C I T Y O F B O U L D E R
PLANNING BOARD AGENDA ITEM

MEETING DATE: April 28, 2016

AGENDA TITLE:
Public hearing and consideration of a request to annex two properties of a total of 22-acres at 5399 Kewanee Drive and 5697 South Boulder Road with an initial zoning of Residential Low -2 (RL-2) zoning (LUR2015-00093).

Applicant/Property Owner: Michael Boyers

REQUESTING DEPARTMENT:
Planning, Housing & Sustainability
David Driskell, Executive Director
Susan Richstone, Deputy Director
Charles Ferro, Development Review Manager
Karl Guiler, Senior Planner /Code Amendment Specialist
Jeff Yegian, Housing Planning and Policy Manager
Michelle Allen, Housing Planner

Public Works
Maureen Rait, Executive Director
Edward Stafford, Public Works Development Review Manager

OBJECTIVES:
1. Hear staff and applicant presentations
2. Hold public hearing
3. Planning Board discussion
4. Planning Board recommendations to City Council on the proposed Annexation, and Initial Zoning.

SUMMARY:

Proposal:	Annexation and Initial Zoning of an approximately 22 acre site.
Project Name:	Boulder Creek Commons
Location:	5399 Kewanee Drive & 5697 South Boulder Road
Size of Tract:	22 acres
City Zoning:	To be determined (RL-2, Residential Low – 2 proposed)

Comprehensive Plan: Low Density Residential and Environmental Protection

KEY ISSUES

1. **Does the Planning Board support the proposed annexation and find that the proposed community benefits appropriately meet BVCP Policy 1.24, Annexation?**

2. **Does Planning Board support the proposed initial zoning of RL-2 (Residential Low – 2)?**

PROJECT DESCRIPTION:

The applicant is requesting annexation of roughly 22 acres into the City of Boulder with RL-2, Residential Low - 2 zoning. A request for annexation with a companion Site Review was presented to the Planning Board in 2013. The current proposal does not include a Site Review application or associated site development plan. The previous application was recommended for denial by the board in 2013 and was later withdrawn before City Council review in 2013.

While there is no site development plan, the applicant provided a written statement of intent to provide for the same community benefits that were proposed in 2013 including a total of 121 dwelling units, of which 50 would be senior congregate care units with eight to be deed-restricted, permanently affordable units. Staff has been working with the applicant on a new draft annexation agreement that contains additional community benefits based on recent discussions with Planning Board and City Council on community housing needs. The draft annexation agreement is found in **Attachment A.**

At the time of drafting the staff memorandum, the city and the applicant have not come to agreement on the draft. The applicant has verbally agreed to all the provisions (discussed below) with the exception of a requirement that the entire development be net zero energy. The applicant has requested that the agreement specify 100 percent net zero "or its functional equivalent." Staff and the applicant are discussing what these equivalents may be and will inform the board at the hearing and any updates to the agreement.

If approved, the project would require a mix of housing types, attached and detached, and would include 50 percent permanently affordable housing with at least 30 percent as middle income units. Restrictions on market rate house sizes would also apply. Depending on the ultimate site plan layout and meeting required open space provisions, the plan could accommodate from roughly 115 to 120 dwelling units on the site. Further, wetlands and open space on the east parcel would be protected from development through the annexation agreement.

RECENT BACKGROUND:

The potential annexation and development of the site has been under discussion for a number of years. There have been several Concept Plan applications and one Site Review as well as other staff, consultant and neighborhood reviews of detailed engineering and environmental studies pertinent to the site to demonstrate whether or not the site is suitable for development.

The most recent applications from 2013, analyses and studies relevant to the Hogan-Pancost property can be found at the following web links (**Attachment B** contains summaries of prior Planning Board reviews and motions):

- Environmental and Engineering Assessment and Feasibility Study on the Hogan-Pancost Property (Case #LUR2010-00036, reviewed by Planning Board on Jan. 6, 2011);

- Concept Plan review for 50 congregate care units permanently affordable to very low and low income seniors, six duplex units and two single-family units permanently affordable to middle income households, and 63 market rate single-family units for a total of 121 dwelling units on the roughly 22 acre site; (Case # LUR2011-00069, reviewed by Planning Board on Jan. 19, 2012).

- Study Session in advance of Annexation and Site Review public hearing; reviewed by Planning Board on April 18, 2013.

- Public Hearing of Annexation and Site Review applications described as follows:

  ➔ Annexation and Initial Zoning, LUR2006-00099: Application to annex the approximately 22-acre properties at 5399 Kewanee Drive and 5697 South Boulder Road with an initial zoning of Residential Low -2 (RL-2) zoning; and

  ➔ Site Review and Preliminary Plat, LUR2012-00048: Application to subdivide and develop the site with 50 permanently affordable congregate care rental units, six permanently affordable duplex ownership units, two permanently affordable single-family ownership units, and 63 market rate single-family units for a total of 121 dwelling units. (Case #LUR2006-00099 and #LUR2012-00048, were reviewed by Planning Board on April 24 and 25, 2013.

Planning Board unanimously recommended denial of the previous Annexation and Initial Zoning and Site Review applications based on concerns that the proposal would not meet BVCP policies (see **Attachment B**). City Council considerations of the applications were scheduled for September and October 2013. However, due to the occurrence of the Sept. 11th flood of that year coupled with the board recommendation for denial, the applicant opted to withdraw both applications prior to the City Council public hearing.

In October 2015, the applicant submitted the subject annexation application. As a new application, Planning Board review and action is required before consideration by City Council. Although not explicitly required, the applicant did not submit a new Site Review application.

In 2015, requests to change the Planning Area designation on the site were also submitted by the Southeast Boulder Neighborhood Association to change the site from Area II (areas anticipated for annexation) to Area III- Rural Preservation (areas to remain in open space) as part of the Boulder Valley Comprehensive Plan update (see **Attachment E**). The applicant submitted a rebuttal requesting that the Planning Area not be changed (**Attachment F**).

In January 2016, the Boulder County Planning Commission recommended against further study of the proposed planning area change. Following a recommendation of the Boulder City Planning Board that the county reconsiders this decision, the Boulder City Council opted to not move forward with further study of the planning area change.

The subject annexation application has been reviewed and processed independent of the planning area change requests pursuant to the city's normal land use review process.

ANALYSIS:
Planning Board is considering the following as part of the annexation application:

- A recommendation on the application for annexation, and
- A recommendation on the requested initial zoning for the site, if annexed.

The recommendation of Planning Board will then be forwarded to the City Council for consideration. The factors that inform this recommendation are based on whether the proposed annexation is consistent with State Statutes, city annexation and other BVCP policies, and whether the proposed zoning is consistent with the BVCP Land Use Map.

While annexation does not require submission of a Site Review application, the city has traditionally reviewed Site Review applications simultaneous to annexations of larger parcels of land with significant development potential. Site Review applications are commonly reviewed with annexations so the potential development potential of a site is understood. In the absence of Site Review, staff has worked on drafting a new annexation agreement as part of the process, which is found in **Attachment A** and discussed below. **Attachment C** includes the proposed annexation map.

