

**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,)	Cause No.: 407
FOR A TOTAL OF TWENTY (20))	
HORIZONTAL WELLS, FOR)	
PRODUCTION FROM THE CODELL)	Docket No. 171200773
AND NIOBRARA FORMATIONS IN)	
AN APPROXIMATE 1,280-ACRE)	
DRILLING AND SPACING UNIT)	Type: ADDITIONAL DENSITY
PROPOSED FOR SECTIONS 35)	
AND 36, TOWNSHIP 1 NORTH, RANGE)	
69 WEST, 6TH P.M, WATTENBERG)	
FIELD, BOULDER COUNTY, COLORADO)	

BOULDER COUNTY’S AND LAFAYETTE’S PRE-HEARING STATEMENT

Pursuant to the Hearing Officer’s Amended Case Management Order, Boulder County and Lafayette submit this Pre-Hearing Statement in the above-captioned matter.

1. BOULDER COUNTY’S AND LAFAYETTE’S CLAIMS AND DEFENSES.

- a. The County is an Owner, as that term is defined by statute, of interests on, within and under the Application Lands. The County is also one of the Local Governments with land use jurisdiction within the Application Lands and has elected to intervene as a matter of right on behalf of its citizens pursuant to Rule 509. In its capacity as regulator of land use, the County states: (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.
- b. The City is a local government with land use jurisdiction within the Application Lands. In its regulatory capacity, the City restates the concerns stated by the County above.
- c. The Application Lands contain numerous resources of concern to the County and

the City, listed below.

i. Within the City:

1. Pioneer Elementary School;
2. Great Bark Dog Park;
3. Hundreds of residential units;
4. The City of Lafayette Recreation Center;
5. Undeveloped land slated for development as a park (the Great Park);
6. The City of Lafayette Cemetery;
7. Numerous legacy and abandoned coal mines;
8. Josephine Commons Senior apartment complex; and
9. Numerous public trails.

ii. In the County:

1. Important agricultural land purchased with public funds;
2. Multiple wetlands and streams;
3. Critical wildlife habitat, including sensitive raptor forage;
4. An airport influence zone;
5. Numerous residences;
6. Geological hazards, including subsidence risk from abandoned coal mines; and
7. County roads.

- d. On July 1, 2018, S.B. 18-230 is slated to go into effect, amending Section 34-60-116, C.R.S. with regard to spacing orders. Under the amendments, a spacing order will be allowed to authorize more than one well, which affects the legal arguments raised in the County's and City's petition for intervention and protest. Nonetheless, 8 North's applications remain legally flawed.

- i. S.B. 18-230 did not amend subsection (2) of the statute, which describes how a unit is to be determined. On evidence at a hearing, the Commission must determine "the existence of a pool and the appropriate acreage to be embraced within a drilling unit." § 34-60-116(2), C.R.S. However, the Commission cannot comply with § 34-60-116(2) by determining the existence of a pool because the hydrocarbons are tightly bound in the rock,

as demonstrated by the prevalence of hydraulic fracturing to develop the subject formations; moreover, after the enactment of S.B. 18-230, the Commission cannot determine the appropriateness of a unit based on the area that can be drained by a single well. In light of the S.B. 18-230 amendment to subsection (3) authorizing an initial spacing order to allow for more than one well, and in light of the tightly bound nature of the hydrocarbons, the statute no longer provides any rational basis on which the Commission can determine the existence of a pool or the appropriate acreage to be embraced within a drilling unit. 8 North cannot present evidence to demonstrate why its proposed unit in Docket No. 171000694 is an appropriate drilling and spacing unit when there is no identifiable reservoir of hydrocarbons with defined limits. Instead, the proposed unit becomes an arbitrary designation that gives 8 North the extraordinary right to statutorily pool nonconsenting mineral owners in the area. The Commission cannot comply with the statute under the circumstances and should not approve the proposed unit without a rational basis in fact.

- ii. 8 North's application in 171200774 still requests additional wells in the Application Lands, which is governed by the unamended Section 34-60-116(4), C.R.S. That section limits the authorization for additional wells in established units to the prevention of waste and unnecessary wells or to protect correlative rights. None of those matters can properly be determined for a given unit without evidence based on existing production on the newly-established unit.
- e. In making its determination on the subject applications, the Commission must apply the standards set forth in *Martinez et al. v. Colorado Oil and Gas Conservation Commission*, 2017 COA 37 (March 23, 2017), *cert. pending*. In particular, the Commission must determine that, allowing for the establishment of a spacing unit of the proposed size in the proposed location will not be detrimental to public health and safety or the environment and wildlife.

2. WITNESS LIST.

The County and the City may call the following witnesses in their case in chief or in rebuttal or both.

- a. Kimberly Sanchez, Senior Chief Planner and Local Government Designee, Boulder County Land Use Department. Ms. Sanchez will testify to the potential adverse impacts of intensive oil and gas development in the Application Lands. Anticipated time of direct testimony: 15 minutes.
- b. Janis Whisman, Real Estate Division Manager, Boulder County Parks and Open Space Department. Ms. Whisman will testify to the County's surface and mineral ownership and the public funds program with which it was purchased. Anticipated time of direct testimony: 10 minutes.

- c. Roger Caruso, Assistant City Administrator, City of Lafayette. Mr. Caruso will testify to the potential adverse impacts of intensive oil and gas development on the City of Lafayette. Anticipated time of direct testimony: 10 minutes.
- d. Patrick Murphy, Oil and Gas Specialist, Boulder County Public Health. Mr. Murphy will testify to the air quality impacts of oil and gas facilities in Boulder and Weld counties. Anticipated time of direct testimony: 5 minutes.
- e. Dave Hoerath, Wildlife Biologist, Boulder County Parks and Open Space Department. Mr. Hoerath will testify to the wildlife resources in the Application Lands. Anticipated time of direct testimony: 5 minutes.
- f. Nathan Teich, Plant Ecologist, Boulder County Parks and Open Space Department. Mr. Teich will testify to the vegetation resources in the Application Lands. Anticipated time of direct testimony: 5 minutes.
- g. Rob Alexander, Senior Resource Specialist, Boulder County Parks and Open Space Department. Mr. Alexander will testify to the agricultural resources in the Application Lands. Anticipated time of direct testimony: 5 minutes.

3. EXHIBIT LIST.

The following exhibits are filed concurrently with this Pre-Hearing Statement. The County and the City propose to project some or all of these exhibits electronically at the hearing.

- A. Map—Overview of Eastern Boulder County
- B. Map—County Surface Ownership in the Application Lands
- C. Map—County Mineral Ownership in the Application Lands
- D. Map—Agricultural Resources in the Application Lands
- E. Map—Water resources in the Application Lands
- F. Map—Habitations in the Application Lands
- G. Map—Floodplain and floodway features in the Application Lands
- H. Map—Airport Influence Area in the Application Lands
- I. Map—Geological Hazards in the Application Lands
- J. Map—Resources of Concern in Lafayette
- K. Boulder County Resolution 2016-77
- L. Boulder County Voluntary Inspection Program Results Excerpts

M. § 34-60-116, C.R.S.

N. S.B. 18-230

O. Photo—Powers Marsh Wetlands

P. Chart Defining Agricultural Lands of Importance

4. OPEN LEGAL ISSUES.

Other than those issues listed in Section 1 above to be determined at the hearing, the County and the City are not aware of other open legal issues.

5. RELIEF REQUESTED.

The County and City request the following relief:

1. The additional wells application in Docket No. 171200773 should be denied because:
 - a. There is no evidence of production in the proposed unit on which the commission can determine the need for 19 additional (or 20 total) wells;
 - b. The intensity of development entailed in the application poses potential severe adverse impacts to public health and safety and to the environment and wildlife resources that are not addressed by the application.

6. ESTIMATED TIME REQUIRED.

The County and the City estimate that they need 90 minutes for opening and closing statements and presentation of direct and rebuttal evidence.

Dated this 21st day of June 2018.

Respectfully submitted,

BOULDER COUNTY ATTORNEY'S
OFFICE

By: 

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Senior Assistant County Attorney
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Deputy County Attorney
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**ATTORNEYS FOR INTERVENOR
BOULDER COUNTY**

CITY COUNCIL
CITY OF LAFAYETTE

By: /s/ Jeffrey Robbins

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**ATTORNEYS FOR
CITY OF LAFAYETTE**

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June 2018, a true and correct copy of **BOULDER COUNTY'S AND LAFAYETTE'S PRE-HEARING STATEMENT** has been filed with the COGCC and served electronically to the following entities that require notice of such filing:

James P. Rouse
Hearing Officer
Oil and Gas Conservation Commission
1120 Lincoln Street, Ste. 801
Denver, CO 80203
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Jobediah J. Rittenhouse
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Beatty & Wozniak, P.C.
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jrittenhouse@bwenergylaw.com
jparrot@bwenergylaw.com



Cathy Peterson



Docket No. 171200773

EXHIBIT A

Overview

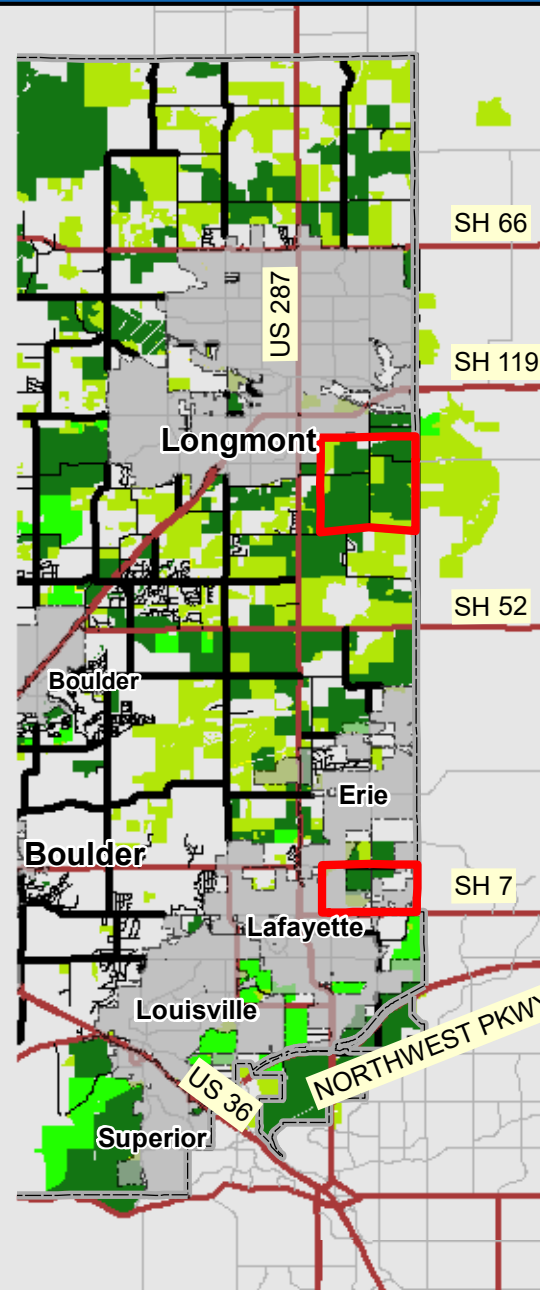
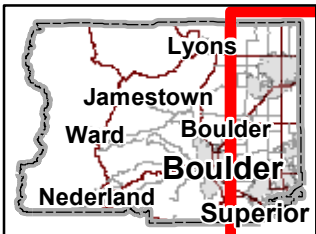
8 North LLC Drilling Spacing Units

