immediate area and beyond that are likely to result from this intensive development and Crestone has still not addressed the majority of those issues.

The agricultural lands in the CDP area are principally classified as Agricultural Lands of National Importance, a County designation that mirrors the USDA's definition of "Prime Farmland." Such lands are rare, of the highest value, and are under threat nationally.

See [https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143\\_014052](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014052). The large-scale facilities Crestone proposes on three significantly valuable agricultural parcels threaten to severely impair their agricultural uses and resources far into the future, if not permanently. In its previous comments, the County has noted innumerable specific concerns related to matters such as irrigation interruptions, livestock conflicts, failure to identify or note protections for ditches and laterals, the necessity to preserve topsoil, and timing of operations to prevent agricultural interruptions. Virtually none of these concerns have been touched in the Fourth (or any earlier) Draft.

Similarly, the County has offered dozens of specific wildlife, plant and ecological concerns that have not been addressed, including the improper mapping of raptor habitats, the lack of timing accommodations for wildlife needs, the complete absence of sensitive plant identification and protection measures, and the dangers of locating pipelines or access roads in riparian or wetland areas.

Neither can the County determine potential impacts to its road systems where information on truck trips and driving routes is absent.

Finally, the County and hundreds of public comments have raised concerns about noise, odor, vibration, lights, ground stability, traffic, air quality, health impacts, water usage, and waste, to which Crestone has given only cursory responses or ambiguous and indefinite assurances that mitigation measures will be considered later. Many of these comments have come from people who live or have lived near existing multi-well sites (some as far as  $\frac{3}{4}$  of a mile) and have directly experienced negative impacts and disruption to their lives.

Where such important and numerous issues have been raised but not sufficiently addressed, the Fourth Draft cannot be considered a complete plan.

#### VIII. Conclusion.

Significant issues remain with the Fourth Draft. First and foremost, Crestone's recent agreement with Extraction brings much more land into consideration for surface locations and no plan should be finalized until those previously disregarded sites are taken into account. Further analysis should respect the importance of Boulder County Open Space and floodway concerns. Second, Crestone still needs to demonstrate its mineral rights and any attendant limits on surface use of the locations it proposes to develop. Third, Crestone will not be entitled to a Rule 318A variance until it can show that it has negotiated with the County in good faith about any surface locations on Open Space and can show that no other compliant sites are possible. Fourth, Crestone must demonstrate that it will have adequate gas pipeline or takeaway capacity in place before it begins drilling to prevent harmful and unnecessary flaring. Finally, a lengthy list of specific questions or concerns about agricultural, ecological, wildlife and plant, public health, transportation and disruption to individual residents must be adequately addressed. For all of these reasons, the CDP should be expanded to require another preliminary draft, with an in-person public meeting to provide input, before any Final CDP can be accepted by the COGCC.



# Exhibit A: Lower Boulder Creek Floodway Extent

## Legend

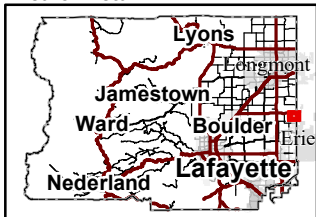
Date: 4/12/2018

- Access Road
- Production Equipment Area
- Well Pad
- Surface Disturbance Area
- 12-inch Floodway
- Draft Floodplain
- Modelled 6-inch Floodway
- Stream
- Perennial Lake or Reservoir
- 6-inch Floodway Approximation Before Modelling Was Completed (denoted in 3rd Draft CDP Comments)

