

**CITY COUNCIL MEETING**  
**Municipal Building, 1777 Broadway**  
**SPECIAL MEETING Prior to Study Session**  
**Tuesday, May 31, 2016**  
**6 p.m.**

**AGENDA**

**1. CALL TO ORDER AND ROLL CALL**

**A. Declaration regarding National Gun Violence Awareness Day**

**2. MATTERS FROM THE CITY MANAGER**

**A. Consideration of a motion to authorize the City Manager to pursue an amendment to the approved site review for 6400 Arapahoe and to begin the concept planning and associated land use processes to develop Phase III as a home for additional zero waste-related activities; and to return to council at a study session with more specific use concepts and funding options for site development**

**3. MATTERS FROM THE CITY ATTORNEY**

**A. Consideration of a motion authorizing the City Manager to enter into settlement agreements in excess of \$10,000 arising out of the February 15, 2016 water main break**

**4. PUBLIC COMMENT ON MATTERS**

**5. ADJOURNMENT**

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**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: May 31, 2016**

**AGENDA TITLE** Strategic Development at 6400 Arapahoe

**PRESENTERS**

Jane S. Brautigam, City Manager

David Driskell, Executive Director of Housing, Planning & Sustainability

Kara Mertz, Environmental Program Manager

**EXECUTIVE SUMMARY**

The purpose of this agenda item is to update council on the status of approved land use for the city's property at 6400 Arapahoe Ave. and to seek council feedback on future development plans. Specifically, staff is seeking council comments and authorization for the city manager to pursue a site review amendment for Phase II development at the property and to begin the concept planning for Phase III at 6400 Arapahoe Ave. It must be noted that at the present time, there is not a defined funding plan for Phase II or Phase III development. The project's next steps will include developing cost estimates and a funding plan.

**STAFF RECOMMENDATION**

**Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the city manager to pursue an amendment to the approved site review for 6400 Arapahoe and to begin the concept planning and associated land use processes to develop Phase III as a home for additional zero waste-related activities; and to return to council at a study session with more specific use concepts and funding options for site development.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic – The proposed development at 6400 Arapahoe could have positive economic impacts by providing small business start-up incubator space for “upcycled” materials. In addition, by providing a resale opportunity for industrial scrap materials, the non-profit tenants at the property can save builders and manufacturers disposal costs while providing a tax deduction for material donations. Refurbishing old computers also helps support the local non-profit community by offering lower cost computer equipment.
- Environmental – Primarily an environmental initiative, creating a zero waste hub for reuse and repair contributes significantly to our community’s resource conservation goals. Phase II and Phase III development will facilitate a wider community engagement in Boulder’s zero waste activities. Co-locating reuse and repair organizations increases the exposure for each, and provides synergies that significantly increase the number and type of unique visitors to the property.
- Social – The draft strategic planning process has unearthed several new partnership possibilities at 6400 Arapahoe, many of which cater to underserved populations including special needs adults, youth, low income families and the arts communities.

## **OTHER IMPACTS**

- Fiscal – Additional city funding may be required to complete the planned development. Some funding options are described in the Analysis section of this memo. Prior to finalizing Phase III, staff will return to council at a study session with more specific facility and use concepts and an outline of funding options for site development.
- Staff time – This strategic development process and its associated land use and community building work are part of existing staff work plans.

## **BOARD AND COMMISSION FEEDBACK**

This is being brought to the Environmental Advisory Board (EAB) on June 1. Staff will include board feedback in any land use applications as well as any subsequent communications with council.

## **PUBLIC FEEDBACK**

One stakeholder meeting was held on May 16 with industry experts and institutional neighbors of the site including Boulder Valley School District and Thorne Ecological Institute. The general consensus from that meeting was agreement with the staff recommendation to retain ownership of the entire site. There was also uniform support for the draft Phase III concepts and several new ideas arose. Additional public meetings will be held as part of the regular land use processes to amend the approved site review and submit technical documents for Phase II, as well as during concept and site review for Phase III.

## **BACKGROUND**

### ***Purchase and use of the site***

In 2008, the city purchased 6400 Arapahoe for \$5,486,846. The purchase was funded by proceeds from the sale of \$6 million, 20-year general obligation nonprofit revenue bonds; \$793,846 in cash; and a \$500,000 loan from Boulder County. The bonds are backed by Trash Tax revenue. \$1.8 million of the bond proceeds were used for site development and the entitlement process. The county loan was paid back over five years with three percent interest.

The original purpose of the land purchase was to create a permanent home for two zero waste nonprofit organizations and the facilities they operate that fulfill critical roles in the infrastructure needed for Boulder to become a zero waste community. Prior to the purchase, both ReSource and Eco-Cycle were in month-to-month leases that did not provide a stable enough term for either organization to make long-term investments in their facilities.

The property is subdivided into two lots. “Lot 1” is the portion of the site currently developed and leased to Eco-Cycle and the Center for Resource Conservation for ReSource, its used building materials resale yard. This part of the property must be leased to nonprofit entities while the nonprofit GO bonds are still outstanding. “Lot 2” is currently undeveloped and represents the city’s equity in the site.

In 2008, ReSource moved to the property, as it was allowable under the property’s Boulder County zoning. In 2010, the property was annexed into the city (zoned Industrial-General) and between 2008 and 2013, the City redeveloped and upgraded the site to current building codes and standards including HVAC upgrades, improved site landscaping; construction of a detention pond; new utility hookups, and other site improvements. In 2011, a Site Review was approved by the Planning Board and City Council. The approved Site Review includes “Phase I,” which has been built; and “Phase II” which at the time, represented the tenant organizations’ desires for expansion. Phase II builds upon the existing structures at the site by providing additional offices and warehouse space for ReSource and Eco-Cycle as well as covered retail area for ReSource, a significantly improved street presence and an improved entrance/exit. “Phase III” represents the un-programmed potential future uses on the eastern subdivided lot. This is not part of the approved site review and there exist no approved plans for Phase III. **Attachment A** includes approved Phase I and Phase II plans.