Legend

 Drilling Spacing Unit

0 4 Miles 

Area of Detail Date: 6/21/2018





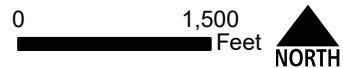
Docket No. 171200773

EXHIBIT B

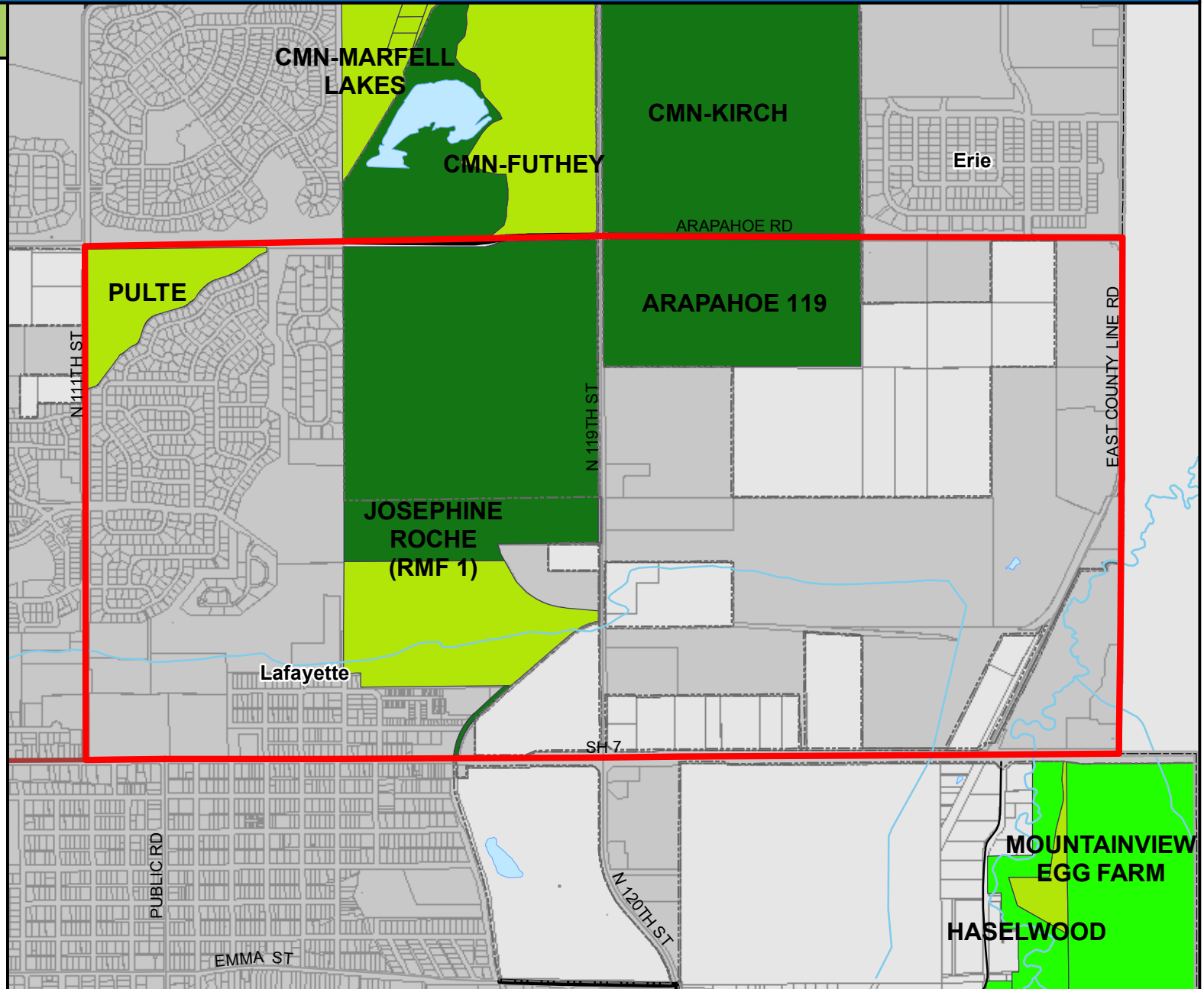
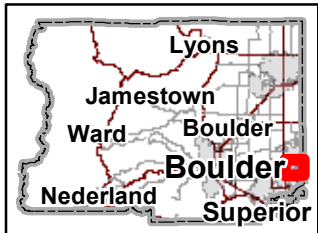
Boulder County Open Space Surface Ownership

Legend

- Drilling Spacing Unit
- County Open Space
- Joint County and Municipal Open Space
- County Conservation Easement



Area of Detail Date: 6/21/2018








Docket No. 171200773

EXHIBIT C

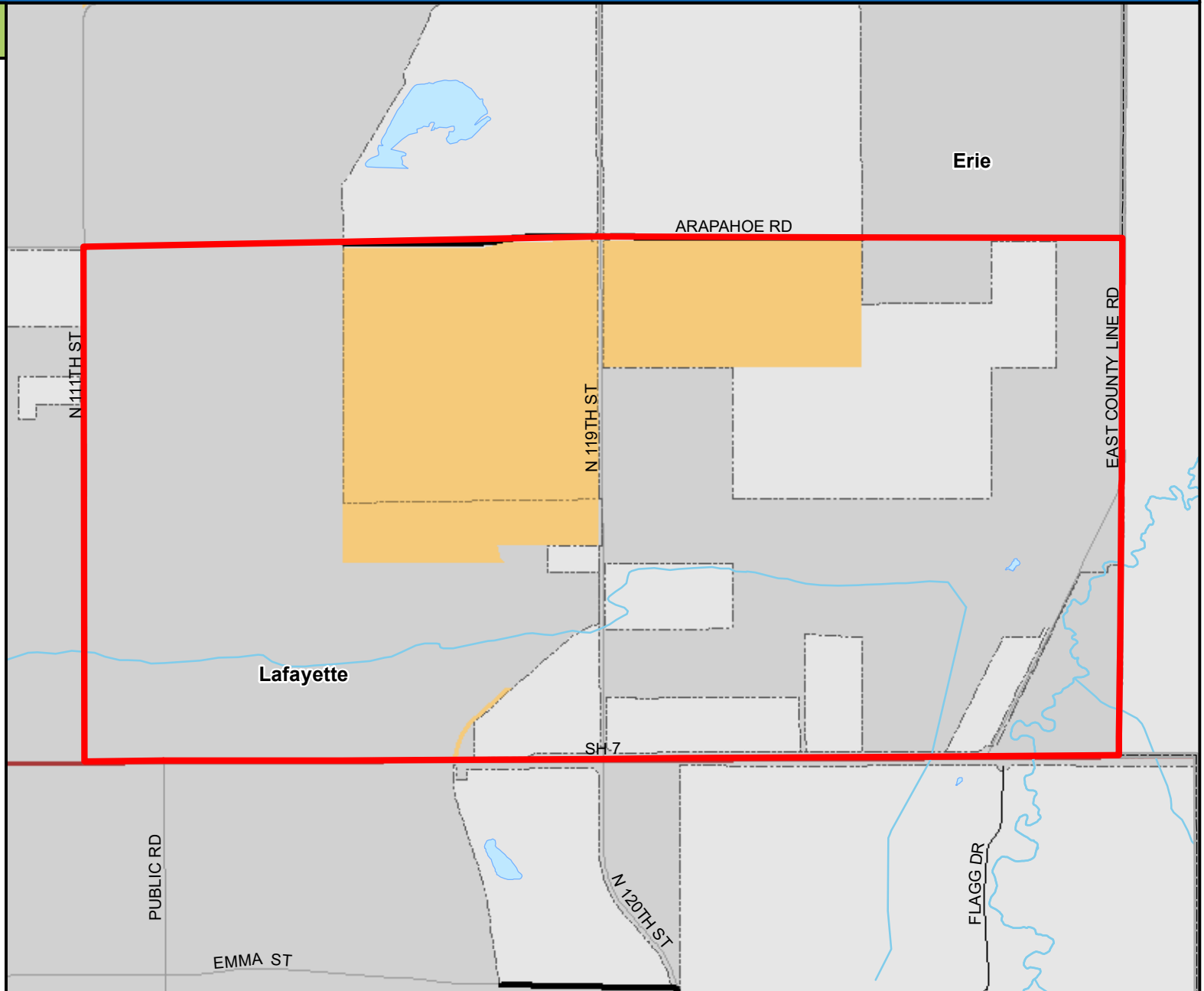
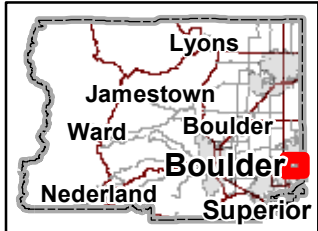
Boulder County Open Space Mineral Ownership

Legend

-  Drilling Spacing
-  County Open Space Where County Owns Minerals

0 1,500 Feet 

Area of Detail Date: 6/21/2018





Docket No. 171200773

EXHIBIT D

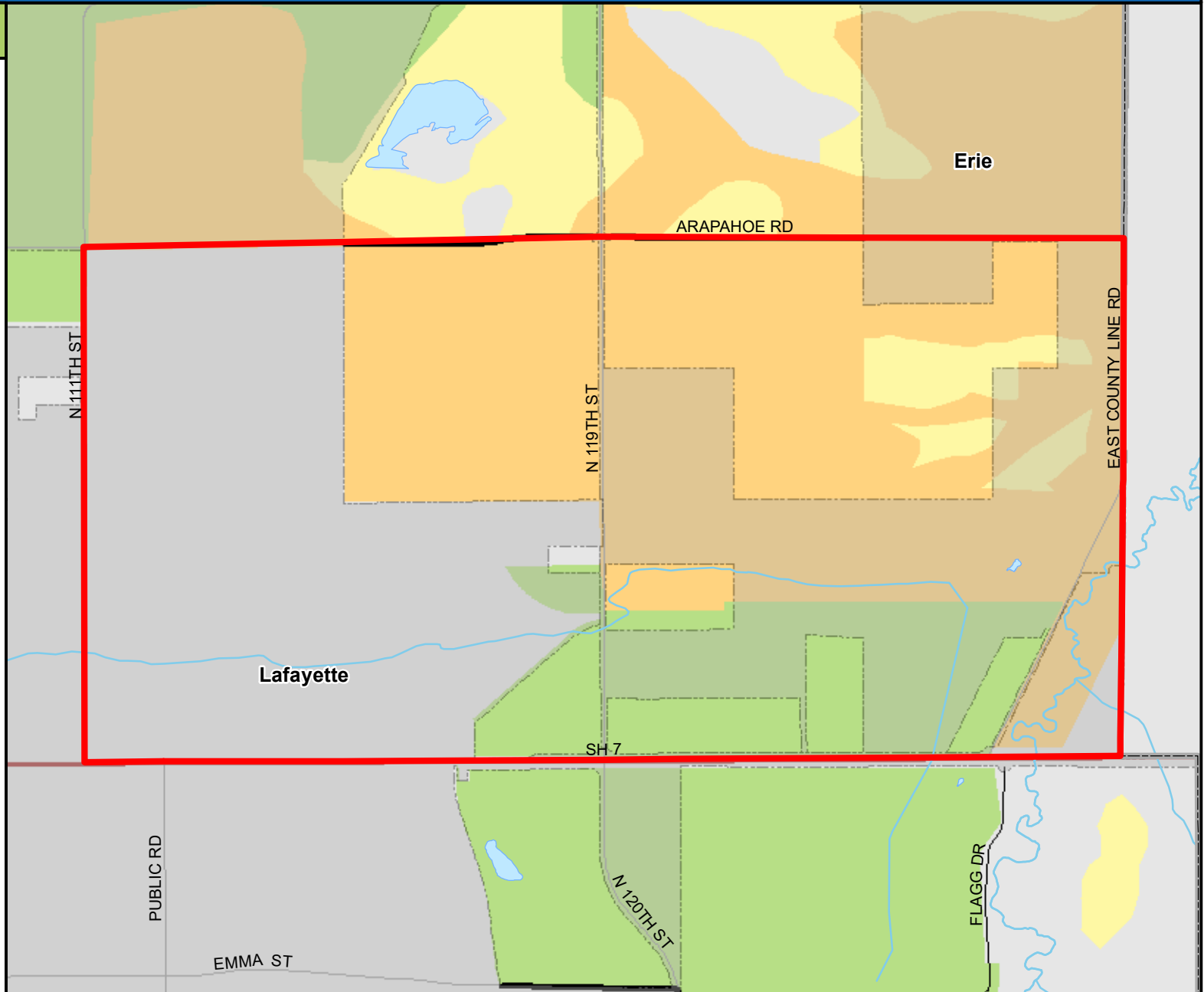
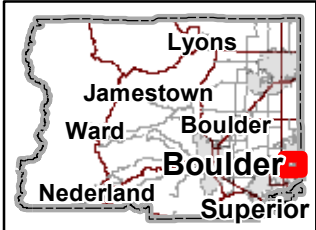
Boulder County Comprehensive Plan Significant Agricultural Land

Legend

- Drilling Spacing Unit
- Agricultural Land of National Importance
- Agricultural Land of Statewide Importance
- Agricultural Land of Local Importance