Compliance with Colorado Revised Statues
Staff has reviewed the annexation petition for compliance with the state annexation statues (Section 31-12-101, C.R.S.) and finds that the application is consistent with those sections, as affirmed by the criteria below:

- Landowners of more than 50% of the area have petitioned to annex;
- The petition was filed with the City Clerk;
- There is a community interest between the property proposed for annexation and the city of Boulder;
- The subject property does not include any area included in another annexation proceeding involving a city other than the city of Boulder;
- The annexation would not remove the property from one school district and add it to another; and
- The property has, at least, one-sixth contiguity with the perimeter of the city of Boulder.

1. Does the Planning Board support the proposed annexation and find that the proposed community benefits appropriately meet BVCP Policy 1.24, Annexation?

The properties are currently part of Boulder County within Planning Area II, which are properties anticipated for annexation to the city. In order to develop the site as proposed, annexation to the City of Boulder is required. As part of the Annexation and Initial Zoning process, the appropriate city zoning must be determined and any zoning district and resultant proposal must be found consistent with goals and policies of the BVCP. A subsequent Site Review would, therefore, have to be designed to comply with the above conditions as well as being subject to the Site Review criteria of Section 9-2-14(h), B.R.C. 1981. Further, updates to all of the previous environmental and engineering studies would be required at the Site Review stage.

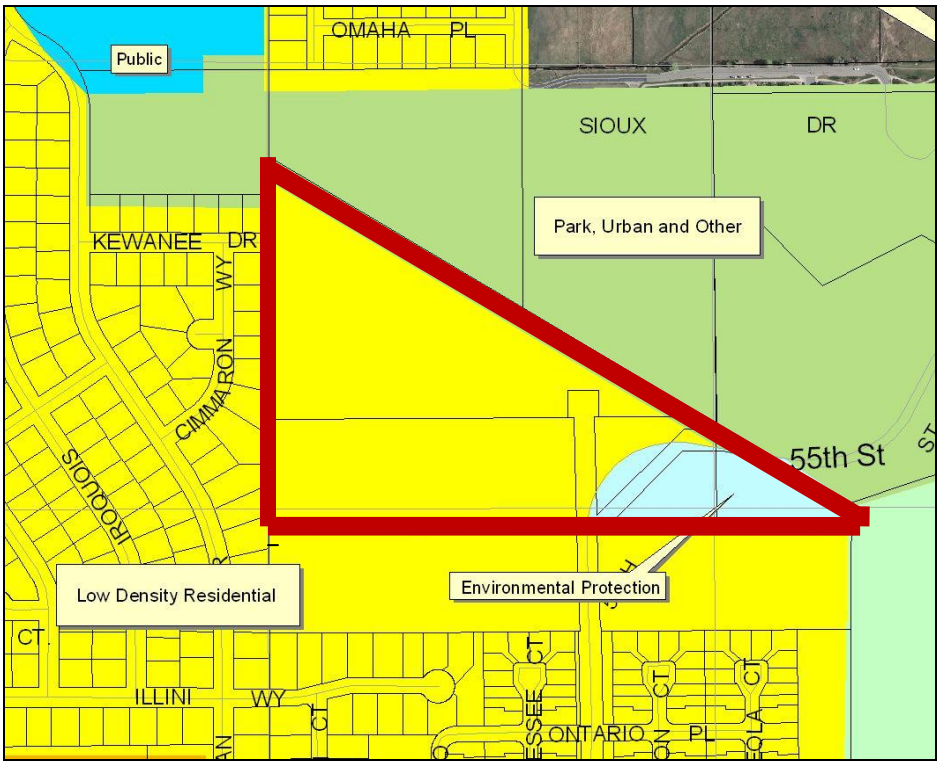

Figure 1- BVCP land use designations on and around the site.

As Figure 1 shows, the BVCP designates the site as Low Density Residential on the parcel west of 55th Street and Environmental Protection on the parcel east of 55th Street. Low Density Residential land use permits two to six dwelling units per acre. The eastern parcel will be protected from development through the annexation agreement. This conforms to the Environmental Protection land use designation. This is also consistent with BVCP Policies 2.04, Open Space Preservation and 3.06, Wetland and Riparian Protection. Except for the south boundary of the site, the entire site is contiguous to the boundaries of the city.

For properties to be annexed into the city, community benefit is required by BVCP Policy 1.18, Growth Requirements and BVCP Policy 1.24, Annexation. BVCP Policy 1.18, Growth Requirements states: "*the overall effect of urban growth must add significant value to the community, improving quality of life. The city will require development and redevelopment as a whole to provide significant*

community benefits and to maintain or improve environmental quality as a precondition for further housing and community growth."

BVCP Policy 1.24, Annexation, states, "*In order to reduce the negative impacts of new development in the Boulder Valley, the city will annex Area II land with significant development or redevelopment potential only if the annexation provides a special opportunity or benefit to the city. For annexation considerations, emphasis will be given to the benefits achieved from the creation of permanently affordable housing. Provision of the following may also be considered a special opportunity or benefit: receiving sites for transferable development rights (TDRs), reduction of future employment projections, land and/or facilities for public purposes over and above that required by the city's land use regulations, environmental preservation, or other amenities determined by the city to be a special opportunity or benefit. Parcels that are proposed for annexation that are already developed and which are seeking no greater density or building size would not be required to assume and provide that same level of community benefit as vacant parcels unless and until such time as an application for greater development is submitted*."

Staff has prepared a draft annexation agreement that includes a detailed package of conditions meant to fulfill the community benefit requirements of annexation discussed above. Consistent with BVCP Policy 1.24, Annexation, the focus has been on provision of permanently affordable housing and environmental preservation, but also includes a requirement that the development be net zero energy.

More specifically, the conditions found in the proposed annexation agreement are designed to address a wide range of identified community benefits ranging from high percentage of permanently affordable units to innovation in energy efficiency to environmental preservation. The new annexation conditions were also informed by Planning Board comments made in 2013 relative to creating a more energy efficient site plan that took advantage of solar and other renewable opportunities.

In summary, the draft agreement, found in **Attachment A,** requires at least 50 percent of the units as permanently affordable, with special provisions to require 30 percent of the units to be affordable to middle income. Further, restrictions would apply to the market rate units on size and unit type to address the city's housing needs and ensure more compatibility with the surrounding neighborhoods. To mitigate for environmental concerns, wetland areas would be protected and no basements or other subterranean spaces would be permitted. Lastly, as the city is moving towards more rigorous energy efficiency standards citywide, staff has required that the entire development be developed as a net zero development. The proposed terms are outlined in more detail below:

Proposed annexation conditions:

- *Pay Plant Investment Fees for existing development*
- *Conveyance of Dry Creek No. 2 Ditch shares*
- *Preserve area east of 55th Street and convey to city upon request. Area may be counted as land area for purposes of meeting open space and density standards.*
- *Dedicated flood control easements along western edge for flood improvements*

- *Requirement to map wetlands*
- *Net zero energy efficiency for the development*
- *Market unit size restriction, no unit greater than 2,500 sq. ft.*
- *Market unit type restriction, no more than 35% detached single family. At least 65% attached duplex/four-plex/ and townhomes. At least 35% smaller "downsizing" 2 bedroom patio homes.*
- *Affordable housing requirement:*
    a. *50% of all units permanently affordable (PAs)*
    b. *Affordable units tenure rental vs for-sale proportional to market*
    c. *20% of for-sale PAs low/moderate income*
    d. *30% of for-sale PAs middle income*
    e. *All rental PAs consistent with IH rents (60% AMI)*
    f. *Affordable units split between smaller "downsizing" 1&2 bedroom patio homes, and larger 3 & 4 bedroom family friendly with yard.*
    g. *All affordable units attached; duplex, four-plex, & townhome.*
    h. *PAs constructed concurrent with market and integrated throughout.*
- *Reimbursement of $267,758 to Parks and Recreation for 55th St.*
- *Prohibition of subterranean spaces such as basements, crawlspaces and underground parking*
- *Required connection of Kewanee Drive to 55th and associated traffic calming elements*

As stated above, the applicant has verbally agreed to all of the conditions specified above with the exception of the net zero energy component, where further discussions are being undertaken. Staff will update the board as the progress of these discussions.