In 2013, when the site improvements were complete, Eco-Cycle moved to the site from its former home at the city municipal service center. Between 2013 and 2016, the City spent an additional \$20,000 annually on major site maintenance and improvements including replacing asphalt with concrete in several areas of the site, adding electricity to outbuildings and setting aside funds for roof replacement.

**Trash Tax Funding**

The Trash Tax generates approximately \$1.7 million per year, of which approximately \$600,000 is dedicated to bond repayments for the purchase and development of Phase I at 6400 Arapahoe; and \$1.1 million has been appropriated for ongoing zero waste program expenses as outlined below. As of 2015, the purchase loan from Boulder County was paid off, which frees up approximately \$140,000 annually that can be used to support additional program activities or facility investments. Thus far in 2016, these funds have been used for business rebates to support compliance with the Universal Zero Waste Ordinance. Within the Trash Tax, the Zero Waste Strategic Plan and priority-based budgeting guide the annual balance of programs and facility investments.

**2016 Trash Tax Funding Breakdown**

<b>Facilities:</b>	<b>\$220,000</b>
Yard Waste and Wood Waste drop-off centers (operational costs)	\$100,000
CHaRM (operational costs)	\$100,000
6400 Arapahoe facility repair and replacement fund	\$20,000
<b>Programs and Services:</b>	<b>\$232,000</b>
BVSD Green Star Schools and zero waste curriculum	\$32,000
CU Green Teams	\$10,000
Multi-family Unit outreach project	\$40,000
PACE zero waste advising services	\$150,000
<b>Rebates and Incentives:</b>	<b>\$340,000</b>
Universal Zero waste grants and start-up rebates	\$340,000
<b>Staff</b>	<b>\$300,000</b>
<b>TOTAL:</b>	<b>\$1,092,000</b>

Since the site was purchased in 2009, council has discussed several times whether or not to sell Lot 2. Each time it has been discussed, the consensus was to wait to make a final determination until such a time as it could be determined whether the revenue from the sale of the subdivided parcel could help fund other zero waste activities. At a June 3, 2010 Study session, most council members were not inclined to sell Lot 2, recognizing that the city would likely need more land over time for zero waste or other priorities, though some council members indicated a willingness to investigate selling off this subdivided parcel if it could help pay for Phase II for the nonprofit tenants. At its July 29, 2014 Study Session, council expressed an interest in keeping the entire property open for zero waste activities and for allowing others besides ReSource and Eco-Cycle to locate there; especially those that could highlight innovation in the zero waste arena.

### ***Zero Waste Strategic Plan***

The Zero Waste Strategic Plan, accepted by Council in November 2015 outlined the strategic development planning process that is currently underway. The strategic plan includes the following goals:

- **WASTE DIVERSION:** 85% waste diversion in each sector by 2025 (residential single-family, residential multi-family, and commercial)
- **SOURCE REDUCTION:** measure per capita total waste generation (trash, recycling and compost) and work to decrease this over time
- **GREENHOUSE GAS (GHG) EMISSIONS REDUCTION:** measure GHG emissions from waste disposal to the greatest extent possible and implement strategies to reduce GHG emissions from waste.
- **PARTICIPATION:** maximize the number and diversity of individual participants in zero waste services and programs.

### **ANALYSIS**

Since the approved site review for Phase II development at 6400 Arapahoe expires in two years, and it has become clear that the organizations' needs have evolved, staff recently initiated a process to scope out potential amendments to the approved site review. In addition, there has been an increasing interest in use or purchase of Lot 2 (see **Attachment B**) from other city departments for office space and from private non-city interests. Since funding has yet to be identified to complete Phase II and a plan had not been developed for Phase III, staff initiated a strategic planning process that involved a budget-level appraisal of Lot 2 and a tenant and stakeholder charrette for concept planning for Phase III (See **Attachment C**). The goals of the strategic planning process are to identify options for development at 6400 Arapahoe by:

- Updating the site review and mapping out a funding strategy and timeline for Phase II development; and
- Weighing the zero waste benefits of selling a portion of the site to help fund Phase II development versus retaining the entire site for Phase III zero waste activities.

Council is being asked for authorization to pursue the proposed land use processes for Phases II and III at 6400 Arapahoe; and staff is seeking comments, questions or concerns about the analysis and the proposed process moving forward.

### ***6400 Arapahoe within the context of Zero Waste Boulder***

When the city's Zero Waste Resolution was adopted in 2006, it outlined the city's role in achieving this zero waste vision, stating:

*Government can be ultimately responsible for establishing facilities and criteria needed to eliminate waste, for creating the economic and regulatory environment in which to achieve it, and for leading by example.*

Inherent in the zero waste resolution is the reality that the city cannot work alone, and that only through collaboration with its private, nonprofit and public sector partners can the entire community achieve zero waste. Furthermore, it recognized that any community striving toward zero waste needs to look upstream from recycling and composting to address reuse and waste prevention – a concept sometimes referred to as “sustainable materials management.” Although there is a societal movement toward product design for recyclability, this shift is slow. For the foreseeable future, our community will need a location to drop off and sort materials that are either not numerous enough or valuable enough to be collected curbside. The current activities at 6400 Arapahoe collect hard-to-recycle materials for reprocessing, minimize electronic waste, facilitate building material reuse, as well as other sharing, repair and reuse activities through Eco-Cycle’s fix-it clinics and the tool lending library. Over time, these activities can be expanded to increase opportunities for reuse, repair and deconstruction - and should include flexibility because the specific “hard-to-recycle” materials will necessarily change over time.

### ***City and partner roles***

In contrast to communities with municipal control over waste hauling, state mandates or high landfill tip fees that encourage zero waste investments, Boulder relies on a strong network of nonprofit, for-profit, governmental and community partnerships to invest resources in the success of our zero waste systems. In this dynamic environment, the City of Boulder’s role is to: facilitate a community vision around zero waste; “set the rules” so everyone can play on an even field; and work with each community partner to collaboratively build facilities and deliver strategic programs and services. In this vein, the landscape that supports our zero waste facilities is built on a foundation of long-standing partnerships.