0 1,500 Feet

Area of Detail Date: 6/21/2018





Docket No. 171200773

EXHIBIT E

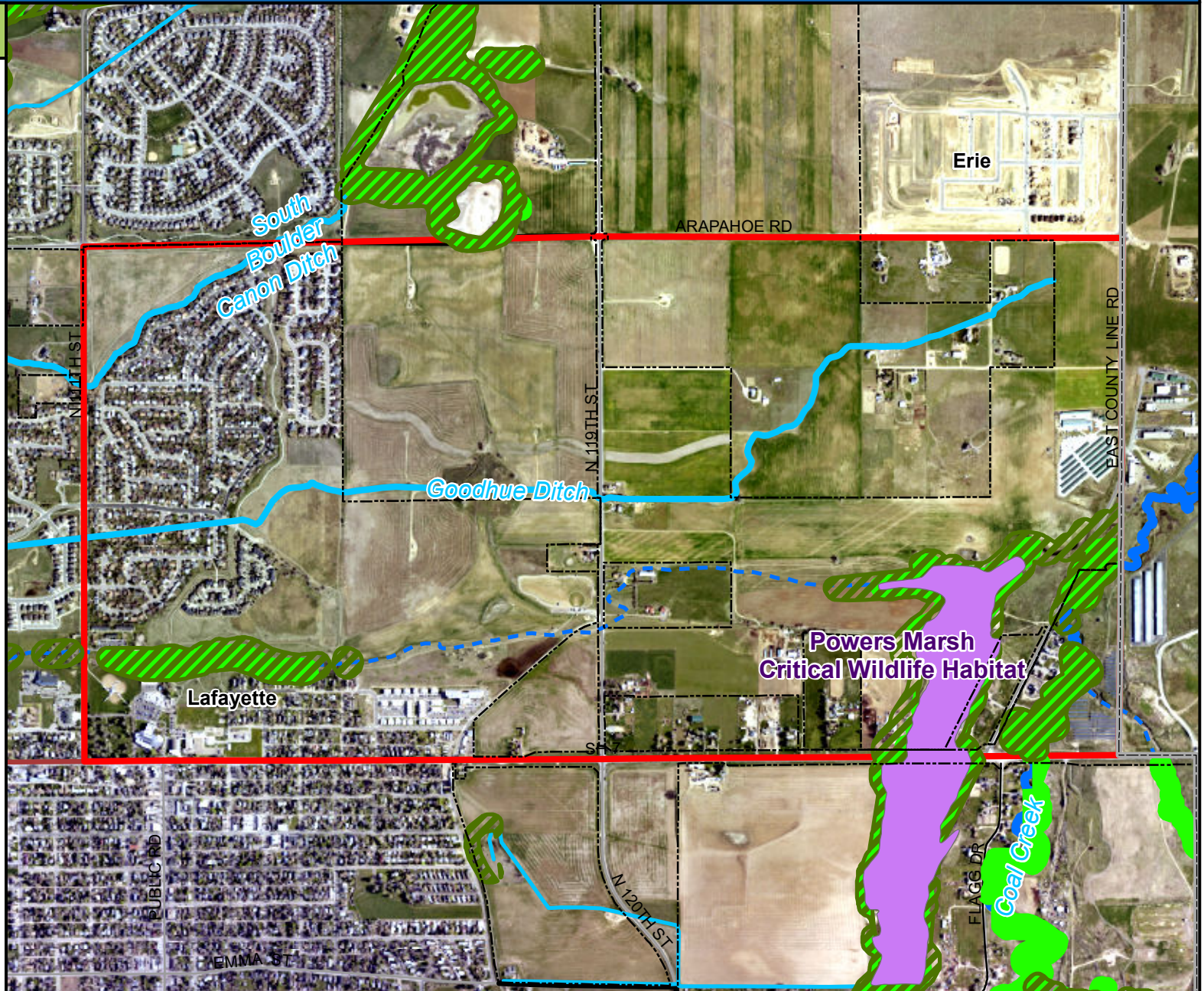
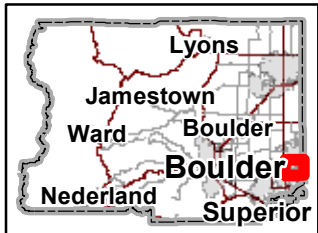
Boulder County Water Resources and Critical Wildlife Habitat

Legend

- Drilling Spacing Unit
- Critical Wildlife Habitats
- BCCP Riparian Areas
- BCCP Wetlands
- Perennial Stream
- Intermittent Stream
- Main Ditch
- Lateral Ditch

0 1,500 Feet

Area of Detail Date: 6/21/2018





Docket No. 171200773

EXHIBIT F

Boulder County Habitations

Legend

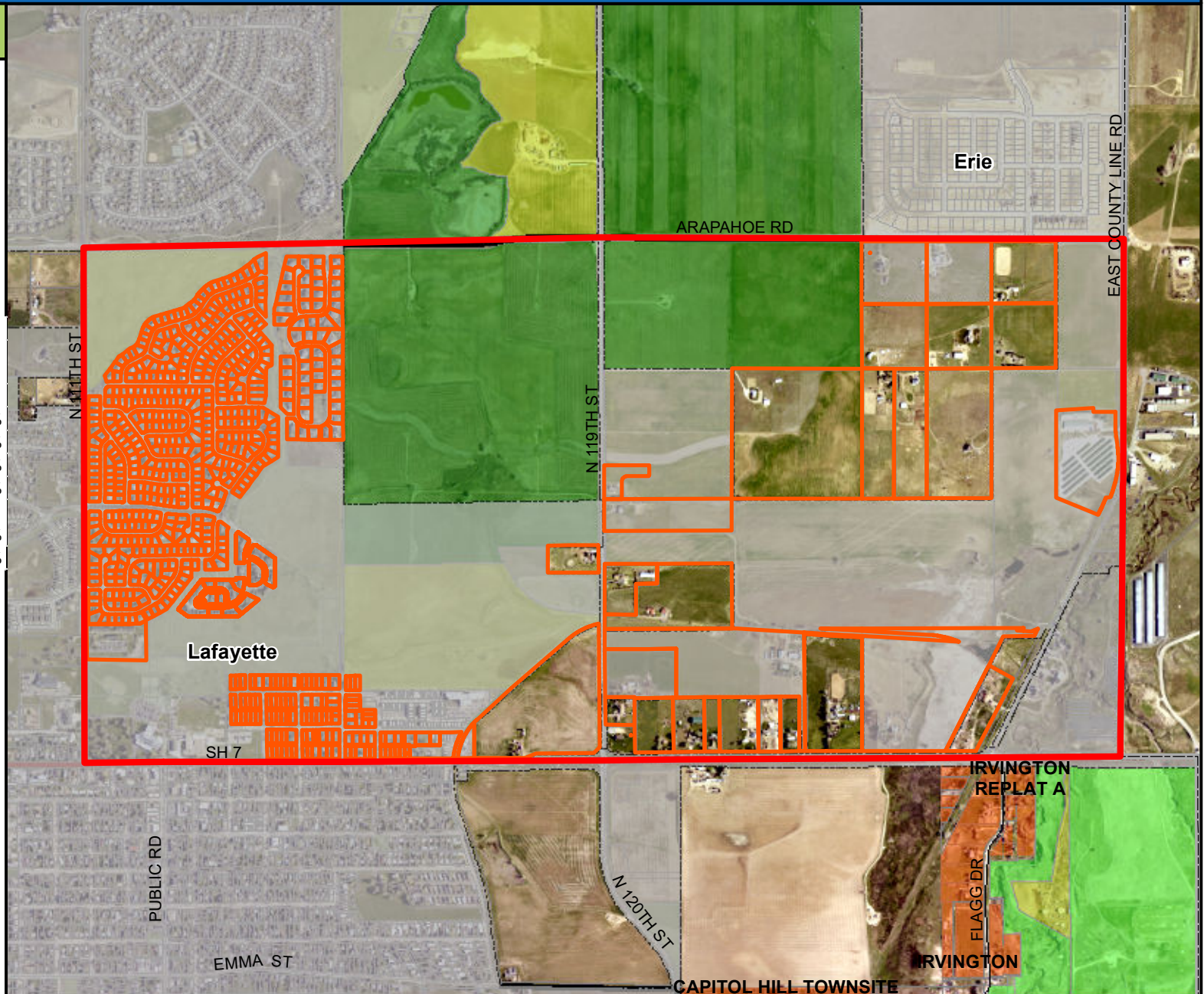
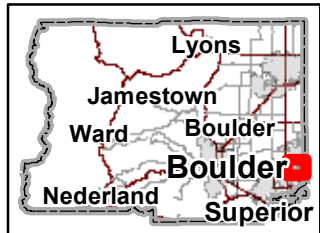
- Drilling Spacing Unit
- Residential Parcels
- Subdivision

Housing Units 796
Population Estimate 1,859

DSU	1,288 ac.	100%
Erie	495 ac.	38.4%
Lafayette	298 ac.	23.2%
Unincorporated	495 ac.	38.4%
County Owned		
Open Space	240 ac.	18.6%
Private Land	255 ac.	19.8%

0 1,500 Feet

Area of Detail Date: 6/21/2018





Docket No. 171200773

EXHIBIT G

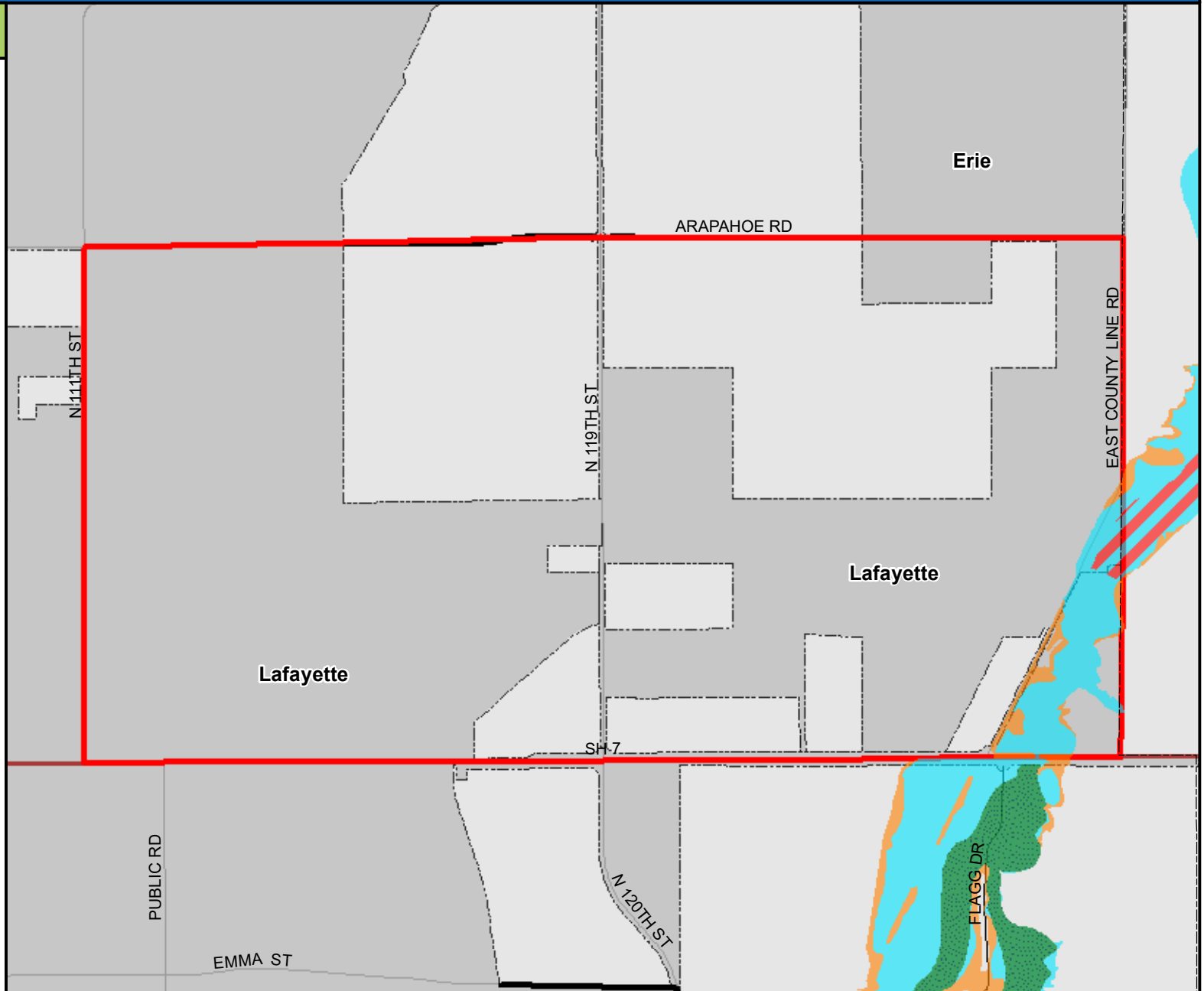
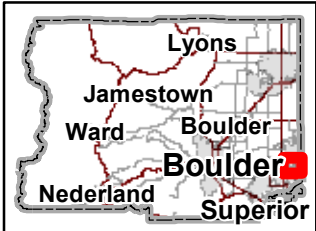
Boulder County Floodplain and Floodway - Coal Creek