2. Does Planning Board support the proposed initial zoning of RL-2 (Residential Low – 2)?

The site is designated for Low Density Residential land use in the BVCP, which permits two to six dwelling units per acre. The only applicable zoning districts in this density range are RL-1 (Residential Low- 1) and RL-2 (Residential Low – 2), which are found in the vicinity of the project as represented in Figure 2 below:

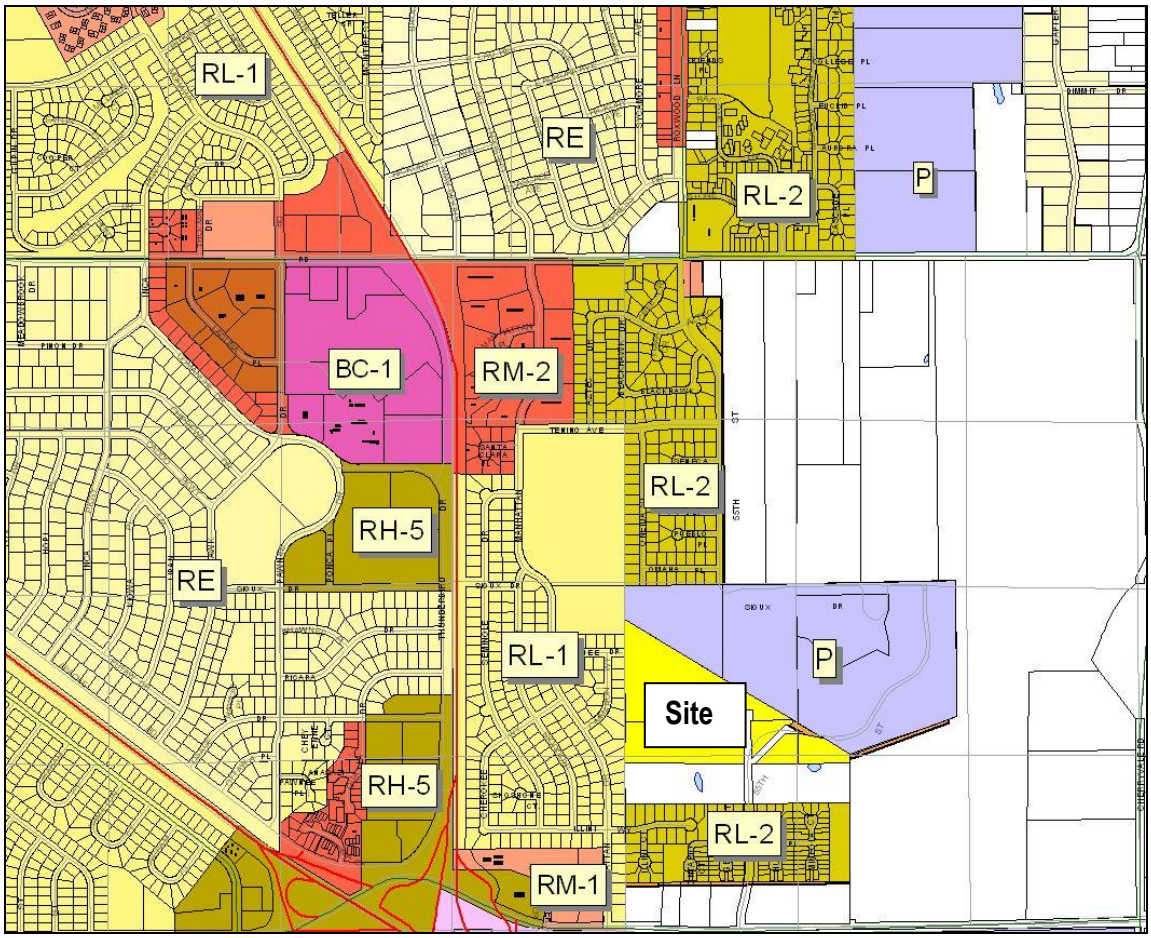

Figure 2- City zoning around the site.

The primary difference between RL-1 and RL-2 is that RL-1 has a minimum lot size of 7,000 square feet and RL-2 has a minimum open space of 6,000 square feet per unit, both of which determine total density. It is not uncommon to see lots under 7,000 square feet or lots with less than 6,000 square feet of open space as these amounts can be modified in the Site Review process so long as the overall density does not exceed the total permitted in the gross land area and/or open space requirements. Many of the developments in the area were approved under Planned Unit Developments (PUDs) or the more contemporary Site Review process to permit these conditions.

RL-1 neighborhoods typically pre-date 1970 and include generally larger lot sizes to match the 7,000 square feet required, whereas RL-2 zoned areas typically have occurred after 1970 when

open space determined density. It is more common in RL-2 areas to see PUD or Site Review approvals for lots that do not have 6,000 square feet individually, but rather include aggregated open space areas. Setback modifications are also not uncommon in such areas as opposed to RL-1 properties that were developed by-right without PUDs or Site Review. Figure 2 above also shows that RL-2 areas typically occur along the eastern boundary of the city and are proximate to open space areas.

The subject property is along the eastern boundary of the city, adjacent to city open space and would be designed in the two to six dwelling unit per acre range. The project also includes modifications to open space standards to permit open space in common areas as opposed to on individual lots. This condition is similar to that of Greenbelt Meadows to the south of the site, which is zoned RL-2. Based on this analysis, staff finds that RL-2 is the most appropriate zoning district for the site.

Conclusion

Staff finds that the proposed annexation of the property with low density residential land use (i.e., RL-2 zoning) would be consistent with BVCP policies and the BVCP Land Use Map and that the conditions found in **Attachment A** would provide a strong package of community benefits as required by BVCP policy 1.24, Annexation. The community benefits would be in the form of 50 percent of the units as permanently affordable, a mix of housing types, limitations on market rate housing sizes, environmental protection through easements and outlots for wetland areas and a development that would be required to be 100 percent net zero. For these reasons, staff recommends approval of the annexation request. If approved, a Site Review application (potentially preceded by a new Concept Plan) would be required where the previous environmental and engineering studies would require updates and would be reviewed in detail.

OPTIONS FOR THE PLANNNING BOARD

Irrespective of the proposed conditions and whether the proposal advances to City Council or not, it would be helpful to the applicant and city staff to understand what the board may see as appropriate for the property if the board finds that it should continue to be designated by the BVCP as a property for eventual development.