### ***Facility needs***

The city’s Zero Waste Strategic Plan outlines seven major facility types required for any community to achieve zero waste:

1. Recyclables Processing
2. Organics processing
3. Creative reuse and repair facilities
4. Hard-to-Recycle Center
5. Household hazardous waste facility
6. Construction waste recycling
7. Transfer station for “whatever’s left”

Of these, only one facility type is yet to be developed (construction waste recycling), though there exist significant opportunities to expand the existing facilities and increase their efficiency and effectiveness.

1. Recyclables Processing Facility – The Boulder County Recycling Center (BCRC) is owned by Boulder County and operated by Eco-Cycle. The BCRC needs

upgraded equipment for removing plastic bag contamination, optically sorting various plastics, and expanding the area dedicated to receiving and processing clean, sorted cardboard. Boulder County is planning to make these investments over the coming 5+ years. Some funding is dependent on the passage of a Sustainability Tax in November 2016.

2. Organics processing – There is one windrow composting facility in Boulder owned and operated by Western Disposal. There is also a privately-owned biofuels digester composting facility in LaSalle, CO owned by Électricité de France (EDF) and A-1 Organics. The City and the county are working together to jointly develop a compost transfer site in Frederick, CO that would allow any private hauler to collect compostable materials from Boulder businesses and deliver them for composting to a cost-effective site within 25 miles of any point in Boulder.
3. Creative reuse and repair facilities – Eco-Cycle and ReSource operate on the city’s property at 6400 Arapahoe. The two organizations manage various material reuse activities and fix-it clinics. These activities can be expanded if more classroom and workshop space were available. In addition, while ReSource removes nails from a limited quantity of lumber, there exists the potential for a 30-50 percent increase in diversion with Phase II de-nailing operations and a covered retail shopping area. Separate from 6400 Arapahoe, Boulder’s creative reuse center, ArtParts is operating from a small retail space without adequate materials storage. There is not a central location for art creation or gallery space nor is there a local area for youth programming focused on recycled material arts and crafts.
4. Center for Hard-to-Recycle Materials (CHaRM) – This facility is operated by Eco-Cycle under contract to the city. Eco-Cycle leases the property from the city for \$1 per month; and Eco-Cycle (and ReSource) pay for upkeep and maintenance. The facility is adequate for the materials currently accepted; however, additional drop-off area is needed, especially for large items such as carpets, carpet pads and mattresses; and flex drop-off space is needed for future CHaRM material expansion. There is also a significant opportunity and unmet need for refurbishing used computers for resale and for facilitating entrepreneurial innovation through recycling industrial discards.
5. Household Hazardous Waste Facility – owned and operated by Boulder County, the hazardous materials management facility is funded jointly by all participating communities
6. Construction waste recycling – A facility for recycling mixed construction waste is not yet available. Boulder County is investigating development of a mixed construction waste sorting facility as part of the proposed countywide

sustainability tax. Such a facility is not considered an appropriate use at 6400 Arapahoe given the site's context and the constraints of its Annexation agreement.

7. Transfer station for “whatever’s left” – owned and operated by Western Disposal, the transfer station may be expanded over time to be able to recover additional materials from the waste stream.

Given these facility needs and expansion possibilities, staff investigated two options for Lot 2 at 6400 Arapahoe:

1. Sell Lot 2 to serve other community needs; use the revenue from the sale to further our community's zero waste efforts
2. Retain Lot 2 for zero waste purposes

***To sell or not to sell?***

If the city were to sell Lot 2, it has been estimated to be worth approximately \$1 million. Potential buyers include other city departments for offices or material storage, or private industrial development. Zoning would need to be changed to accommodate housing. Depending on the final owner and programming associated with the parcel, it could serve a number of community needs. The revenue from the sale of the parcel would supplement the Trash Tax and could be used to help fund Phase II for the existing nonprofit tenants' expansion. Unfortunately, this would provide only an estimated 25-30 percent of the required funding for Phase II. The remainder of the funding would have to come from creative funding partnerships with the nonprofit tenants and/or the city.

Discussions with the existing tenants have indicated that prior efforts to seek funding for Phase II have proven difficult. A programming exercise was initiated to see what could fit on the property and how many of the community's outstanding zero waste needs could be met through Phase III. The exercise has identified several potential new activities and partnerships, as well as several needed improvements to the site's traffic flow, efficiency and customer experience. With it, Phase III brings expanded business opportunities with additional nonprofit partners, significant synergies to expand the number of visitors to the site, and the potential for a diversified funding base.

Potential new activities on site:

1. Creative reuse center for artists, teachers and youth groups
2. Small business incubator space focused on “up-cycling” materials
3. Art gallery and retail space for upcycled products
4. Public workshop/maker space
5. Computer refurbishing and resale for lower income and nonprofits' use
6. Covered outdoor shopping area for ReSource materials
7. De-nailing operations for increased wood recovery

Potential new Partnerships:

- ArtParts – existing nonprofit that operates Boulder's creative reuse center

- Blue Star Recyclers – employs autistic adults to refurbish personal computers and upgrade wood
- Boulder Valley School District – potential for shared classroom and meeting space, programming for young adults needing special education services, potential partnerships through the Arapahoe Ridge technical High School and even possibly shared commercial kitchen space for collaboration on enhancing local food efforts and reducing food waste.

Other possible site improvements:

- Flex drop-off area for changing materials over time
- Additional office space and meeting space for ReSource and Eco-Cycle
- Recycled art sculpture gateway to site and to the eastern gateway of Boulder
- Improved donation lanes and traffic flow for ReSource materials
- Educational displays regarding alternative building materials
- Increased ability to host fix-it clinics and summer camps and youth programming focused on upcycling and creative reuse
- Potential processing for other value-added materials from CHaRM and ReSource
- Additional loading dock and storage for recycling bins and material exchange
- Improved vehicle and pedestrian circulation to provide an overview and cross-pollination for visitors and the organizations on site

***How do these improvements measure up against the community’s zero waste criteria for investment?***

The Zero Waste Strategic Plan identifies three quantitative and two qualitative criteria against which potential initiatives should be weighed. At this stage, this evaluation is only for comparative purposes. When evaluating the quantitative criteria, ratings are based on estimated tons (of waste diverted or greenhouse gases avoided) or estimated increases in participation. Once actual plans are finalized and costs estimated, a true cost-benefit analysis can be performed.