Legend

- Floodway (Boulder County)
- Floodway (FEMA)
- 100-Year Floodplain - Zones AE, A, AO and AH (FEMA)
- 500-Year Floodplain - Zone X500 (FEMA)
- Drilling Spacing Unit

0 1,500 Feet

Area of Detail Date: 6/21/2018








Docket No. 171200773

EXHIBIT H

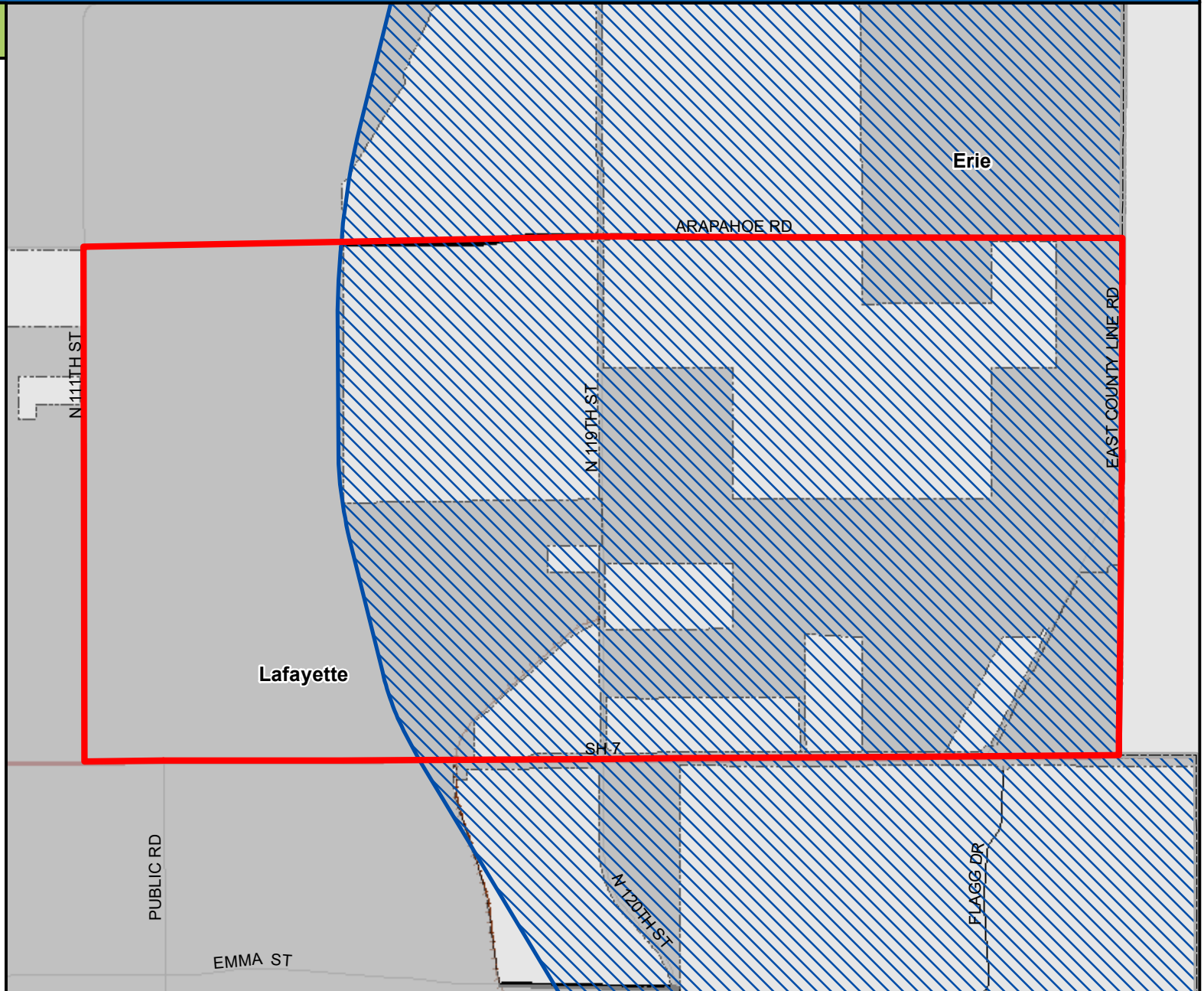
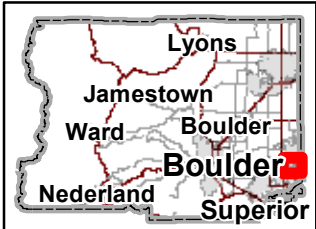
Boulder County Airport Overlay Zone

Legend

-  Drilling Spacing Unit
-  Airport Overlay Zone

0 1,500 Feet 

Area of Detail Date: 6/21/2018





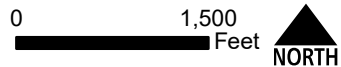
Docket No. 171200773

EXHIBIT I

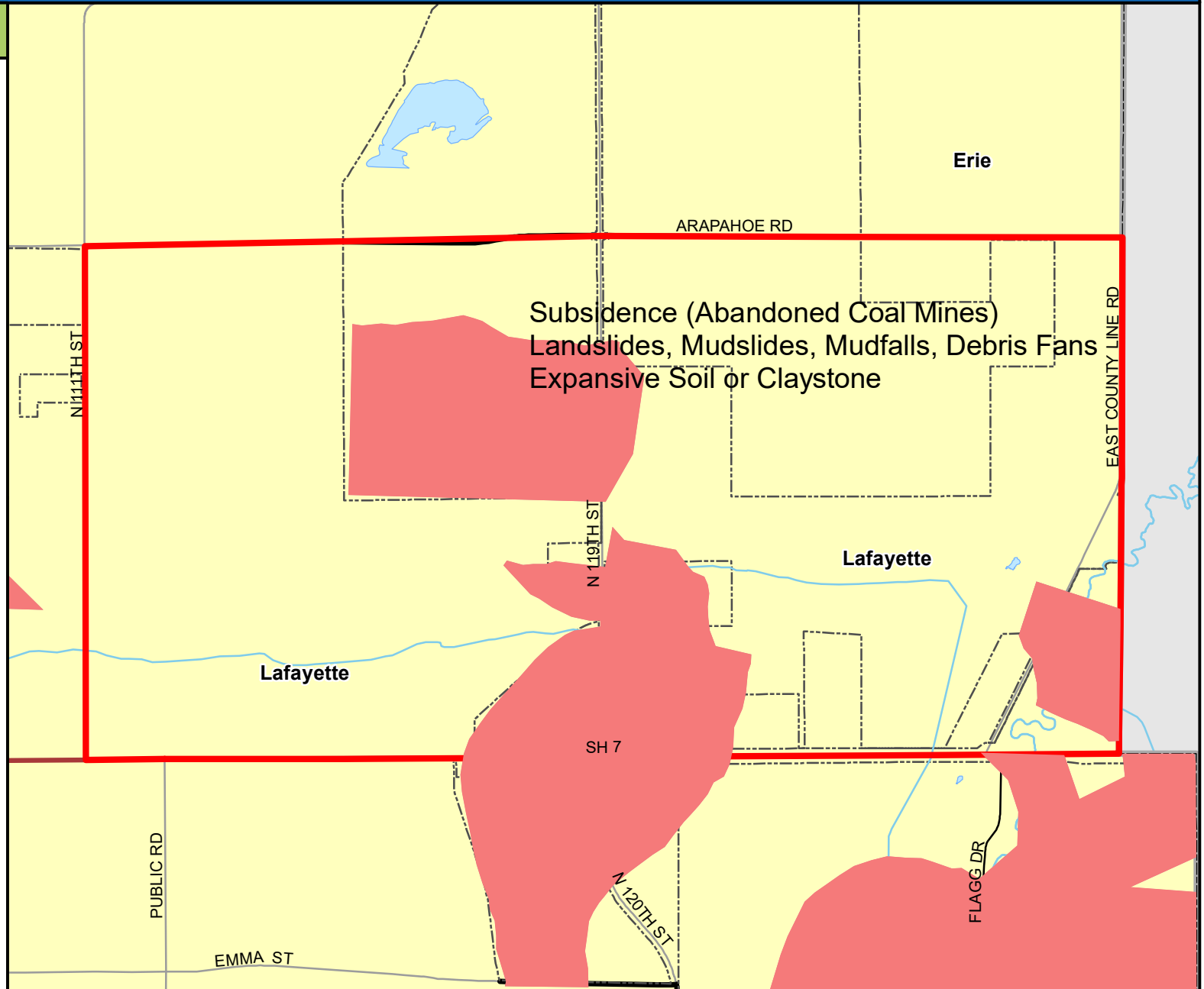
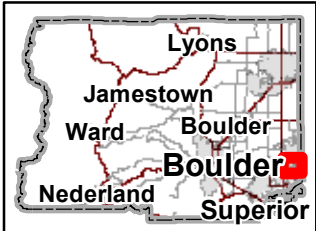
Boulder County Comprehensive Plan Geological Features

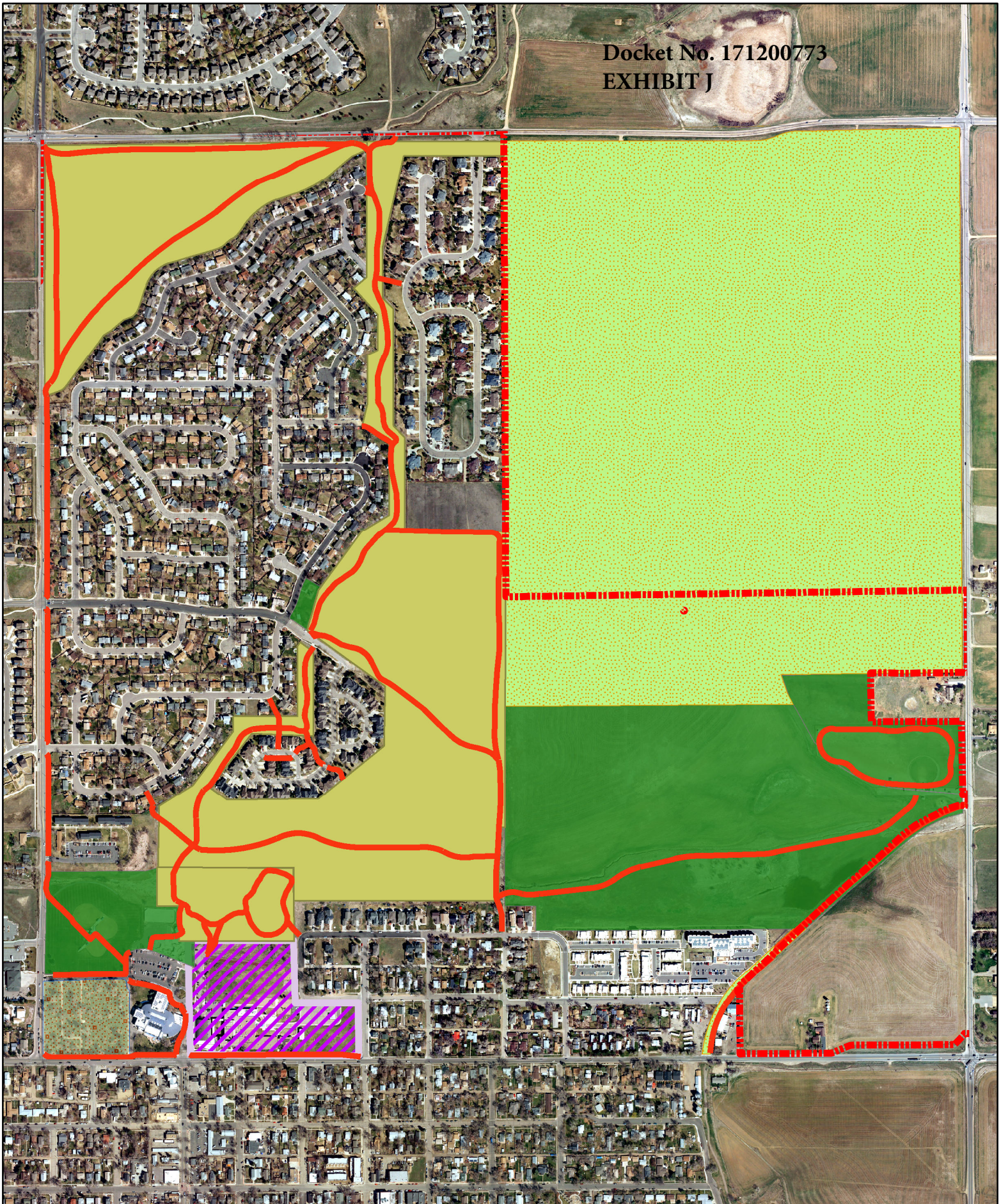
Legend

- Drilling Spacing Unit
- Major Geologic Hazard Area
Extensive Problems
High Risk
- Moderate Geologic Constraint
Significant Problems
Provisional Risk



Area of Detail Date: 6/21/2018

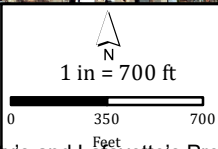




Resources of Concern City of Lafayette

Administration

Printed: 6/20/2018
Created By: rogerc



Legend



City Limit



Trails



Cemeteries



City Open Space



County Open Space



City Parks



Schools

RESOLUTION 2016-77

A Resolution of the Board of County Commissioners of Boulder County describing a proposal to extend one-half (0.125%) of the existing 0.25% countywide open space sales and use tax for the purpose of continuing to fund the open space program; for the issuance of open space capital improvement trust fund bonds through a multiple-fiscal year commitment of revenues from such tax and from other open space sales and use tax revenues, general fund moneys and other legally available funds; a voter-approved revenue change; and providing other matters relating thereto.