As the site has a complex history and many environmental and design considerations, staff has prepared a detailed options list below that could inform any board input on the site. If the board felt the site could be annexed under different considerations in the future, staff would request that the board provide specific input as guidance for staff and the applicant.

The following options have been identified:

Options	Anticipated Outcomes
Annex the site with RL-2 zoning (requested)	• Would be consistent with the current underlying BVCP Land Use Designation on the site and surrounding developments that are adjacent to city open space. • Would create the entitlement for the property to be developed with a density of two to six dwelling units up to roughly 130 dwelling units. • Would have the highest number of new affordable units. • Zoning would permit a diversity of housing types, attached and detached. • Would be consistent with BVCP policies to add units to offset the jobs-housing

	imbalance and would permit a diversity of housing types consistent with the BVCP. • The specific project remains unknown as there is no site development plan.
Annex the site with RL-1 zoning	• Would be consistent with the current underlying BVCP Land Use Designation on the site. • Would allow the property to be developed with a density of two to six dwelling units or up to 120 dwelling units. Density is slightly lower as it is based on minimum lot size of 7,000 square feet and not open space like in RL-2. Lot size could be modified through Site Review to yield a higher number of units so long as it is no more than six dwelling units per acre. • Would have a high number of new affordable units. • Diversity of housing types would not be possible as RL-1 does not permit attached housing. • Would be consistent with BVCP policies to add units to offset the jobs-housing imbalance.
Annex the site with RE zoning	• Would allow the property to be developed with a density at no more than two dwelling units or roughly 60 dwelling units. • Would have a substantially lower amount of affordable units. • Would be consistent with BVCP policies to add units to offset the jobs-housing imbalance • Diversity of housing types would not be possible as RE does not permit attached housing. • Larger lots and potentially larger, more expensive homes would be possible, unless restricted through the annexation. • May have a lesser environmental and traffic impact by virtue of the development being less dense.
Annex the site with RR zoning	• Would create the entitlement for the property to be development with a density at less than two dwelling units or roughly 30 dwelling units. • Would have a substantially lower amount of affordable units. • Would be consistent with BVCP policies to add units to offset the jobs-housing imbalance • Diversity of housing types would not be possible as RR does not permit attached housing. • Larger lots and potentially larger, more expensive homes would be possible, unless restricted through the annexation. • May have a lesser environmental and traffic impact by virtue of the development being less dense. • A change to the BVCP Very Low Density Residential land use designation would be appropriate to make the BVCP land use designation consistent with the RR zoning, which is less than two dwelling units per acre.
Deny the annexation	• The annexation would be denied and future attempts to develop or annex the site would require new annexation and/or Site Review applications. • Like this request, reviews and analysis would be based on the site being designated within Planning Area II (areas expected to be annexed to the city) and the BVCP Low Density Residential land use designation, which permits two to six dwelling units per acre.

STAFF RECOMMENDATION

Staff recommends that the Planning Board recommend approval of the annexation of the properties with RL-2 (Residential Low – 2) zoning and pursuant to the conditions outlined in the draft annexation agreement found in **Attachment A**.

PUBLIC COMMENT AND PROCESS

Public notice was given in the form of written notification mailed to all property owners within 2000 feet of the subject site and a sign was posted on the property for at least 10 days. All notice requirements of Section 9-4-10(g), B.R.C. 1981 have been met. An additional courtesy notice of the Planning Board public hearing was also sent to neighbors. Staff has been in communication with the neighborhood regarding the application and is looking to have a meeting in advance of any City Council consideration of the annexation. Public comments received on the annexation request received during the review process are found in **Attachment D**.

Approved By:

David Driskell, Executive Director
Department of Community Planning and Sustainability

ATTACHMENTS:

A: Draft Annexation Agreement
B: Background of project and site
C: Annexation Map
D: Public comments
E: Request for Revision: Hogan-Pancost Area III Rural Preservation Area Expansion submitted by Southeast Boulder Neighborhoods Association
F: Applicant's Formal Rebuttal Comments including responses from consultants

For Administrative Use Only
Owner: Boulder Creek Commons, LLC
Case No. LUR2015-00093

ANNEXATION AGREEMENT

This Agreement, made this _____ day of _____, 2016, by and between the City of Boulder, a Colorado home rule city, hereinafter referred to as "City," and Boulder Creek Commons, LLC, a Colorado limited liability company, hereinafter referred to as "Applicant."

RECITALS

A. The Applicant is the owner of the real property generally described as "5399 Kewanee Drive and 5697 South Boulder Road" and more particularly described in Exhibit A, which real property shall hereinafter be referred to as the "Property;" and

B. The Applicant is interested in obtaining approval from the City of a request for the annexation of the Property in order to provide adequate urban services, particularly City water and sewer; and

C. The parties anticipate that annexation with an initial zoning of Residential Low – 2 (RL-2) pursuant to subsection 9-5-2(c)(1), B.R.C. 1981 is consistent with the Boulder Valley Comprehensive Plan; and

D. The City is interested in insuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises and covenants herein set forth, and other good and valuable consideration herein receipted for, the parties agree as follows:

1. Requirements. The Applicant shall be required to do the following:

   a. Prior to first reading of the annexation ordinance before City Council, the Applicant shall:

      i. Provide an updated title commitment current within 30 days.

ii. Pay a Storm Water and Flood Management Utility Plant Investment Fee of $4,434.75, in accordance with Section 11-5-7, B.R.C. 1981, based upon an impervious area of 2,025 square feet.

iii. Dedicate to the City, at no cost to the City, a flood control easement, in a form acceptable to the City Manager, for the western 100 feet of the Property.

iv. Convey to the City, at no cost to the City, all of the shares of the Dry Creek Ditch No. 2 Ditch associated with the Property by quitclaim deed and stock assignment.

2. Zoning. The Property shall be annexed to the City with an initial zoning classification of "Residential Low - 2", and except as set forth herein, shall be subject to all of the rights and restrictions associated with that zoning.

3. Affordable Housing. The parties agree that this Agreement is a voluntary agreement between the City and the Applicant that may limit prices or rents on dwelling units on the Property to insure that they are constructed and maintained as permanently affordable housing. The Applicant agrees that fifty percent (50%) of any dwelling units on the Property shall be permanently affordable and shall meet the requirements provided below. Permanently affordable deed restricting covenants, either interim or final, are required to secure the affordability of dwelling units. The covenant(s) shall be signed and recorded with the Boulder County Clerk and Recorder prior to application for any residential building permit. The City Manager shall have the authority to modify the requirements set forth in this Paragraph 3 provided that the specifically proposed development would provide an affordable housing benefit that is equivalent to the benefit required.

a. Permanently Affordable Rentals. The percentage of affordable rental units shall be proportionate to the percentage of all rental units in the development. Affordable rents will be set to be consistent with the program requirements for rental units under Chapter 9-13, "Inclusionary Housing, "B.R.C. 1981, or as amended. Currently the rental limits are set to be affordable to households earning no more than sixty percent of the area median income. Rental units must meet all of the requirements in the City of Boulder Division of Housing Rental Compliance Manual, as amended.