**Zero Waste Criteria Comparison**

<u>Quantitative Criteria</u>	<u>Develop Lot 2</u>	<u>Sell Lot 2</u>
DIVERSION POTENTIAL:	medium	low
GHG REDUCTION POTENTIAL:	medium	low
COMMUNITY ENGAGEMENT:	high	low
<u>Qualitative Criteria</u>		
UPSTREAM CONSERVATION:	high	n/a
EASE OF IMPLEMENTATION:	low	high

Obviously, these criteria rankings reflect an evaluation based solely on advancing the city’s zero waste efforts, consistent with the use for which 6400 Arapahoe was originally purchased. A broader evaluation of site use options to advance other community priorities has not yet been conducted.

### ***Financing the development***

The existing Trash Tax revenues can pay for soft costs including engineering, architectural and permit fees to continue the development process for Phase II and produce the concept plans and artists' renderings for Phase III.

Based on initial discussions with the existing and future tenants at the property, the following possible financing options have been identified:

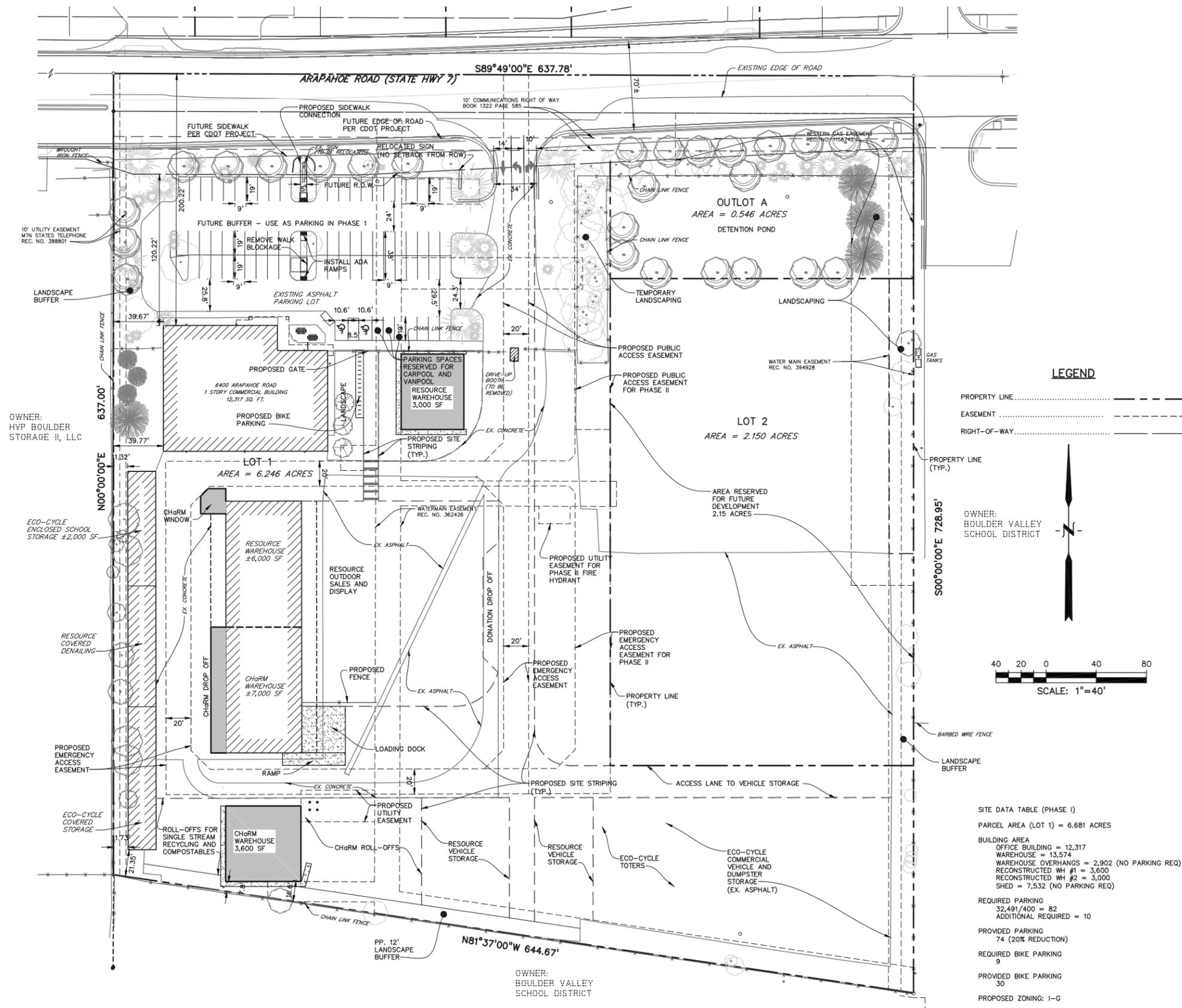
- Public private partnerships
- Capital Campaigns
- Scientific and Cultural Development Grants
- Other grants
- Foundation funding
- Boulder County Sustainability Tax – If tax measure passes, revenue could be available after 2019
- Existing Trash Tax – Approximately \$200,000 annually, increasing to \$350,000 as start-up rebates are phased out
- New Trash Tax – Voter approval would be required to increase Trash Tax
- Disposable Bag Fee proceeds – voter approval required to convert the existing fee into a tax to allow investment in non-bag-related expenses. (Current revenues are ~\$25,000 annually)
- Other city funds – Priority-based budgeting exercise would be required to prioritize this over other city needs
- Private bank loans to city or nonprofit tenants

### **CONCLUSION**

If council authorizes the city manager to pursue an amendment to the approved site review and to begin the concept planning and associated land use processes to develop Phase III, staff will return to council at a study session with more specific facility and use concepts for the site and an outline of funding options.