Recitals:

A. Article 2, Title 29, Colorado Revised Statutes, as amended (hereinafter the “Article”), provides for the imposition of a countywide sales and use tax upon approval of a majority of the registered electors of Boulder County, Colorado (the “County”) voting on such question.

B. There is a continuing need in the County for preservation of open space land, including acquisition of key remaining properties and conservation easements and the continued management and maintenance of existing open space areas.

C. Due to the accomplishments of the open space program in the years since its inception, the Board of County Commissioners (the “Board”) finds that the County’s remaining open space acquisition and conservation goals and the ongoing management and maintenance of open space lands may be achieved through continued funding from the extension of one-half (0.125%) of the existing 0.25% countywide open space sales and use tax.

D. On November 2, 1993, the voters of the County approved a 0.25% countywide sales and use tax and issuance of revenue bonds for the acquisition, improvement, management and maintenance of open space lands and other open space property interests, as described in Resolution 93-174.

E. On November 2, 1999, the voters of the County approved a proposal for the extension of the 0.25% countywide open space sales and use tax for an additional period of ten (10) years to and including December 31, 2019, and issuance of additional open space sales and use tax revenue bonds, as described in Resolution 99-111.

F. The Board now desires to refer the extension of one-half of the 0.25% countywide sales and use tax at a rate of 0.125% for an additional period of fifteen (15) years to be effective through December 31, 2034, and authorization for issuance of bonds payable from the revenues thereof, to the registered electors of the County, to be determined by a majority voting thereon.

G. The goals of the County open space program, as originally stated in Resolution 93-174, and as modified over time, have not as yet been fully realized, in that there are lands and areas for which property interests should be acquired in order to create trails and open space buffers for communities, protect wildlife habitat and preserve important agricultural lands; and these lands need to be managed and in some cases, restored.

H. As such, there remains a critical need for the preservation and stewardship of open space lands in the County, preserved open space being a fundamental shared value of the citizens of the County, which open space lands can be used for purposes including but not limited to buffers to preserve community identity, natural areas, wildlife habitat and wetlands, allow continuation of existing visual corridors and offer passive recreational use through the development of a recreational trail system, and therefore there is critical need for countywide sales and use taxes to finance the acquisition and limited improvement of said lands.

I. It is more cost-effective to purchase lands and complete improvements now rather than wait until additional revenues are realized from currently approved sources, since the price inflation of land costs is several times greater than the financing costs through tax-exempt bonds.

J. Proposing to extend the 0.25% countywide sales and use tax at a rate of 0.125% for a period of fifteen (15) additional years from its current expiration to be effective through December 31, 2034, with future revenues to be expended for open space acquisition and improvement, for repayment of capital improvement trust fund bonds, and for maintenance and management of open space lands, in accordance with the purposes set forth herein, is a cost-effective method of obtaining additional revenues without an increase in the total cumulative countywide sales and use tax rate.

K. If such extension is approved by the voters, revenues collected from the imposition of the existing 0.25% countywide sales and use tax up to and including December 31, 2019 would continue to be expended for the purposes and in accordance with the limitations of Resolution No. 99-111, and Resolution 99-111 would be superseded by this Resolution effective for revenues collected from the imposition of the extended 0.125% countywide sales and use tax on and after January 1, 2020.

L. Due to the immediacy of the need, open space capital improvement trust fund bonds as authorized by law in a maximum principal amount of \$30,000,000, net of any premium, should be issued in order to allow such acquisitions and improvements to take place as soon as possible, said revenue bonds to be repaid through a multiple-fiscal year commitment of revenues received from such extension of 0.125% countywide sales and use tax, and, to the extent moneys from such tax are insufficient or unavailable, moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from other open space sales and use tax moneys, the County's general fund and conservation trust fund, and other legally available funds.

M. The Board finds that the extension of one-half (0.125%) of the 0.25% countywide sales and use tax for a period of fifteen (15) additional years to be effective through December 31, 2034, with revenues to be expended for the open space program in accordance with the purposes set forth herein, and the issuance of \$30,000,000 in open space capital improvement trust fund bonds repaid through a multiple-fiscal year commitment of revenues received from such 0.125% countywide sales and use tax, and, to the extent moneys from such tax are insufficient or unavailable, moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from other open space sales and use tax moneys, the County's general fund and conservation trust fund, and other legally available funds, and the exemption of such tax revenues, bond proceeds and the interest thereon from the fiscal year spending limitations of article X, section 20 of the Colorado Constitution ("TABOR"), would permit additional revenues to be utilized to further accomplish the County's open space goals.

N. The County, with voter approval, is statutorily authorized to issue bonds to finance open space acquisitions and improvements, and to repay those bonds from any revenue source available to the County.

O. The Board desires to refer to the registered electors of the County to be determined by a majority voting thereon, the question of whether such tax extension, bonds and voter-approved revenue change shall be approved or disapproved.

P. The Article provides for the submission of such a sales and use tax proposal and multiple-fiscal year obligation authorization to the registered electors of the County at a general election scheduled within 120 days after adoption of such resolution.

Q. The Article provides that the County Clerk and Recorder shall publish the text of such tax proposal four separate times, a week apart, in the official newspaper of the County and of each city and incorporated town within the County.

R. Colo. Const., Art. X, Section 20(3)(b), requires certain election notices to be mailed to all registered voters of the County.

S. The Article provides that the proposal shall contain certain provisions concerning the amount, levying and scope of said tax.

T. It is the intent of the Board that, should the proposal to extend the existing countywide sales and use tax at a rate of 0.125% and obtain a voter-approved revenue change for such tax not be approved by the electorate in November, the existing tax, multiple fiscal year revenue commitment authorization, and existing voter-approved revenue change, shall not in any way be affected by such failed amendment and shall continue in force and effect as if this Resolution had not been adopted.

Therefore, the Board resolves:

There shall be referred to the registered electors of the County at the general election to be held on Tuesday, November 8, 2016, the following proposal:

1. (a) The imposition, by the extension of one-half of a countywide 0.25% (25 hundredths of one percent) sales and use tax, of a countywide 0.125% (12.5 hundredths of one percent) sales and use tax, in accordance with the provisions of the Article upon the sale at retail of tangible personal property and the furnishing of certain services in the County as provided in paragraph (d) of Subsection (1) of Section 29-2-105, Colorado Revised Statutes ("C.R.S."), as amended, and as is more fully hereinafter set forth.

(b) The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S., as amended.

(c) The gross receipts from sales shall include delivery charges when such charges are subject to the State Sales and Use Tax imposed by Article 26 of Title 39, C.R.S., as amended, regardless of the place to which delivery is made.

(d) The countywide sales tax proposed to be extended hereby shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., as amended, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the County evidencing that a local use tax has been paid or is required to be paid.

(e) The countywide sales and use tax extension proposed hereby shall not apply to the sale of food purchased with food stamps. For the purposes of this paragraph, "food" shall have the meaning as provided in 7 U.S.C., Section 2012(g), as amended.

(f) The countywide sales and use tax extension proposed hereby shall not apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C., Section 1786. For the purposes of this paragraph, "food" shall have the meaning as provided in 42 U.S.C., Section 1786, as amended.

(g) The countywide sales tax extension proposed hereby shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed by the County. A credit shall be granted against the sales tax imposed by the County with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed by the County.

(h) Notwithstanding any other provision contained herein, the value of construction and building materials on which a use tax has previously been collected by an incorporated town, city, or county shall be exempt from the town, city or county sales tax if the materials are delivered by the retailer or his agent to a site within the limits of such town, city or county.

(i) The sale of tangible personal property and services taxable pursuant this proposal shall be the same as the sale of tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., except as otherwise provided herein. There shall be exempt from taxation under the provisions of this proposed countywide sales and use tax extension, the tangible personal property and services which are exempt under the provisions specified in Part 7 of Article 26 of Title 39, C.R.S., as amended, except that only those local exemptions identified in Section 29-2-105(d)(I), C.R.S., listed below in (1) through (4), and when legally recognized, the local exemptions listed below in (5) through (7) shall apply to this County sales and use tax. The following exemptions are consistent with exemptions contained in various existing Boulder County sales and use tax resolutions:

- (1) For sales of machinery or machine tools specified in Section 39-26-709(1), C.R.S.
- (2) For sales of food, as defined in Section 39-26-102(4.5), C.R.S., specified in Section 39-26-707(1)(e), C.R.S.
- (3) For sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source, specified in Section 39-26-724, C.R.S.;
- (4) For sales of electricity, coal, wood, gas, fuel oil, or coke specified in Section 39-26-715(1)(a)(II), C.R.S.
- (5) For sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles as specified in Section 39-26-723, C.R.S.
- (6) For sales that benefit a Colorado school specified in Section 39-26-725, C.R.S.
- (7) For sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in Section 39-26-718(1)(c), C.R.S.

(j) All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall be exempt from this sales tax extension when such sales meet both of the following conditions:

(i) The purchaser is a non-resident of or has his principal place of business outside of the County; and

(ii) Such tangible personal property is registered or required to be registered outside the limits of the County under the laws of the State of Colorado.

(k) For the purposes of this sales tax extension proposal, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the County or to a common carrier for delivery to a destination outside the limits of the County.

(l) In the event a retailer has no permanent place of business in the County or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of a sales tax imposed by this proposal shall be determined by the provisions of article 26 of title 39, C.R.S., as amended, and by rules and regulations promulgated by the Colorado Department of Revenue.

(m) The countywide sales tax extension proposed hereby shall be collected, administered and enforced by the Executive Director of the Colorado Department of Revenue in the same manner as the collection, administration, and enforcement of the Colorado State Sales Tax, as provided by articles 26 and 21 of title 39 and article 2 of title 29, C.R.S., as amended; provided that the County shall be authorized to enter into an intergovernmental agreement with said Executive Director pursuant to Section 39-26-122.5, C.R.S., as amended, to enhance systemic efficiencies in the collection of such taxes.

2. The imposition, by the extension of one-half of a countywide 0.25% (25 hundredths of one percent) sales and use tax, of a countywide 0.125% (12.5 hundredths of one percent) sales and use tax is hereby extended and imposed in accordance with the provisions of the Article for the privilege of using or consuming in the County any construction and building materials, purchased at retail, and for storing, using, or consuming in the County any motor and other vehicles on which registration is required, purchased at retail. Subject to the provisions of Section 39-26-212, C.R.S., as amended, the use tax shall not extend or apply:

(a) To the storage, use, or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the County;

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in the County either in its original form or as an

ingredient of a manufactured or compounded product, in the regular course of a business;

(c) To the storage, use, or consumption of tangible personal property brought into the County by a non-resident thereof for his own storage, use, or consumption while temporarily within the County; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this State by a non-resident to be used in the conduct of a business in this State;

(d) To the storage, use, or consumption of tangible personal property by the United States government or the State of Colorado, or its institutions, or its political subdivisions in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(e) To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label, or the furnished shipping case thereof;

(f) To the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by the County. A credit shall be granted against the use tax imposed by the County with respect to a person's storage, use, or consumption in the County of tangible personal property purchased in another statutory or home rule county. The amount of the credit shall be equal to the tax paid by the person by reason of the imposition of a sales or use tax of the other statutory or home rule county on the purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this resolution;

(g) To the storage, use, or consumption of tangible personal property and household effects acquired outside of the County and brought into it by a nonresident acquiring residency;

(h) To the storage or use of a motor vehicle of the owner is or was, at the time of purchase, a nonresident of the County and purchased the vehicle outside of the County for use outside of the County and actually so used it for a substantial and primary purpose for which it was acquired and registered, titled, and licensed said motor vehicle outside of the County;

(i) To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required

if a written contract for the purchase thereof was entered into prior to January 1, 2020;

(j) To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into any time prior to January 1, 2020.