b. Permanently Affordable For-sale Units. The percentage of affordable for-sale units shall be proportionate to the percentage of all for-sale units in the development. Of the affordable for-sale units forty percent (40%) shall be priced to be affordable to low or moderate income households and sixty percent (60%) of the affordable for-sale units shall be priced to be affordable to middle income households consistent with the following:

i. Permanently Affordable - Low/moderate income. The Applicant agrees to provide forty percent (40%) of any for-sale affordable units with pricing consistent with the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, as amended. Currently the inclusionary low/moderate prices are set to be affordable to households earning no more than the HUD low income limit and qualifying household incomes are set at HUD plus ten percent (HUD + 10%).

ii. Permanently Affordable – Middle Income. The Applicant agrees to provide sixty percent (60%) of any permanently affordable for-sale units to be affordable for middle income households. Middle income prices shall be set to be affordable to households earning the Federal Housing and Urban Development ("HUD") low income limit plus twenty-five percent (HUD +25%) and qualifying household incomes shall be set at HUD plus thirty-five percent (HUD + 35%).

iii. Final Unit Pricing. In addition to the income limits described above, affordable for-sale unit pricing shall be adjusted based on the unit's size and number of bedrooms and bathrooms. Final unit pricing shall be determined when either an interim affordable covenant or a final affordable covenant is executed, whichever is first.

c. Consistency with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981 and related Administrative Regulations. The Applicant agrees that except as specifically modified by this Agreement, implementation of the affordable housing requirements under this Agreement will be consistent with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Inclusionary Housing Administrative Regulations of the City of Boulder.

d. Affordable Unit Characteristics.
All affordable units shall be designed as either (A) downsizing units and (B) family oriented units. For for-sale affordable units, fifty percent each of the low/moderate and the middle income priced units shall be designed as senior oriented downsizing units, and fifty percent each of the low/moderate and the middle income priced units, shall be designed as family oriented units. Any affordable rental units shall be split equally between the two types; downsizing units and family oriented units.

A. Downsizing units shall be provided consistent with the following standards:
   i. Units shall be provided in duplex, tri-plex, four-plex,eight-plex and townhouse form;
   ii. No unit shall have more than two bedrooms;
   iii. Equal number of one and two bedroom units;

iv. Constructed as a single level or split level patio homes;
v. May have a patio but little or no yard to ensure low maintenance;
vi. Include either universal or accessible design features;
vii. The floor area of each unit excluding garages shall be (+/- 5%):

1. One bedroom unit – 800 square feet
2. Two bedroom unit – 1,200 square feet

B. Family oriented units shall be provided consistent with the following standards:
i. Units shall be provided in duplex, tri-plex, four-plex, eight-plex or townhome form;
ii. No unit shall have fewer than two or more than four bedrooms;
iii. Equal number each of two, three and four bedroom units;
iv. Each unit has a yard or private outdoor play space; and
v. The floor area of each unit excluding garages shall be (+/-5%):

1. Two bedroom units– 1,200 square feet
2. Three bedroom unit – 1,600 square feet
3. Four bedroom unit – 2,000 square feet

e. Parking and Garage. The permanently affordable units shall have parking accommodations and garages of similar size and design as the market units.

f. Concurrency. The permanently affordable units must be provided concurrently with the market units such that for each building permit issued for one market rate unit one building permit must have been issued for an affordable unit.

g. Distribution. The permanently affordable units must be distributed throughout the development such that there is no concentration of affordable units in any one area.

h. Site and Floor Plan Approval. Prior to signing the affordable covenant and no later than a building permit submittal for any permanently affordable units, the Applicant shall submit and obtain approval from the City Manager for documentation, including, but not limited to, a site plan showing the location of the affordable units, floor plans and finish specifications, demonstrating that the permanently affordable units meet the requirements of this Agreement and of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and are consistent with the City's Livability Standards for Permanently Affordable Housing. No permanently affordable unit shall be accepted until the location, size, type, fixtures, finishes and building design are accepted by the City Manager.

i. Rounding Rule. If any of the percent calculations in this section results in a fraction .40 or lower, the total number of required permanently affordable units

shall be rounded down to the nearest whole number; if such calculation results in a fractional number .401 or above, the total number of required permanently affordable units shall be rounded up to the nearest whole number.

j. Floor Area. The floor area requirements for permanently affordable units in this Paragraph 3 shall be determined based on the definition of "floor area for attached dwelling units" in Section 9-16-1, "General Definitions," B.R.C. 1981, and shall exclude up to five hundred square feet of floor area in attached garages that are primarily used for personal storage or for the parking of automobiles for the occupants of the dwelling unit.

k. Agreement to Abide by Restrictions. The Applicant agrees to construct, restrict, and sell permanently affordable units as described and required by this Agreement. The Applicant agrees that no dwelling units shall be established unless the requirements of this paragraph have been met. The Applicant further agrees that the City may withhold any approval affecting the Property, including, without limitation, a building permit, administrative review, use review, site review, and subdivision, until the requirements of this paragraph have been satisfied.

4. Market Rate Unit Design. The Applicant agrees that any market rate dwelling units shall be designed to meet the following standards:

a. No more than thirty-five percent (35%) of any market rate units on the Property shall be detached single family dwellings;

b. At least sixty-five percent (65%) of market rate dwelling units shall be attached duplex, four-plex, and townhome units;

c. At least thirty-five percent of market rate units shall meet the requirements for Downsizing units as detailed in section 3 (d) "Affordable Unit Characteristics" of this Agreement; and

d. No market rate unit shall have a floor area that exceeds 2,500 square feet.

5. Laws, Rules, Guidelines and Indexes. Except as provided in this Agreement, the Parties intend to apply the law, rules and guidelines that are effective at the time of development or the issuance of building permits. In the event that any such laws, rules, or guidelines are not in place, the City Manager will create similar standards for the purposes of implementing this Agreement. In the event that any indexes including without limitation the HUD Low Income Limit applicable to the City of Boulder that are used in this Agreement are not in place at the time of development or the issuance of building permits, the City Manager will select or create a similar index for the purpose of implementing the requirements of this Agreement.

6. Reimbursement to Department of Parks and Recreation. Prior to recordation of a final plat or prior to obtaining any building permit for the Property, whichever occurs first, the Applicant shall reimburse the City of Boulder Department of Parks and Recreation for the previous construction of 55th Street across the Property pursuant to the Agreement dated October 20, 1993 between the City and The Estate of Thomas P. Hogan, Deceased, Thomas Grant Hogan, Successor Personal Representative recorded in the Boulder County Clerk and Recorder's Office at Film #1903, Reception #01361390 on November 15, 1993 ("Settlement Agreement"). The parties agree that said reimbursement amount described above shall be $267,758.00.

7. Zero Site Energy Requirements. The Applicant agrees to construct and maintain a net-zero development on the Property, with either each building performing at net zero or as applied to the entirety of the Property, through the use of energy efficiency and on-site energy generation methods, which may include solar and geothermal energy production. Prior to issuance of a building permit, the Applicant shall demonstrate with detailed reports prepared by a licensed energy consultant that the development will be a "net zero" energy development. The development shall be designed and maintained such that the energy actually delivered to the Property in a calendar year will be less than or equal to the energy created on and exported from the Property in that calendar year. The development shall meet all applicable public utility laws and regulations. The Applicant agrees that to meet this standard, the development may need to generate more energy than is permitted to be added to the energy grid under public utility laws; energy created beyond what may be added to the energy grid shall be stored and distributed consistent with all applicable laws and regulations.