### **ATTACHMENTS**

- A:** Approved Phase I and Phase II plans
- B:** Lot 1 and Lot 2 drawings
- C:** Draft Phase III concept drawings



SITE DATA TABLE (PHASE I)

PARCEL AREA (LOT 1) = 6.681 ACRES
<b>BUILDING AREA</b>
OFFICE BUILDING = 12,317
WAREHOUSE = 13,574
WAREHOUSE OVERHANGS = 2,902 (NO PARKING REQ)
RECONSTRUCTED WH #1 = 3,600
RECONSTRUCTED WH #2 = 3,000
SHED = 7,532 (NO PARKING REQ)
<b>REQUIRED PARKING</b>
32,491/400 = 82
ADDITIONAL REQUIRED = 10
<b>PROVIDED PARKING</b>
74 (20% REDUCTION)
<b>REQUIRED BIKE PARKING</b>
9
<b>PROVIDED BIKE PARKING</b>
30
<b>PROPOSED ZONING:</b> I-G

STUDIO TERRA  
3740 LONGWOOD AVENUE  
BOULDER, COLORADO 80504  
303.442.4138  
FAX 303.442.1878  
STUDIO TERRA ARCHITECTS

peh  
ARCHITECTS  
BOULDER, COLORADO

Drexel, Barrell & Co.  
Engineers • Surveyors  
1800 36TH STREET  
BOULDER, COLORADO 80301  
(303) 442-4338

6400 Arapahoe  
Boulder, Colorado

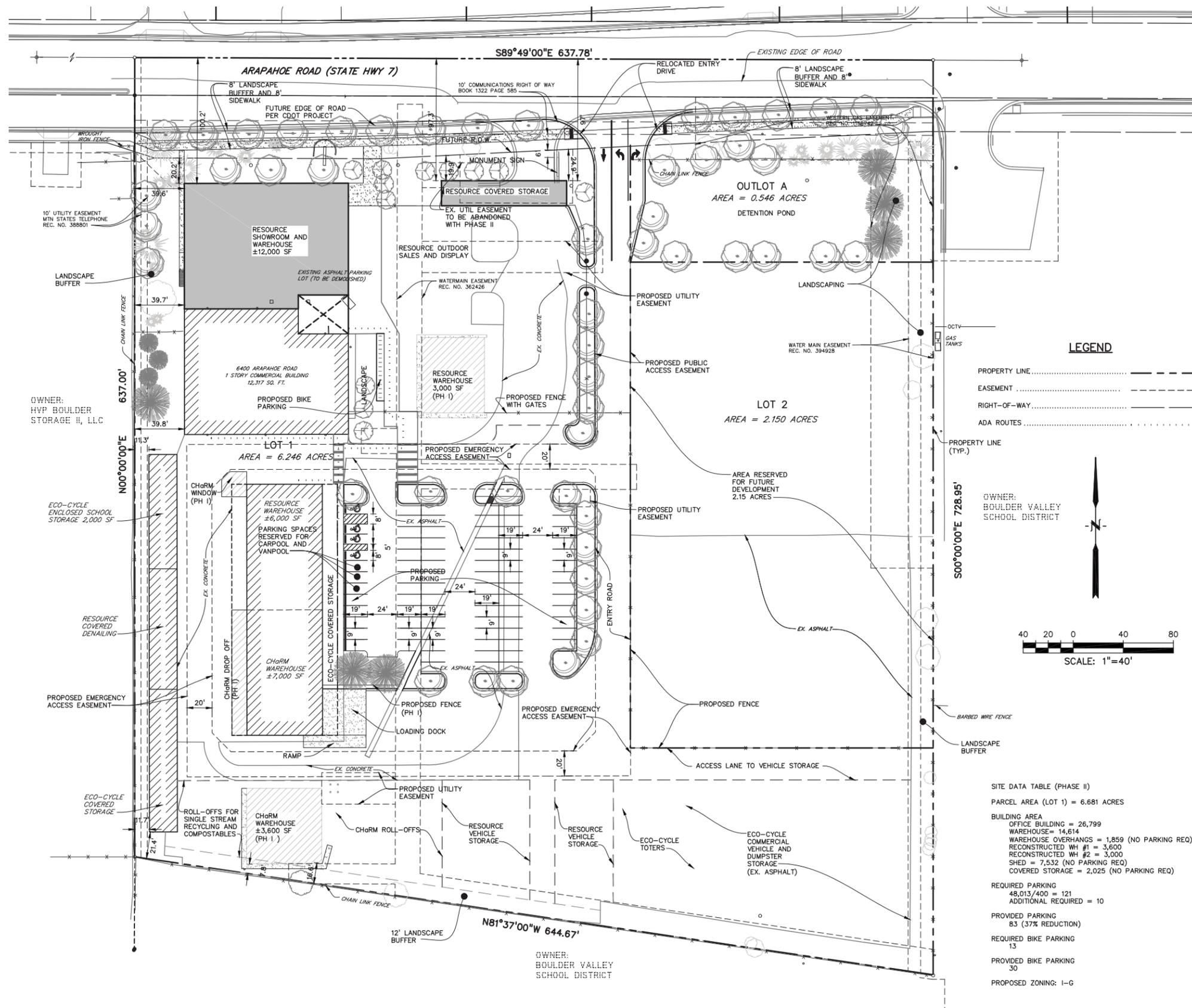
# SITE REVIEW

City of Boulder  
Eco-Cycle  
CHaRM  
ReSource

MARCH 18, 2011  
MAY 16, 2011  
JUNE 15, 2011

PHASE I  
SITE PLAN

SHEET NUMBER:  
C1



STUDIO TERRA  
3740 LINDENWOOD AVENUE  
BOULDER, COLORADO 80504  
303.442.8138  
FAX 303.442.1878  
STUDIO TERRA ARCHITECTS

**peh**  
ARCHITECTS  
BOULDER, COLORADO

Drexel, Barrell & Co.  
Engineers • Surveyors  
1800 36TH STREET  
BOULDER, COLORADO 80301  
(303) 442-4338