3. The 0.125% use tax provided for herein shall be applicable to every motor vehicle for which registration is required by the laws of the State of Colorado, and no registration shall be made for any motor vehicle by the Department of Revenue or its authorized agents until any tax due upon the use, storage, or consumption thereof pursuant to this resolution has been paid.

4. The definition of words herein contained shall be as said words are defined in Section 39-26-102, C.R.S., as amended, and said definitions are incorporated herein.

5. Except as provided by Section 39-26-208, C.R.S., as amended, any use tax imposed shall be collected, enforced and administered by the County. The use tax on construction and building materials will be collected by the County building inspector or as may be otherwise provided by intergovernmental agreement, based upon an estimate of building and construction materials costs submitted by the owner or contractor at the time a building permit application is made.

6. If the majority of the registered electors voting thereon vote for approval of this countywide sales and use tax extension, such 0.125% countywide sales and use tax will continue to be in effect throughout the incorporated and unincorporated portions of the County up to and including December 31, 2034.

7. If such extension is approved by the voters, revenues collected from the imposition of the existing 0.25% countywide sales and use tax up to and including December 31, 2019 would continue to be expended for the purposes and in accordance with the limitations of Resolution No. 99-111, and Resolution 99-111 would be superseded by this Resolution effective for revenues collected from the imposition of the extended 0.125% countywide sales and use tax on and after January 1, 2020.

8. If the majority of the registered electors voting thereon vote for approval of this proposal, the Board may issue up to \$30,000,000 maximum principal amount, net of any premium, of open space capital improvement trust fund bonds payable from moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from moneys from the countywide 0.125% sales and use tax extension authorized herein, and to the extent moneys from such tax are insufficient or unavailable for the repayment of such bonds, from the County's other open space sales and use tax moneys, the County's conservation trust fund, the County's general fund, and other legally available funds, in such amount as is necessary to pay the debt service on the bonds and to otherwise comply with the covenants of the resolution or resolutions to be adopted by the

Board authorizing the bonds and setting the terms thereof, such bonds to be issued in accordance with part 5 of article 26 of title 30, C.R.S., as amended.

9. The cost of the election shall be paid from the general fund of the County.

10. The County Clerk and Recorder shall publish the text of this sales and use tax extension proposal four separate times, a week apart, in the official newspaper of the County and each city and incorporated town within this County.

11. The conduct of the election shall conform so far as is practicable to the general election laws of the State of Colorado.

12. Beginning January 1, 2020, the net proceeds from the extension of the 0.125% countywide sales and use tax received by the County from collections during the period authorized hereby shall be expended by the County for the following purposes related to acquisition, improvement, management and maintenance of open space lands:

(a) To acquire fee title interest in real property through all means available and by various types of instruments and transactions, in the County for open space when determined by the Board, acting pursuant to authority as set forth in title 30, C.R.S., and in article 7 of title 29, C.R.S., to be necessary to preserve such areas;

(b) To acquire an interest in real property by other devices, including but not limited to, lease, development rights, mineral and other subsurface rights, and conservation easements, in order to effect the preservation of open space lands, as hereinafter defined, in the County;

(c) To acquire water rights and water storage rights for use in connection with real property acquired for open space;

(d) To acquire rights-of-way and easements for access to open space lands and for trails in the County and to build and improve such access ways and trails;

(e) To acquire options related to these acquisitions;

(f) To pay for all related costs of acquisition and construction as set forth in subparagraphs (a) through (e) above;

(g) To improve all County open space property and trails in accordance with Parks and Open Space policies adopted by the Board; improvements shall be related to resource management, including but not limited to water improvements (irrigation, domestic use and recreational uses), preservation enhancements (fences, wetlands and wildlife habitat improvements),

and passive recreational uses, such as trails, trailhead parking and other access improvements, picnic facilities and restrooms;

(h) To manage, patrol and maintain all County open space property and trails in accordance with Parks and Open Space policies adopted by the Board;

(i) To permit the use of these funds for the joint acquisition of open space property with municipalities located within the County in accordance with an intergovernmental agreement for open space or with other governmental entities or land trusts;

In connection with these purposes, these funds shall be used for:

- major remaining open lands, including an emphasis on areas surrounding or within existing mountain open space parks;
- highly visible buffer lands surrounding cities and towns outside their urban growth areas;
- wildlife habitat lands and remaining parcels along stream corridors;
- lands that include trail corridors connecting communities to open space properties;
- agricultural lands and improvements that enhance local food production;
- efficient use of water resources for open space lands; and
- improvements to such lands.

13. Open space land, for the purpose of this resolution, is generally described as: those lands in which it has been determined by the Board that it is, or may in the future be, within the public interest to acquire an interest in order to assure their protection and to fulfill one or more of the functions described below. Interests acquired may include fee simple, lease, easements, development rights, and conservation easements.

14. Open space shall serve one or more of the following functions:

(a) urban shaping between or around municipalities or community service areas and buffer zones between residential and non-residential development;

(b) preservation of critical ecosystems, natural areas, scenic vistas and areas, fish and wildlife habitat, natural resources and landmarks, and cultural, historical and archeological areas;

(c) linkages and trails, access to public lakes, streams and other usable open space lands, stream corridors and scenic corridors along existing highways;

(d) areas of environmental preservation, designated as areas of concern, generally in multiple ownership, where several different preservation methods (including other governmental bodies' participation or private ownership) may need to be utilized;

(e) conservation of natural resources, including but not limited to forest lands, range lands, agricultural land, aquifer recharge areas, and surface water;

(f) preservation of land for outdoor recreation areas limited to passive recreational use, including but not limited to hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing.

15. Once acquired, open space may be used only for passive recreational purposes, for agricultural purposes, or for environmental preservation purposes, all as set forth above.

16. The Board will annually consult the City Councils and Town Boards of the municipalities within the County to assure that open space preservation and trail projects identified by municipalities are considered in setting county open space acquisition and trail development priorities for the following calendar year.

17. No open space land acquired through the revenues provided by this sales and use tax may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the Board. Prior to such disposal, the Parks and Open Space Advisory Committee shall review the proposed disposition, and a recommendation shall be forwarded to the Board. Approval of the disposal may be given only by a majority vote of the members of the Board after a public hearing held with notice published at least ten (10) days in advance in the official newspaper of the County and of each city and incorporated town within the County, giving the location of the land in question and the intended disposal thereof. No such open space land shall be disposed of until sixty (60) days following the date of Board's approval of such disposal. If, within such sixty (60) day period, a petition meeting the requirements of § 29-2-104, C.R.S., as amended, or its successor statute, is filed with the County Clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until a referendum held in accordance with said statute has been held. The provisions of this paragraph shall not apply to agricultural leases for crop or grazing purposes for a term of ten (10) years or less.

18. If the real property or any interest therein acquired by use of proceeds of said sales and use tax pursuant to paragraph 14 of this resolution be ever sold, exchanged, transferred or otherwise disposed of, the consideration for such sale, exchange, transfer or disposition shall be subject to the same expenditure and use restrictions as those set forth herein for the original proceeds of said sales and use tax, including restrictions set forth in

this paragraph; and if such consideration is by its nature incapable of being subject to the restrictions set forth herein, then the proposed sale, exchange, transfer or disposition shall be unlawful and shall not be made.

19. The County will not use any of the revenues received from the sales and use tax proposed hereby to acquire an interest, other than an option, in open space land within the community service or influence area of a municipality as designated and recognized by action of the Board in accordance with the Boulder County Comprehensive Plan or as provided in an intergovernmental agreement with such municipality, without the concurrence of the municipality involved.

20. Revenue generated from activities on open space lands may be used to acquire, manage, patrol, improve and maintain open space properties.

21. Interest generated from the revenues of the sales and use tax extension shall be used for the purposes set forth in this resolution.

22. For purposes of Colo. Const., Art. X, Section 20, ("TABOR"), the receipt and expenditure of revenues of the extended 0.125% countywide sales and use tax proposed hereby together with earnings on the investment of the proceeds of such tax shall constitute a voter-approved revenue change.

23. The sales and use tax shall expire at 12:00 a.m. on January 1, 2035, and any monies remaining after January 1, 2035 may continue to be expended solely for the purposes set forth herein until completely exhausted.

24. The proposal as described in this Resolution shall take effect immediately upon the approval of the electorate.

25. A notice of the approval of this countywide sales and use tax proposal by a majority of the registered electors voting thereon shall forthwith be submitted by the County Clerk and Recorder to the Executive Director of the Department of Revenue, together with a certified copy of this Resolution, no later than November 17, 2016.

26. The election shall be conducted on November 8, 2016 as a coordinated election in accordance with articles 1 to 13 of title 1, C.R.S. (the "Uniform Election Code").

27. The Board shall take further action by resolution to set a ballot title for the proposal described herein. For purposes of Section 1-11-203.5, C.R.S., as amended, such resolution shall serve to set the ballot title for such proposal.

28. No later than September 9, 2016, the Designated Election Official shall certify the order of the ballot and ballot content to the Clerk and Recorder of the County (the "County Clerk"). The "Designated Election Official" shall be Michelle Krezek, Intergovernmental Relations Director and Administrative Deputy to the Board.

29. The order of the ballot shall be determined by the County Clerk as provided in Section 1-5-407(5), C.R.S., and the rules of the Secretary of State. In accordance therewith, if the County refers more than one ballot issue, the order of the ballot shall, in accordance therewith, be as follows: first, measures to increase taxes; second, measures to retain revenues in excess of its fiscal year spending limit; third, measures to increase debt; fourth, citizen petitions; and fifth, other referred measures. If the County refers more than one ballot issue within any such type of ballot issue, the order within such type of ballot issue shall, unless otherwise determined by the Board, be the same as the order of the ballot issues in the resolution of the Board that orders that such ballot issues be so referred (with questions set forth in separate resolutions listed in the order in which such resolutions were adopted).

30. The Designated Election Official is hereby authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and comply with the Uniform Election Code, TABOR, and other applicable laws; provided that all acts required or permitted by the Uniform Election Code relevant to voting by early voters' ballots, absentee ballots, and emergency absentee ballots which are to be performed by the Designated Election Official shall be performed by the County Clerk. The election shall be conducted in accordance with the Uniform Election Code, TABOR, and all other applicable laws.

31. No later than September 27, 2016, the Designated Election Official shall submit to the County Clerk, in the form, if any, specified by the County Clerk, the notice of election required by Subsection (3)(b) of TABOR.

32. The Designated Election Official, the County Clerk and other County officials and employees are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

33. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the Board and the officers and employees of the County and directed toward holding the election for the purposes stated herein are hereby ratified, approved, and confirmed.

34. All prior acts, orders or resolutions, or parts thereof, by the County in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

35. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

A motion to approve this Resolution 2016-77 was made by Commissioner Jones, seconded by Commissioner Domenico, and passed by a 3-0 vote.


ADOPTED this 28th Day of July, 2016.


ATTEST:




Clerk to the Board

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY**


Elise Jones, Chair


Cindy Domenico, Vice Chair


Deb Gardner, Commissioner



Leak Inspection and Repair at Oil and Gas Well Sites
Boulder County Voluntary Inspection Program Results 2014–2016

EXCERPTS

full text at: <https://assets.bouldercounty.org/wp-content/uploads/2017/09/boulder-county-voluntary-oil-and-gas-inspection-program-results-20170831.pdf>

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August 31, 2017

Abstract

Public concern has grown in Boulder County regarding the health and safety implications of emissions from oil and gas activity. Boulder County has implemented a voluntary oil and gas inspection program in order to respond to this concern. The program resulted in nearly 500 inspections at 145 production sites across the county from 2014 to 2016. Gas leaks were detected at 65% of inspected sites, and 31% of the sites with leaks experienced them in multiple calendar years. Most leaks were detected at storage tanks, separators, and wellheads. Across equipment categories, many leaks involved malfunctioning pneumatic controllers. Once reported to operators by the Boulder County oil and gas inspector, 99% of the leaks were resolved, and half of the leaks were resolved within five days. Given that almost all of the observed and resolved leaks were detected with the aid of an infrared (IR) camera, increasing the frequency of required IR inspections is necessary to improve leak detection and repair and to reduce emissions from oil and gas production sites on the Front Range.