8. Areas to be Preserved in Undeveloped State. The Applicant agrees to preserve the eastern portion of the northeastern corner of the part of the Property located west of 55th Street, as depicted on Exhibit B which is a copy of the map attached as Exhibit 3 to the Settlement Agreement, in an undeveloped state except as approved by the City Manager in a landscape or other plan that is submitted for review and approval by the City Manager. The area so to be preserved in an undeveloped state shall be entitled to be counted as land area within the Property for purposes of calculating allowable density and as required open space area under City ordinances existing at the time of development triggering such calculation. Otherwise, this area to be preserved in an undeveloped state shall be governed by City ordinances existing at the time of development.

9. Subterranean Spaces Prohibited. The Applicant agrees that all buildings shall have slab on grade foundations and, with the exception of necessary improvements for such foundations, no subterranean spaces, including, but not limited, to basements, cellars, crawl spaces, and subterranean parking shall be constructed in any structures on the Property. "Basement" shall have the meaning as described in the generally applicably definition for "basement" in Section 9-16-1, "General Definitions," B.R.C. 1981.

10. Traffic Calming and Yield Street Requirement. Prior to issuance of a certificate of occupancy for any new building on the Property, a public street connection between the

existing Kewanee Drive to the west of the Property and 55th Street shall be constructed consistent with the requirements of the City of Boulder Design and Construction Standards. The final approval authority of a site review for a development on the Property may require, as part of the site review approval, that the connection be designed to reduce speeds through the use of speed tables, traffic circles, and other traffic calming design techniques.

11. Wetlands Mapping. In accordance with the requirements of Section 9-3-9(k)(2) B.R.C. 1981, all stream, wetland, water bodies and buffer areas on the Property shall be mapped. This mapping shall include a functional evaluation of the stream, wetland or water body preformed by the city manager or the manager's delegate. Prior to submittal of a Site Review application, the Applicant must submit a mapping request and pay the Function Evaluation – Final Application fee prescribed in Section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C 1981. Prior to a Site Review approval for the Property, the mapping must be approved by the city manager and any outstanding fees associated with the mapping must be paid.

12. Wetlands. All high functioning wetland areas on the Property shall be surrounded by a buffer area fifty feet in width; the entire fifty feet wide buffer area shall be considered as and meet the standards applicable to an inner buffer area or zone, as such terms are used in Section 9-3-9, "Stream, Wetlands and Water Body Protection," B.R.C. 1981.

13. Conveyance of Land East of 55th St. The Applicant shall preserve in an undeveloped state, except as approved by the City Manager, in the City Manger's sole discretion, and for future conveyance to the City the entire area of the Property located east of 55th Street. The Applicant shall convey said area of land, at no cost to the City, within thirty (30) days of request by the City Manager. The conveyance shall be in a form and with terms as requested and approved by the City Manager, which may include a warranty deed, conservation easement, or other form of conveyance.

14. Density Calculation. The area of the Property located east of 55th Street, required to be preserved in an undeveloped state pursuant to this Agreement, shall be entitled to be counted as land area within the Property for purposes of calculating allowable density and as required open space area under City ordinances existing at the time of development triggering such calculation. Otherwise, this area shall be governed by City ordinances existing at the time of development.

15. Fencing. The Applicant agrees to build a fence, with no gate, along the eastern frontage of 55th Street to prevent access to the area of the Property located east of 55th Street. The location and design of the fence must be approved by the City Manager and must be completed prior to issuance of any building permit for any building on the Property.

16. Conveyance of Drainage. The Applicant shall convey drainage from the Property in a historic manner that does not materially and adversely affect abutting property owners.

17. Waiver of Vested Rights. The Applicant waives any vested property rights that may have arisen under Boulder County jurisdiction. This Agreement shall replace any such rights that may have arisen under Boulder County jurisdiction. The Applicant acknowledges that nothing contained herein may be construed as a waiver of the City's police powers or the power to zone and regulate land uses for the benefit of the general public.

18. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action under or fails to pay any fee specified under the Covenants of this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or fails to perform any affirmative obligation hereunder, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Applicant and collect its costs in the manner herein provided. The Applicant agrees to waive any rights it may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing the collection of this specific debt, or acknowledges that the adopting of the annexation ordinance is such enabling ordinance.

19. Additional Documents. The Applicant agrees to execute and deliver any additional documents and perform any additional acts necessary or appropriate to effectuate and perform the provisions of this Agreement when requested by the City.

20. Binding Agreement. The Agreement and covenants as set forth herein shall run with the land and shall be binding upon the Applicant, his/her heirs, successors, representatives and assigns, and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement creates an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus twenty years and three hundred and sixty-four days.

21. Null and Void. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed to the City.

22. Dedications. The Applicant acknowledges that the dedications and public improvements required herein are rationally related and reasonably proportionate to the projected impact of the development of the Property as set forth in this Agreement.

23. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold such documents

until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.

24. Right to Withdraw. The Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and will have no effect.

EXECUTED on the day and year first above written.

DRAFT

Owner:
East Boulder Properties, LLC,
a Colorado limited liability company
its Manager and Member

By: Del Mar Interests, LLC
a Colorado limited liability company, its
Manager

By: _____
Michael T. Boyers, Manager

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Gary Calderon as Manager of Harper Hollow, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

CITY OF BOULDER, COLORADO

By: _____
City Manager

Attest:

_____
City Clerk on behalf of the
Director of Finance and Record

Approved as to form:

_____
City Attorney

Date: _____

EXHIBITS
A: Legal Description
B: Settlement Agreement

EXHIBIT A

PROPERTY DESCRIPTION

Parcel I:
A portion of the Southeast quarter of Section 4, Township 1 South, Range 70 West of the 6th P.M., described as follows:

Beginning at the Southwest corner of the Southeast quarter of the Southeast quarter of Section 4, Township 1 South, Range 70 West of the 6th P.M.;
Thence North 0°35' West, 1592.00 feet to the **True Point of Beginning**, Corner No. 1;
Thence North 88°22' East, 1296.93 feet to Corner No. 2;
Thence North 60°11' West, 1503.50 feet to Corner No. 3;
Thence South 0°35' East, 784.80 feet to the **True Point of Beginning**, County of Boulder, State of Colorado.

Parcel II:
Beginning at the Southwest corner of the Southeast quarter of the Southeast quarter of Section 4, Township 1 South, Range 70 West of the 6th P.M.; Thence North 0°35' West 1259.00 feet to the **True Point of Beginning**, Corner no. 1; Thence North 88°22' East 1728.15 feet to Corner No. 2; Thence North 0°29' East 71.48 feet to Corner No. 3; Thence North 60°11' West 501.20 feet to Corner No. 4; Thence South 88°22' West 1296.93 feet to Corner No. 5; Thence South 0°35' East 333.00 feet to the **Point of Beginning**, County of Boulder, State of Colorado.