6400 Arapahoe  
Boulder, Colorado  
**SITE REVIEW**

City of Boulder  
Eco-Cycle  
CHaRM  
ReSource

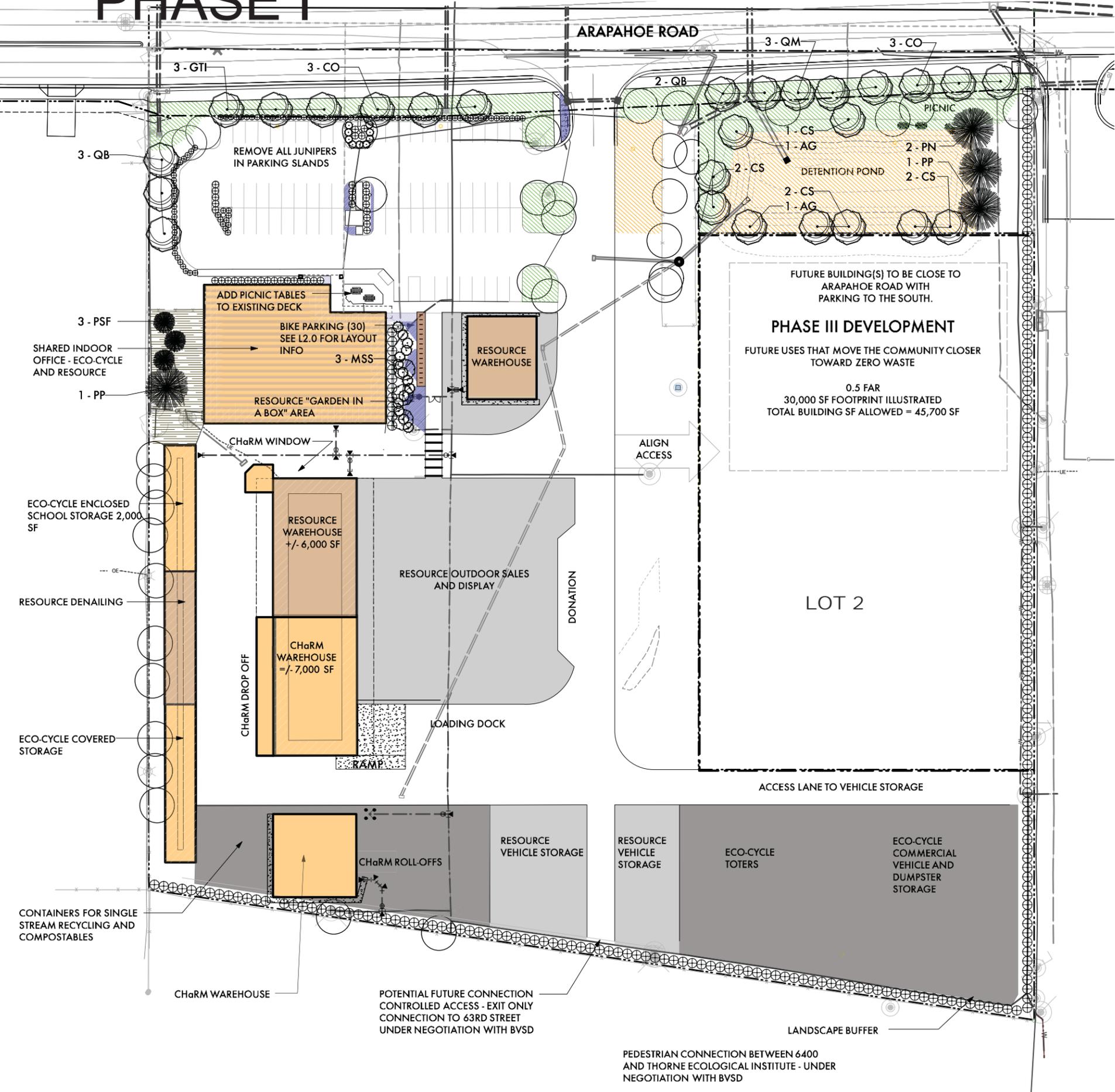
MARCH 18, 2011  
MAY 16, 2011  
JUNE 15, 2011