... [content omitted – full text at: <https://assets.bouldercounty.org/wp-content/uploads/2017/09/boulder-county-voluntary-oil-and-gas-inspection-program-results-20170831.pdf>]

The goal of the first year of the inspection program (2014) was to access and inventory as many sites as possible while conducting AVO and IR camera inspections. In 2015 and 2016, the focus of the program was to conduct more detailed leak detection and repair (LDAR) inspections and to ascertain – through follow-up inspections and correspondence with the operators – if, how, and when gas leaks were resolved.

... [content omitted – full text at: <https://assets.bouldercounty.org/wp-content/uploads/2017/09/boulder-county-voluntary-oil-and-gas-inspection-program-results-20170831.pdf>]

In February 2014, the inspector became certified to use an optical gas imaging camera (FLIR GF-320 thermal infrared camera) owned by the Regional Air Quality Council (RAQC) to detect gaseous leaks. This IR camera can detect emissions of methane, ethane, and VOCs from equipment at oil and gas sites.

... [content omitted – full text at: <https://assets.bouldercounty.org/wp-content/uploads/2017/09/boulder-county-voluntary-oil-and-gas-inspection-program-results-20170831.pdf>]

After each visit, the inspector notifies the operator via email of general inspection findings and of the location of any observed leaks, including from equipment that the operator has already tagged as needing repairs. The inspector then tracks the date of the operator's response and the date of leak resolution reported by the operator. When possible, the inspector will return to the site with the IR camera to confirm that leaks have been resolved as described by the operator.

In analyzing the inspection data, the following state definition of a leak was used: "For infra-red camera and AVO monitoring...a leak is any detectable emissions not associated with normal equipment operation."¹⁷ Therefore, the inspector's descriptions of leaks and correspondence between the county and the operator were manually reviewed to determine if detected emissions were associated with normal equipment operation. If so, the emissions were not considered a leak and were excluded from this analysis. From 2014 to 2016, the inspector notified operators of only 6 possible leaks that were later determined to be associated with normal equipment operation.

For the analysis, each leak was defined as either single or recurrent. If a leak was observed from the same equipment component unchanged across consecutive inspections without documentation of repair between inspections, it was defined as a single leak. If documentation showed that a repair had been made or the leak had ceased between consecutive inspections, then the leak was defined as recurrent and counted as a new leak in the analysis.

... [content omitted – full text at: <https://assets.bouldercounty.org/wp-content/uploads/2017/09/boulder-county-voluntary-oil-and-gas-inspection-program-results-20170831.pdf>]

Results

Numbers of Visits and Leaks

From 2014 to 2016, Boulder County Public Health conducted 489 visits to 145 different oil and gas sites (about 3.4 visits per site) (Table 1); 67% of the visits involved an IR camera inspection, while 33% involved an AVO inspection only, and 118 sites (81%) were inspected in multiple calendar years.

Table 1. Numbers of visits and leaks by inspection type and by year of Boulder County's voluntary inspection program

	2014	2015	2016	Total
Visits	243	94	152	489
IR visits	142	74	111	327
AVO visits	101	20	41	162
Leaks	84	55	80	219
IR leaks	83	55	77	215
AVO leaks	1	0	3	4

A total of 219 leaks were detected, and 94 sites (65%) in Boulder County experienced at least 1 leak during the 3-year period (Table 2; Figure 2). Furthermore, 29 of these 94 sites (31%) experienced leaks in multiple calendar years. For the sites at which at least 1 leak occurred, a single leak occurred at 45% of sites, while 24% of sites experienced 4 or more leaks – or more than 1 leak per year of the inspection program, from 2014 to 2016 (Figure 3).

Table 2. Number of sites and percentage of sites experiencing leaks by year of Boulder County's voluntary inspection program

	2014	2015	2016	Overall
Sites visited	131	80	111	145
Sites with leak(s)	52	30	44	94
Sites with leak(s) as a percentage of sites visited	40%	38%	40%	65%

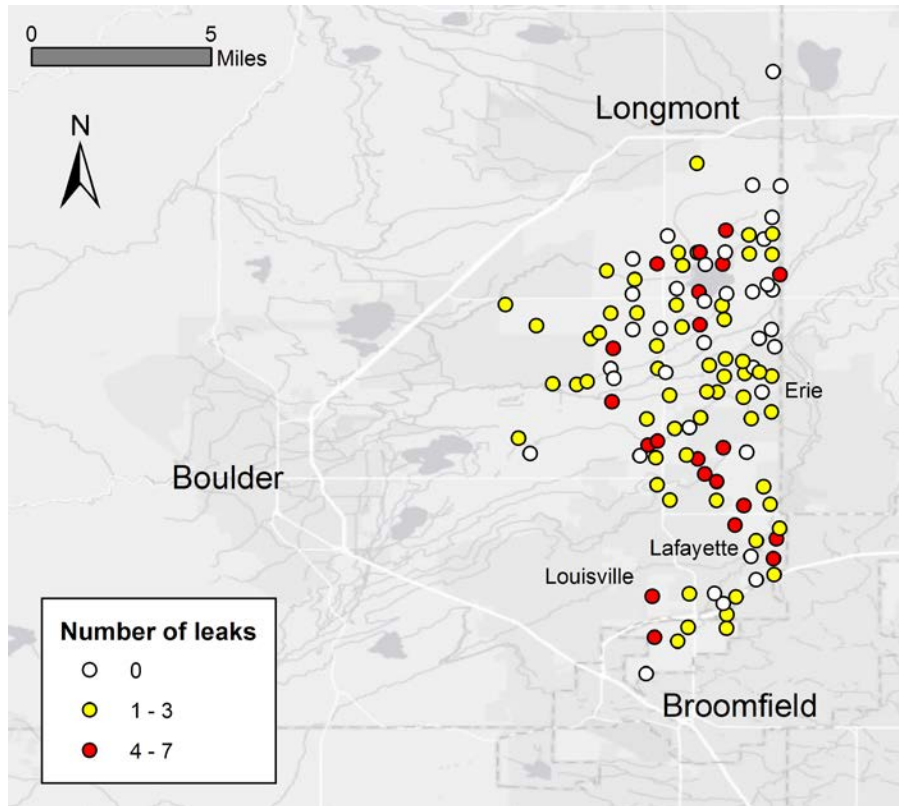


Figure 1. Locations of oil and gas production sites and numbers of leaks

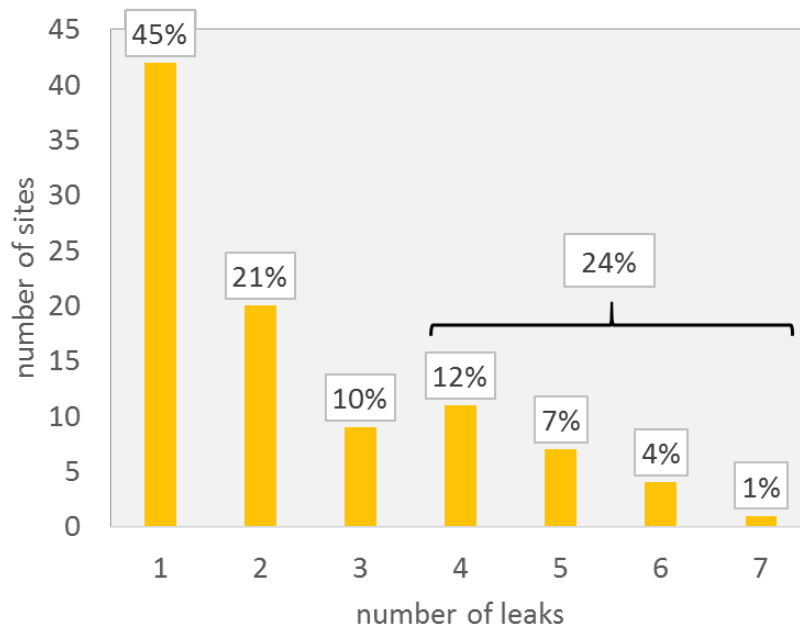


Figure 2. The numbers of sites in Boulder County that experienced one or more leaks from 2014 to 2016

Return Visits and Recurrent Leaks

The inspector returned to oil and gas sites 190 times to conduct IR camera inspections, often to confirm that an earlier leak had been resolved. During 82 of these return visits (43%), the inspector detected 1 or more new leaks at the site. During three return visits (2%), the inspector observed a new leak that was recurrent from a previous visit.

... [content omitted – full text at: <https://assets.bouldercounty.org/wp-content/uploads/2017/09/boulder-county-voluntary-oil-and-gas-inspection-program-results-20170831.pdf>]

In its two-year pilot project involving IR camera inspections across the state of Colorado, APCD observed a marked decrease in the percentage of oil and gas well production facilities that experienced leaks. Leaks or venting were found at 42% of facilities at the beginning of the project in the third quarter of 2013, while only 9% of facilities experienced leaks or venting at the end of the project in the second quarter of 2015.¹² By contrast, Boulder County's analysis indicates that the percentage of sites experiencing leaks in the county remained stable (approximately 40% of sites per year of the voluntary inspection program). At the time of this analysis, the available data were insufficient to discern the reason for the divergence between the results. The divergence may be due to differences between oil and gas sites in Boulder County and those elsewhere in Colorado (e.g., production volumes per site or ages of equipment at each site).

Conclusions

Leaks are common among oil and gas sites in Boulder County, and these sites often experienced multiple leaks during the three-year inspection period. Therefore, the one-time AIMM inspection requirement is inadequate to identify and initiate the repair of leaks from malfunctioning equipment. By increasing the frequency of required inspections, leaks would be discovered sooner, which would aid in curtailing regional emissions of methane and VOCs from oil and gas operations.

Inspections and maintenance should target separators, storage tanks, wellheads, and pneumatic controllers across equipment categories in order to reduce the number of leaks at oil and gas facilities. Furthermore, inspections should be conducted with IR cameras whenever possible. In this analysis, IR camera inspections were much more likely to detect leaks than AVO inspections. Since leak detection is a prerequisite for leak

resolution, and because an inspection program is limited by the time required for an inspector to visit individual well sites and conduct inspections, IR camera inspections may be the most efficient strategy for reducing leaks from oil and gas facilities.

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¹⁶ Colorado Oil and Gas Conservation Commission. 2016. 605.d. Mechanical Conditions. 600-Series Rules. <http://cogcc.state.co.us/documents/reg/rules/latest/600series.pdf>.

¹⁷ Colorado Department of Public Health and Environment Air Quality Control Commission. *Regulation 7: Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions*. 5 CCR 1001-9.

¹⁸ Warneke, C., F. Geiger, P. M. Edwards, W. Dube, G. Pétron, J. Kofler, A. Zahn, et al. 2014. "Volatile Organic Compound Emissions from the Oil and Natural Gas Industry in the Uintah Basin, Utah: Oil and Gas Well Pad Emissions Compared to Ambient Air Composition." *Atmospheric Chemistry and Physics* 14 (20): 10977–88. doi:10.5194/acp-14-10977-2014.

... [content omitted – full text at: <https://assets.bouldercounty.org/wp-content/uploads/2017/09/boulder-county-voluntary-oil-and-gas-inspection-program-results-20170831.pdf>]



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by 2018 Colo. Legis. Serv. Ch. 361 (S.B. 18-230) (WEST),



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

[West's Colorado Revised Statutes Annotated](#)
[Title 34. Mineral Resources](#)
[Oil and Natural Gas](#)
[Conservation and Regulation](#)
[Article 60. Oil and Gas Conservation \(Refs & Annos\)](#)

C.R.S.A. § 34-60-116

§ 34-60-116. Drilling units--pooling interests

[Currentness](#)

(1) To prevent or to assist in preventing waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission, upon its own motion or on a proper application of an interested party, but after notice and hearing as provided in this section, has the power to establish drilling units of specified and approximately uniform size and shape covering any pool.