COLORADO REGISTERED STEVEN J. SELLARS 27615 PROFESSIONAL LAND SURVEYOR

August 22, 2013
Steven J. Sellars 6500-3.doc
Colorado PLS #27615

Table Mesa Shopping Center 637 South Broadway, Suite C
Boulder, Colorado 80305
phone: 303-499-9737 fax: 303-499-9770
StevenSellars@FlagstaffSurveying.com

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AGREEMENT

THIS AGREEMENT, entered into as of October 20, 1993, by and between **THE CITY OF BOULDER**, a municipal corporation of the State of Colorado ("City") and **THE ESTATE OF THOMAS P. HOGAN, DECEASED**, Thomas Grant Hogan, Successor Personal Representative ("Hogan"),

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W I T N E S S E T H

WHEREAS, City has brought a condemnation action in Case No. 91 CV 357-5 in the District Court for the County of Boulder, State of Colorado, related to certain lands owned by Hogan, as more fully described in Exhibit 1 attached hereto ("the Hogan Property"); and

WHEREAS, the parties have agreed to a settlement in such action in the form of the Consent to Entry of Rule and Order attached hereto as Exhibit 2; and

WHEREAS, as a condition of and in consideration for said settlement, the parties have further agreed to certain terms and restrictions to apply to any land development of the Hogan Property if and when the Property is annexed to City;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and the parties' execution of the Consent to Entry of Rule and Order set forth in Exhibit 2, City and Hogan agree as follows:

1. In consideration of the settlement and payment of $26,554 as damages for the remainder of the Hogan Property on account of diminution in the development potential thereof, as set forth in Exhibit 2, Hogan covenants for itself, its successors and assigns that Hogan shall, by covenant, plat restriction, grant of conservation easement or other means reasonably satisfactory to the City Manager, commit as

Lee Buck

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open area not subject to building or development a minimum of 81,055 square feet. Part of this requirement shall be satisfied from the eastern portion of the northeastern remainder of the Hogan Property, as depicted on the map attached hereto as Exhibit 3 in the approximate location designated by the vertical-lined area, the precise extent of which shall be determined by the City Manager and committed as open area by Hogan at the time of annexation of the Hogan Property. (Note: The legal description of the property annexed may vary slightly from the description of the Hogan Property in Exhibit 1). The balance of the minimum required open area required herein may be in such other location as is designated by Hogan, its successors or assigns, on the Hogan Property as annexed, including any designated wetland area. All such open area shall be entitled to be counted as land area within the Hogan Property for purposes of calculating allowable density and as required open area under then existing City ordinances and shall otherwise be governed by then existing City ordinances related to open area. Such balance of open area shall be designated by Hogan or its successors or assigns prior to final approval by the City of any subdivision, Planned Unit Development or other form of development of the Hogan Property.

2. At the time of submission of a development plan for the Hogan Property, City will give due consideration to any proposed transfer of the wetlands on the western portion of the Hogan Property to make it contiguous with the designated wetlands in the southeast portion of the Property. This does not in any way affect or relieve Hogan of the requirement to fully comply with Chapter 9-12 B.R.C. 1981,

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"Wetlands Protection" or such other or additional wetlands or other land review requirements as then exist related to submission and review of a land development plan.

3. In any pending or future request for annexation or development of the Hogan Property, any requirement of repayment for City's cost to acquire and construct 55th Street on the Hogan Property shall not include the $26,584 sum agreed upon in Exhibit 2 and paid as severance damages.

4. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns and shall run with the land described in Exhibit 1.

5. This Agreement expresses the entire understanding of the parties hereto related to the dedication of open area in consideration of the settlement of the claim for severance damages relating to Civil Action No. 91 CV 357-5, and incorporates all prior dealings and covenants related thereto and shall not be amended or supplemented except in writing signed by City and Hogan, its successors or assigns.

Executed the day and year first above written.

CITY OF BOULDER
a municipal corporation

By _____

THE ESTATE OF THOMAS P. HOGAN, DECEASED

By _____
Thomas Grant Hogan,
Successor Personal Representative

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EXHIBIT 1

Covering the Land in the State of Colorado, County of Boulder, described as:

A tract of land located within the E1/2 of the SE1/4 of Section 4, Township 1 South, Range 70 West of the 6th P.M., and within the W1/2 of the SW1/4 of Section 3, Township 1 South, Range 70 West of the 6th P.M. described as follows:
BEGINNING at the Southwest Corner of the SE1/4 of Section 4, Township 1 South, Range 70 West, of the 6th P.M.; thence N0°35'W 1269.00 feet to the TRUE POINT OF BEGINNING, Corner No. 1; thence N88°22'E 1728.15 feet to Corner No. 2; thence N0°20'E 71.48 feet to Corner No. 3; thence N80°11'W 501.20 feet to Corner No. 4; thence S88°22'W 1296.93 feet to Corner No. 5; thence S0°35'E 333.00 feet to the POINT OF BEGINNING.

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EXHIBIT 2

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

CASE NO. 91 CV 357-5

STIPULATION AND CONSENT TO ENTRY OF RULE AND ORDER

CITY OF BOULDER, a municipal corporation of the State of Colorado,

Petitioner,

v.

THE ESTATE OF THOMAS P. HOGAN, deceased, Thomas Grant Hogan, Successor Personal Representative; JAMES CONSTRUCTION COMPANY, a Colorado corporation; and GEORGE FORSYTH, Treasurer of the County of Boulder, State of Colorado,

Respondents.

The undersigned Respondent, The Estate of Thomas P. Hogan, deceased, Thomas Grant Hogan, Successor Personal Representative, hereby states that it is the sole owner of record of the property that is the subject matter of this action, more fully described in Exhibit A attached to the Petition in Condemnation filed herein and attached hereto.

Respondent states that it has agreed with Petitioner herein that $95,000 shall be the total compensation to be paid for the taking of said property, all appurtenances thereto, and damages, costs, fees and interest to which the Respondents are entitled, of which the parties stipulate $26,584 is allocated to damages to the remainder, and it consents to the entry of a Rule and Order in the form attached hereto as Exhibit B; provided that the Court shall order Petitioner to deposit the additional sum of $10,000 into the Registry of the Court, which sum, together with the $85,000 previously deposited for the benefit of the Respondents, equals the amount of the full settlement of all claims against Petitioner for the condemnation of said property, all appurtenances thereto, and all interest therein, including damages, and for any and all other costs of said party, including, but not limited to, appraisal and other expert witness fees, including all reports, discovery costs and expenses, trial preparation time, reimbursable costs and any and all interest, before or after entry of judgment, to which the Respondent may be entitled, if any. Upon entry of the Rule and Order, Respondent shall be entitled to withdraw the total sum deposited in this action, except for such portion which has previously been withdrawn.

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The undersigned Respondent Owner warrants that it has not placed or caused to be placed, and will not place or cause to be placed, any claims, liens, encumbrances, interest or judgments of any kind or nature whatsoever against said property prior to the date of entry of said Rule and Order, other than those identified in the Petition in Condemnation.

The parties agree that upon the deposit of the additional sums by Petitioner, all sums on deposit, together with interest thereon, may be immediately disbursed to the Respondent, The Estate of Thomas P. Hogan, or its attorneys, and James Construction Company and the Treasurer, Boulder County, disclaim and relinquish any claim thereto and to any other damages or compensation in this action and hereby approve this Stipulation and Consent.