PHASE II  
SITE PLAN

SHEET NUMBER:  
C4

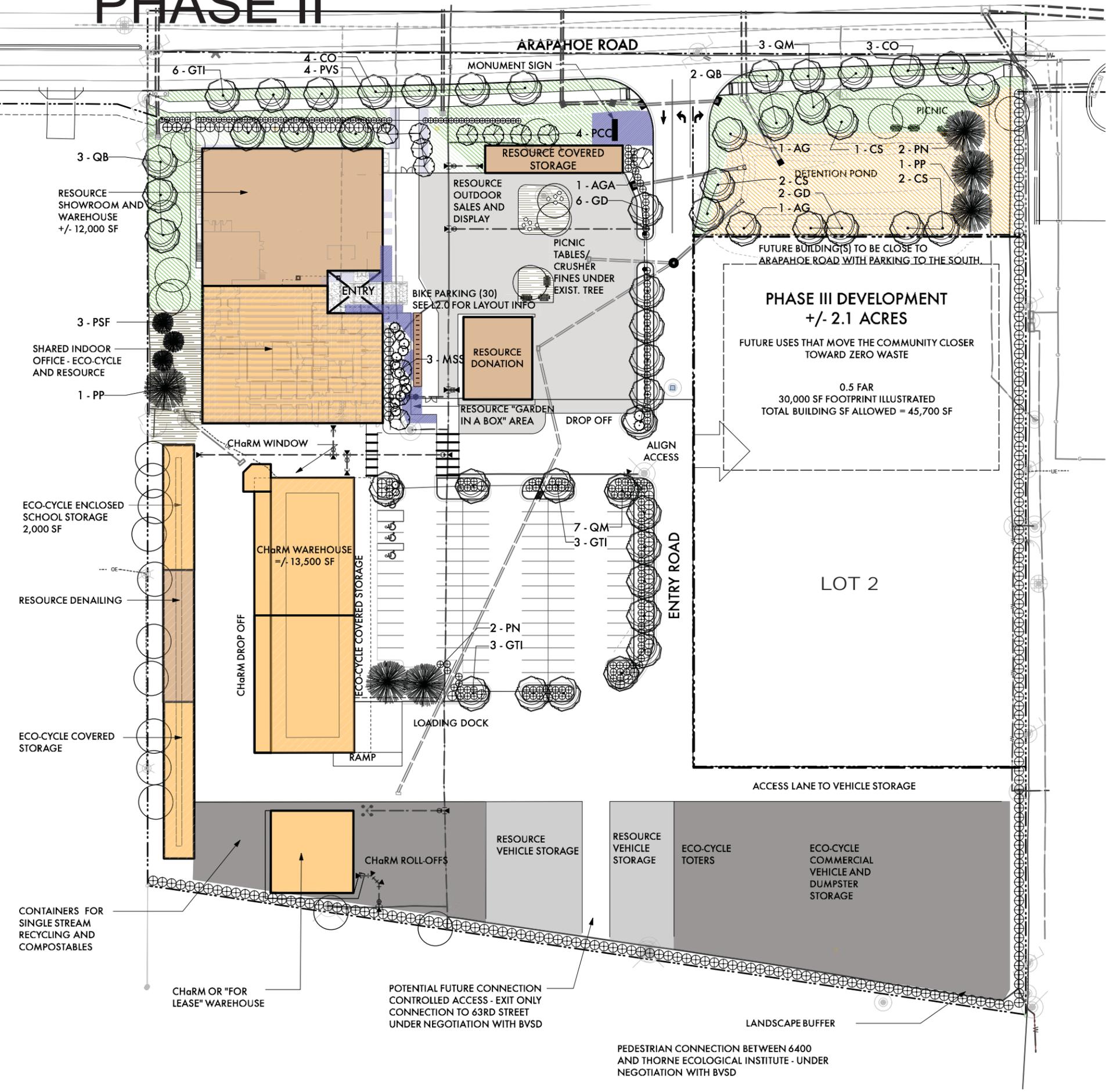
APPROVED SITE REVIEW

# PHASE I

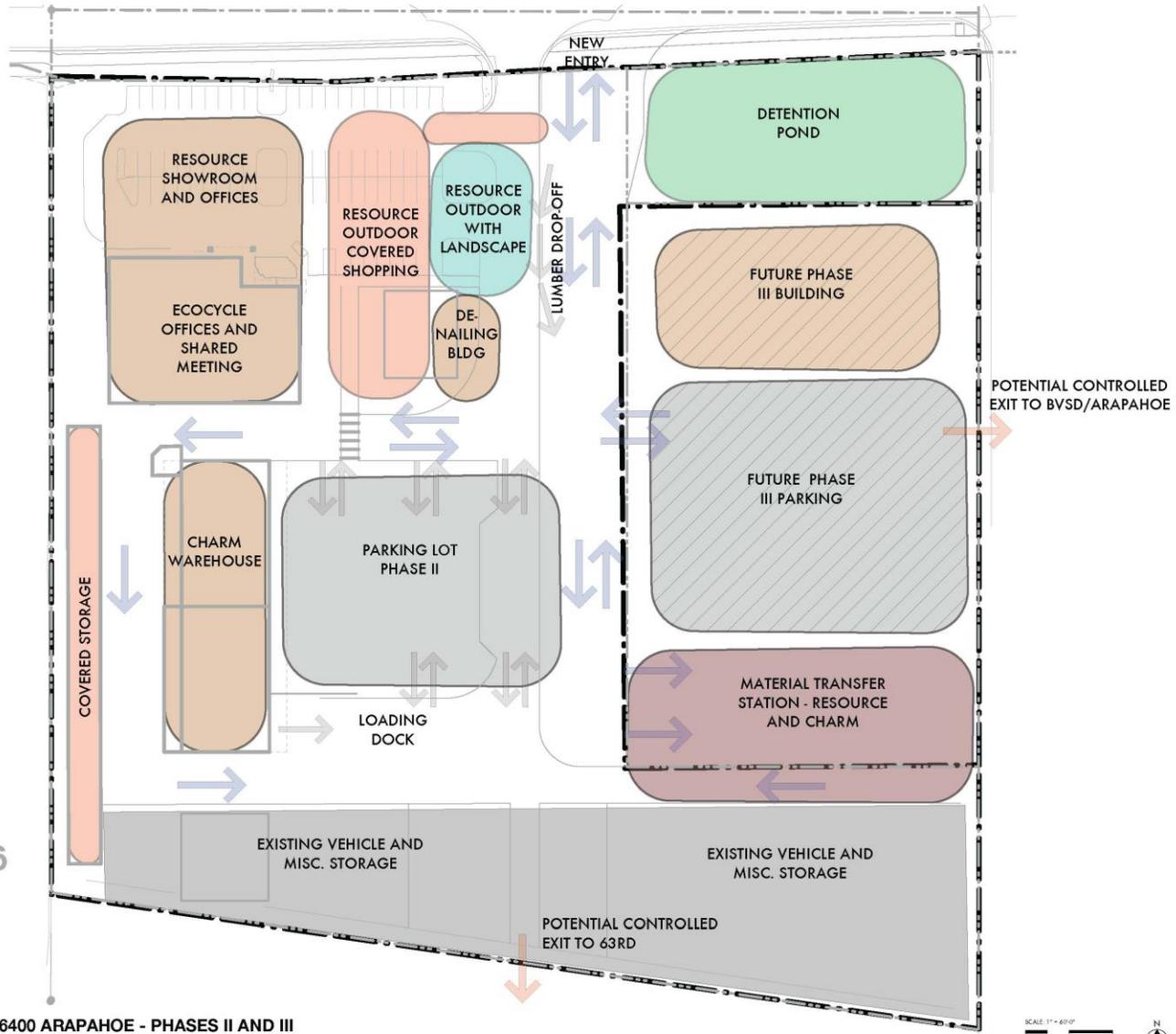


APPROVED SITE REVIEW

# PHASE II



### DRAFT PHASE II / III CONCEPT



DRAFT  
APRIL 27, 2016

2 6400 ARAPAHOE - PHASES II AND III  
1"=60'-0"