(2) In establishing a drilling unit, the acreage to be embraced within each unit and the shape thereof shall be determined by the commission from the evidence introduced at the hearing; except that, when found to be necessary for any of the purposes mentioned in subsection (1) of this section, the commission is authorized to divide any pool into zones and establish drilling units for each zone, which units may differ in size and shape from those established in any other zone, so that the pool as a whole will be efficiently and economically developed, but no drilling unit shall be smaller than the maximum area that can be efficiently and economically drained by one well. If the commission is unable to determine, based on the evidence introduced at the hearing, the existence of a pool and the appropriate acreage to be embraced within a drilling unit and the shape thereof, the commission is authorized to establish exploratory drilling units for the purpose of obtaining evidence as to the existence of a pool and the appropriate size and shape of the drilling unit to be applied thereto. In establishing the size and shape of the exploratory drilling unit, the commission may consider, but is not limited to, the size and shape of drilling units previously established by the commission for the same formation in other areas of the same geologic basin. Any spacing regulation made by the commission shall apply to each individual pool separately and not to all units on a statewide basis.

(3) The order establishing drilling units shall permit only one well to be drilled and produced from the common source of supply on a drilling unit, and shall specify the location of the permitted well thereon, with such exception for the location of the permitted well as may be reasonably necessary for wells already drilled or where it is shown upon application, notice, and hearing, and the commission finds, that the drilling unit is located partly outside the pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the unit would be inequitable or unreasonable. The commission shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and include in the order suitable provisions to prevent the production from the drilling unit of more than its just and equitable share of the oil and gas in the pool.

(4) The commission, upon application, notice, and hearing, may decrease or increase the size of the drilling units or permit additional wells to be drilled within the established units in order to prevent or assist in preventing waste or to avoid the drilling of unnecessary wells, or to protect correlative rights, and the commission may enlarge the area covered by the order fixing drilling units, if the commission determines that the common source of supply underlies an area not covered by the order.

(5) After an order fixing drilling units has been entered by the commission, the commencement of drilling of any well into any common source of supply for the purpose of producing oil or gas therefrom, at a location other than authorized by the order, is prohibited. The operation of any well drilled in violation of an order fixing drilling units is prohibited.

(6) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the drilling unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share. Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several owners thereof. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(7)(a) Each such pooling order shall make provision for the drilling of a well on the drilling unit, if not already drilled, for the operation thereof, and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision and storage. Except as provided in paragraph (c) of this subsection (7), as to each nonconsenting owner who refuses to agree to bear his proportionate share of the costs and risks of drilling and operating the well, the order shall provide for reimbursement to the consenting owners who pay for the drilling and operation of the well of the nonconsenting owner's share of the costs and risks of such drilling and operating out of, and only out of, production from the unit representing his interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such costs, the commission shall determine the proper costs as specified in paragraph (b) of this subsection (7). The order shall determine the interest of each owner in the unit and shall provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to his interest in the drilling unit and, unless he has agreed otherwise, his proportionate part of the nonconsenting owner's share of such production until costs are recovered and that each nonconsenting owner is entitled to own and to receive the share of the production applicable to his interest in the unit after the consenting owners have recovered the nonconsenting owner's share out of production.

(b) Upon the determination of the commission, proper costs recovered by the consenting owners of a drilling unit from the nonconsenting owner's share of production from such a unit shall be as follows:

(I) One hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping) plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered such costs. It is the intent that the nonconsenting

owner's share of these costs of equipment and operation will be that interest which would have been chargeable to the nonconsenting owner had he initially agreed to pay his share of the costs of the well from the beginning of the operation.

(II) Two hundred percent of that portion of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received by the consenting owners, and two hundred percent of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A nonconsenting owner of a tract in a drilling unit which is not subject to any lease or other contract for the development thereof for oil and gas shall be deemed to have a landowner's proportionate royalty of twelve and one-half percent until such time as the consenting owners recover, only out of the nonconsenting owner's proportionate seven-eighths share of production, the costs specified in paragraph (b) of this subsection (7). After recovery of such costs, the nonconsenting owner shall then own his proportionate eight-eighths share of the well, surface facilities, and production and then be liable for further costs as if he had originally agreed to drilling of the well.

(d) No order pooling an unleased nonconsenting mineral owner shall be entered by the commission under the provisions of subsection (6) of this section over protest of such owner until the commission shall have received evidence that such unleased mineral owner shall have been tendered a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area at the time application for such order is made and that such unleased mineral owner shall have been furnished in writing such owner's share of the estimated drilling and completion cost of the well, the location and objective depth of the well, and the estimated spud date for the well or range of time within which spudding is to occur. During the period of cost recovery provided in this subsection (7), the commission shall retain jurisdiction to determine the reasonableness of costs of operation of the well attributable to the interest of such nonconsenting owner.

(8) The operator of a well under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of production during the preceding month. If the consenting owners recover the costs specified in subsection (7) of this section, the nonconsenting owner shall own the same interest in the well and the production therefrom, and be liable for the further costs of the operation, as if he had participated in the initial drilling operation.

Credits

Amended by Laws 1977, S.B.113, § 1, eff. June 1, 1977; Laws 1981, S.B.211, § 1, eff. July 1, 1981; Laws 1988, S.B.65, § 1, eff. April 4, 1988; [Laws 1991, S.B.91-87, § 1, eff. April 19, 1991](#).

[Notes of Decisions \(6\)](#)

C. R. S. A. § 34-60-116, CO ST § 34-60-116

Current with immediately effective legislation through Ch. 256 of the Second Regular Session of the 71st General Assembly (2018)

**Docket No. 171200773
EXHIBIT N**

2018 Colo. Legis. Serv. Ch. 361 (S.B. 18-230) (WEST)

COLORADO 2018 LEGISLATIVE SERVICE

Seventy-First General Assembly, Second Regular Session

Additions are indicated by **Text**; deletions by
~~Text~~ .

Vetoed are indicated by ~~Text~~ ;
stricken material by ~~Text~~ .

CHAPTER 361

S.B. 18-230

OIL AND GAS—DRILLING—POOLS

AN ACT CONCERNING MODIFICATION OF THE LAWS GOVERNING THE ESTABLISHMENT
OF DRILLING UNITS FOR OIL AND GAS WELLS, AND, IN CONNECTION THEREWITH,
CLARIFYING THAT A DRILLING UNIT MAY INCLUDE MORE THAN ONE WELL,
PROVIDING LIMITED IMMUNITY TO NONCONSENTING OWNERS SUBJECT TO POOLING
ORDERS, ADJUSTING COST RECOVERY FROM NONCONSENTING OWNERS, AND
MODIFYING THE CONDITIONS UPON WHICH A POOLING ORDER MAY BE ENTERED.

Be it Enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 34-60-116, **amend** (1), (3), (7), and (8) as follows:

<< CO ST § 34-60-116 >>

34-60-116. Drilling units—pooling interests. (1) To prevent or to assist in preventing waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission, upon its own motion or on a proper application of an interested party, but after notice and hearing as provided in this section, ~~has the power to~~ **may** establish **one or more** drilling units of specified ~~and approximately uniform~~ size and shape covering any pool **or portion of a pool**.

(3) The order establishing ~~drilling units shall permit only one well~~ **a drilling unit may authorize one or more wells** to be drilled and produced from the common source of supply on a drilling unit, ~~and shall specify the location of the permitted well thereon, with such exception for the location of the permitted well as may be reasonably necessary for wells already drilled or where it is shown upon application, notice, and hearing, and the commission finds, that the drilling unit is located partly outside the pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the unit would be inequitable or unreasonable. The commission shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and include in the order suitable provisions to prevent the production from the drilling unit of more than its just and equitable share of the oil and gas in the pool.~~

(7)(a) Each such pooling order shall **must**:

(1) Make provision for the drilling of a well **one or more wells** on the drilling unit, if not already drilled, for the operation thereof **of the wells**, and for the payment of the reasonable actual cost thereof **of the wells**, including a reasonable charge for supervision and storage. Except as provided in ~~paragraph (c) of this subsection (7)~~ **(7)(c) of this section**, as to each nonconsenting owner who refuses to agree to bear his **a** proportionate share of the costs and risks of drilling

and operating the well **wells**, the order shall **must** provide for reimbursement to the consenting owners who pay for the drilling and operation of the well **the costs** of the nonconsenting owner's **proportionate** share of the costs and risks of such drilling and operating out of, and only out of, production from the unit representing his **the owner's** interest, excluding royalty or other interest not obligated to pay any part of the cost thereof, **if and to the extent that the royalty is consistent with the lease terms prevailing in the area and is not designed to avoid the recovery of costs provided for in subsection (7)(b) of this section.** In the event of any dispute as to such **the costs**, the commission shall determine the proper costs as specified in ~~paragraph (b) of this subsection (7).~~ **subsection (7)(b) of this section.**

(II) Determine the interest of each owner in the unit and shall provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production of the well **from the wells** applicable to his **the owner's** interest in the drilling unit **wells** and, unless he **the owner** has agreed otherwise, his **a** proportionate part of the nonconsenting owner's share of such **the** production until costs are recovered and that each nonconsenting owner is entitled to own and to receive the share of the production applicable to his **the owner's** interest in the unit after the consenting owners have recovered the nonconsenting owner's share **of the costs** out of production; **and**

(III) Specify that a nonconsenting owner is immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on the drilling unit.

(b) Upon the determination of the commission, proper costs recovered by the consenting owners of a drilling unit from the nonconsenting owner's share of production from such a unit shall be as follows:

(I) One hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including ~~but not limited to,~~ stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well **or wells** commencing with first production and continuing until the consenting owners have recovered such costs. It is the intent that the nonconsenting owner's share of these costs of equipment and operation will be that interest which **that** would have been chargeable to the nonconsenting owner had he **the owner** initially agreed to pay his **the owner's** share of the costs of the well **or wells** from the beginning of the operation.

(II) Two hundred percent of that portion of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received by the consenting owners, and two hundred percent of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A nonconsenting owner of a tract in a drilling unit which **that** is not subject to any lease or other contract for the development thereof for oil and gas shall be deemed to have a landowner's proportionate royalty of twelve and one-half percent until such time as the consenting owners recover, only out of the nonconsenting owner's proportionate seven-eighths share of production, the costs specified in ~~paragraph (b) of this subsection (7)~~ **(7)(b) of this section.** After recovery of such **the costs**, the nonconsenting owner shall then own **owns** his **or her full** proportionate ~~eight-eighths~~ share of the well **wells**, surface facilities, and production and then be **is** liable for further costs as if he **the owner** had originally agreed to drilling of the well **wells**.

(d)**(I)** No **An** order pooling an unleased nonconsenting mineral owner shall **not** be entered by the commission under the provisions of subsection (6) of this section over protest of such **the owner** until **unless** the commission shall have **has** received evidence that such **the** unleased mineral owner shall have **has** been tendered, **no less than sixty days before the hearing**, a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area at the time application for such **the** order is made and that such unleased mineral owner shall have **has** been furnished in writing such **the** owner's share of the estimated drilling and completion cost of the well **wells**, the location and objective depth of the well **wells**, and the estimated spud date for the well **wells** or range of time within which spudding is to occur.

The offer must include a copy of or link to a brochure supplied by the commission that clearly and concisely describes the pooling procedures specified in this section and the mineral owner's options pursuant to those procedures.

(II) During the period of cost recovery provided in this subsection (7), the commission shall ~~retain~~ **retains** jurisdiction to determine the reasonableness of costs of operation of the well **wells** attributable to the interest of such ~~the~~ nonconsenting owner.

(8) The operator of a well **wells** under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of production during the preceding month. If the consenting owners recover the costs specified in subsection (7) of this section, the nonconsenting owner shall own the same interest in the well **wells** and the production therefrom, and be liable for the further costs of the operation, as if he ~~the owner~~ had participated in the initial drilling operation **operations**.

<< Note: CO ST § 34-60-116 >>

SECTION 2. Effective date—applicability. This act takes effect July 1, 2018, and applies to conduct occurring on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved June 1, 2018.

End of Document

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BCCP Agricultural Lands of Importance

Docket No. 171200773
EXHIBIT P

	Distinguishing Factors and Crops Generally Grown Here	Source of Identification
National	<p>Best physical and chemical characteristics:</p> <ul style="list-style-type: none"> • Soil moisture • Water availability / irrigation • Mean soil temperature • Salinity • Permeability • Erodibility • Drainage / deeper water table • Slope less than 6% 	U.S. Dept. of Agriculture
Statewide	Hay meadows, dryland wheat, grain sorghum, forage sorghum, corn, fruit and vegetable growing and seed cultivation	CO Division of Agriculture, Dept. of Natural Resources, and CO Soil Conservation Board
Local	<ul style="list-style-type: none"> ▪ Soil type – includes class III which is very limited ▪ Existing land uses ▪ Carrying capacity – based on soil type and moisture ▪ Grasses, grass-like plants, forbs and shrubs, valuable lands for grazing 	Longmont Office of Soil Conservation Services, Colorado State University Extension, and Boulder County records