0 500 1,000  
Feet

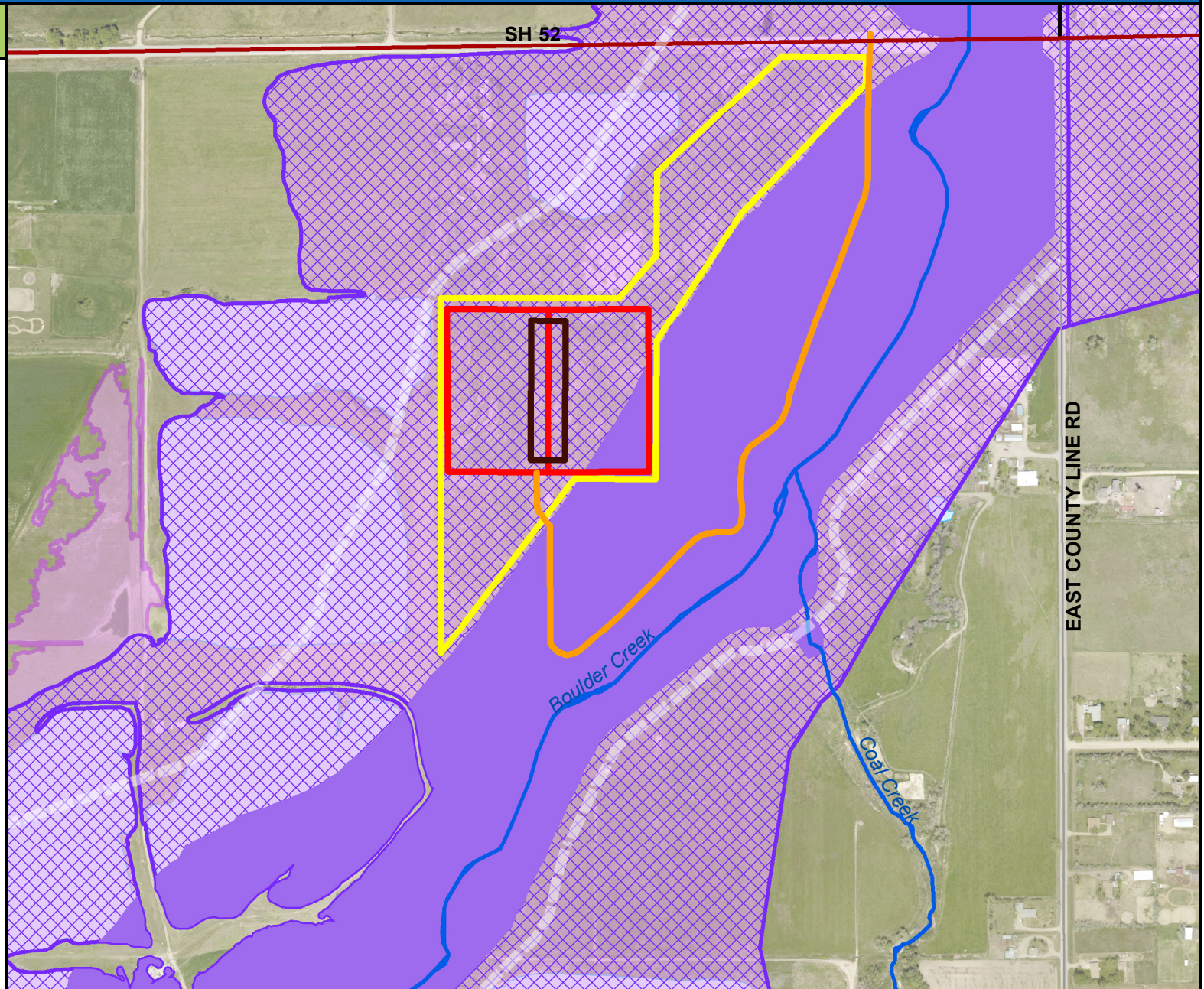


### Area of Detail



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## Exhibit B: Lower Boulder Creek Floodway Extent

### Legend

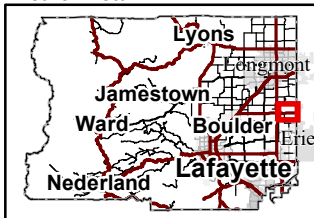
Date: 4/12/2018

- Access Road
- Production Equipment Area
- Well Pad
- Surface Disturbance Area
- 12-inch Floodway
- Modelled 6-inch Floodway
- Draft Floodplain
- Stream
- Perennial Lake or Reservoir
- 6-inch Floodway Approximation Before Modelling Was Completed (denoted in 3rd Draft CDP Comments)

0 1,200 2,400  
Feet



#### Area of Detail



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