SCALE: 1" = 60'  
0 15 30 40 FT



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: MAY 31, 2016**

**AGENDA TITLE:** Consideration of a motion authorizing the City Manager to enter into settlement agreements in excess of \$10,000 arising out of the February 15, 2016 water main break.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Maureen Rait, Executive Director, Public Works  
Jeff Arthur, Director of Public Works for Utilities  
Cheryl Pattelli, Director of Fiscal Services  
Dave Bannon, Acting Risk Manager

**EXECUTIVE SUMMARY**

At the March 15, 2016 council meeting, the city council directed staff to study the possibility of paying claims for damages caused by water main breaks, in situations where the city would not be legally obligated to pay for such damages. Council's interest in making these payments was the result of an incident on February 15, 2016, which resulted in damage to several homes in North Boulder. A second incident occurred on March 25, 2016 in South Boulder. Council considered a proposed ordinance at the May 3, 2016 council meeting. Council directed staff to remove the proposed fee from the ordinance, to expand the scope beyond single family homes, to not limit compensation to damage to basements and to include language clarifying that any payment would be supplemental to any insurance payment. Council further directed that staff submit the proposed ordinance as an emergency measure. The ordinance was scheduled for the council consent calendar at the May 17, 2016 council meeting. To respond to a request to have a second public hearing, the Council Agenda Committee rescheduled the continued second reading for the July 19, 2016 council meeting. In the interim, staff has been working to resolve the claims in compliance with council's direction for amendments to

the ordinance. Staff, with the support of CCMSI, has reviewed the claims and determined appropriate settlement amounts.

The city received ten claims arising out of this event. One claim sought compensation for damage to landscaping, which would not be covered by the proposed ordinance and therefore will be denied. The proposed settlement amounts for six claims would be less than \$10,000 and do not require council approval. These claims are already in the process of being paid. The proposed payment amount for three claims exceeds \$10,000 and therefore staff requests that council approve a motion authorizing the City Attorney to settle those three claims for amounts in excess of \$10,000. Under this proposal, the total payments will not exceed \$75,911.79.

**STAFF RECOMMENDATION**

**SUGGESTED MOTION LANGUAGE**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the city manager to enter into agreements to settle claims filed by Lisa Brusino, Carla Graubard and Simon and Diane Terr by payment from the city in amounts in excess of \$10,000.

**COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic: Not applicable.
- Environmental: Not applicable.
- Social: The resolution of disputes is generally of social benefit and the resolution of this dispute will free up city attorney time to work on other projects.

**OTHER IMPACTS**

- Fiscal-Budgetary: Payment for the proposed settlement will be made from the city's Water Utility Fund.
- Staff Time: No additional staff time will be necessary for these settlements.

**BOARD AND COMMISSION FEEDBACK**

None.

**PUBLIC FEEDBACK**

None.

**BACKGROUND**

On February 15, 2016, a water main in Norwood Avenue broke releasing water down a slope affecting homes downhill. Under Colorado law, a city is only liable for damages caused by water main breaks if the damage was the result of the city’s negligence. Accordingly, the city’s representatives informed the homeowners that the city would not be liable for damages. City staff’s research found no evidence of any negligence either before or after the break. The original stories regarding delay in response and in turning off the water were the product of miscommunication. In fact, the standby water operator arrived within 5 minutes of the fire department and shut off the water within 20 minutes. This is well within industry standard for response. There was no prior indication that this particular water main would fail and no history of prior leaks. From a legal standpoint the city has no liability.

Nevertheless, Council directed staff to present a plan for payment of claims. Staff proposed creating a funding source and limiting payments to things normally found in basements. At the May 3, 2016 council meeting, council instructed staff to amend the proposed ordinance to include payments for damages to ground level living spaces other than basements and to pay for basic remediation. The following is a list of the categories of losses that council directed be compensated:

- Basic remediation costs.
- Repair or replacement of common flooring, drywall, furnaces, boilers and water heaters.
- No payment for extraordinary finishes, including but not limited to appliances, cabinetry, bathrooms or upgraded tile flooring or carpeting.
- No payment for damage to furniture or other possessions.

Staff has examined the claims, sought additional documentation and established settlement amounts. The following chart shows the original claim amounts and the settlement amounts.

<b>Claimant</b>	<b>Claimed Damages</b>	<b>Comments</b>	<b>Probable or Confirmed Damages Covered by Ordinance</b>
Emily Baumbach 1551 Norwood Avenue	\$4,477.94 + personal property	We are awaiting supporting documentation	\$2,500
Lisa Brusino 1620 Oak Avenue	\$20,067	Recommend settlement	\$15,267.42

<b>Claimant</b>	<b>Claimed Damages</b>	<b>Comments</b>	<b>Probable or Confirmed Damages Covered by Ordinance</b>
Karen & Malcolm Daly 1545 Norwood Avenue	\$620	Denial recommended – only damages were to landscaping	\$0
Thomas Debus & Christine Vanston 1660 Oak Avenue	\$5,600	Recommend settlement	\$4,016.54
Carla Graubard 1555 Norwood Avenue	\$37,744.44	We are awaiting clarification	\$28,000
Meredith & Drew Kurry 1548 Oak Avenue	\$10,000	Recommend settlement	\$3,837.53
Stanley Peterson 1629 Norwood Avenue	\$2,279.68	We are awaiting supporting documentation	\$2,000
Dan Spiegler 1535 Norwood Avenue	\$6,402.08	Recommend settlement	\$5,023.83
Cristina Stoica 1640 Oak Avenue	\$95,000	Insurance paid for all damages but for \$3,000 deductible. Recommend reimbursing \$3,000 deductible	\$3,000
Simon & Diane Terr 1680 Oak Avenue	\$15,979.83	Recommend settlement	\$12,265.47
	\$198,170.97	TOTAL	\$75,911

Staff has not settled on the exact amount of the settlement for three of the claims, including one in excess of \$10,000. Staff intends to have exact proposed amounts in time for the presentation at the May 31, 2016 council meeting. Staff is also working on resolving the claims from the March 25, 2015 water main break on Hartford Drive.

## **OPTIONS**

Council has the option of approving or rejecting the proposed settlements.