DATED this ____ day of _____, 1993.

PETITIONER:

CITY OF BOULDER

By_____

RESPONDENT OWNER:

THE ESTATE OF THOMAS P. HOGAN, DECEASED

By_____
Thomas Grant Hogan,
Successor Personal Representative

OTHER RESPONDENTS:

JAMES CONSTRUCTION COMPANY,
a Colorado corporation

By_____

GEORGE FORSYTH, Treasurer
County of Boulder, State of Colorado

By_____

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APPROVED AS TO FORM:

OPPERMAN & ASSOCIATES, P.C.

By_____
Marlin D. Opperman, #3946
Timothy L. Goddard, #17645
Bruce G. Smith, #3646
511 - 16th Street, Suite 410
Denver, CO 80202
(303) 623-1970

SPECIAL COUNSEL FOR THE PETITIONER
CITY OF BOULDER

DIETZE. DAVIS AND PORTER, P.C.

By_____
Peter C. Dietze, #235
Joel C. Davis, #234
P.O. Box 1530
Boulder, CO 80306
(303) 447-1875

ATTORNEYS FOR RESPONDENT
THE ESTATE OF THOMAS P. HOGAN, DECEASED
THOMAS GRANT HOGAN, SUCCESSOR PERSONAL REPRESENTATIVE

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EXHIBIT A

A strip of land located in the SE 1/4 of the SE 1/4 and the NE 1/4 of the SE 1/4 of Section 4 and in the NW 1/4 of the SW 1/4 of Section 3, all in T1S, R70W of the 6th P.M., described as follows:

Commencing at the Southwest Corner of the SE 1/4 of the SE 1/4 of said Section 4, thence N00°10'19"E, 1259.00 feet along the West line of the SE 1/4 of the SE 1/4 of said Section 4 to the Southwest Corner of that tract of land as described in Deed recorded in Book 948 at Page 184 of the records of Boulder County, Colorado; thence N89°07'19"E, 910.16 feet along the South line of that tract of land as described in said Book 948 at Page 184 to a point hereinafter referred to as Point "A" and the TRUE POINT OF BEGINNING;

Thence Northeasterly, 516.69 feet along the arc of a curve concave to the Southeast to a point tangent, said arc having a radius of 300.50 feet, a central angle of 98°30'59" and being subtended by a chord that bears N50°19'41"E, 455.35 feet;

Thence S80°24'50"E, 14.10 feet to a point of curve to the left;

Thence Northeasterly, 23.56 feet along the arc of said curve to a point tangent, said arc having a radius of 15.00 feet, a central angle of 90°00'00" and being subtended by a chord that bears N54°35'10"E, 21.21 feet;

Thence N09°35'10"E, 38.83 feet to the Southwesterly line of that tract of land as described in Deed recorded in Book 866 at Page 192 of the records of Boulder County, Colorado;

Thence S59°25'41"E, 372.32 feet along the Southwesterly line of that tract of land as described in said Book 866 at Page 192;

Thence Northwesterly, 31.88 feet along the arc of a curve concave to the Northeast to a point tangent, said arc having a radius of 340.50 feet, a central angle of 5°21'51" and being subtended by a chord that bears N83°05'45"W, 31.87 feet;

Thence N80°24'50"W, 344.90 feet to a point of curve to the left;

Thence Southwesterly, 374.66 feet along the arc of said curve to the South line of that tract of land as described in said Book 948 at Page 184, said arc having a radius of 219.50 feet, a central angle of 97°47'50" and being subtended by a chord that bears S50°41'15"W, 330.81 feet;

Thence S89°57'19"W, 81.06 feet along the South line of that tract of land as described in said Book 948 at Page 184 to the TRUE POINT OF BEGINNING.

Total Area = 62,185 square feet (1.427 acres), more or less.

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EXCEPT

All that portion of the above described strip of land lying within that strip of land conveyed to the City of Boulder as described in Quit Claim Deed recorded on Film 1580 as Reception No. 00983929 of the records of Boulder County, Colorado, being more particularly described as follows:

Commencing at said Point "A", thence Northeasterly, 84.65 feet along the arc of a curve concave to the Southeast to the West line of that strip of land as described on said Film 1580 as Reception No. 00983929 and the TRUE POINT OF BEGINNING, said arc having a radius of 300.50 feet, a central angle of 16°08'23" and being subtended by a chord that bears N09°08'23"E, 84.37 feet;

Thence Northeasterly, 123.25 feet along the arc of a curve concave to the Southeast to the East line of that strip of land as described on said Film 1580 as Reception No. 00983929, said arc having a radius of 300.50 feet, a central angle of 23°30'02" and being subtended by a chord that bears N28°57'35"E, 122.39 feet

Thence S00°23'46"E, 189.26 feet along the East line of that strip of land as described on said Film 1580 as Reception No. 00983929 to the South line of that tract of land as described in said Book 948 at Page 184.

Thence S89°07'19"W, 60.00 feet along the South line of that tract of land as described in said Book 948 at Page 184 to the West line of that strip of land as described on said Film 1580 as Reception No. 00983929;

Thence N00°23'46"W, 83.09 feet along the West line of that strip of land as described on said Film 1580 as Reception No. 00983929 to the TRUE POINT OF BEGINNING.

Area of Exception = 8,585 square feet (0.199 acres), more or less.

Net area = 53,500 square feet (1.228 acres), more or less.

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DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

CASE NO. 91 CV 357-5

RULE AND ORDER

CITY OF BOULDER, a municipal corporation of the State of Colorado,

Petitioner,

v.

THE ESTATE OF THOMAS P. HOGAN, deceased, Thomas Grant Hogan, Successor Personal Representative; JAMES CONSTRUCTION COMPANY, a Colorado corporation; and GEORGE FORSYTH, Treasurer of the County of Boulder, State of Colorado,

Respondents.

THIS MATTER, came on regularly for consideration of the Stipulation and Consent to Entry of Rule and Order with respect to the acquisition of the property which is the subject matter of this action; and said Consent being duly executed by Respondent Owner, The Estate of Thomas P. Hogan, deceased, Thomas Grant Hogan, Successor Personal Representative; and it appearing to the Court from said Stipulation and Consent and the other pleadings filed herein that said Respondent is the record owner; and that said Respondent has agreed with Petitioner upon the compensation to be paid herein,

THE COURT FINDS that it has full and complete jurisdiction of the subject matter of this action and the parties thereto; that service has been made upon all interested parties as required by law; that Thomas Grant Hogan should be substituted in this action for Charles P. Pancost, Personal Representative of The Estate of Thomas P. Hogan, deceased; that the only party having any interest in the subject property as owner is The Estate of Thomas P. Hogan, deceased, Thomas Grant Hogan, Successor Personal Representative, and it has agreed that the total sum of $95,000 represents the full compensation to be paid for the taking of the property described in Exhibit A attached to the Petition in Condemnation, including all appurtenances thereto, and any and all interest therein, including damages, and for any and all other costs of said party, including, but not limited to, appraisal and other expert witness fees, including all reports, discovery costs and expenses, trial preparation time, reimbursable costs and any and all other interest, before and after entry of judgment, to which the Respondent may be entitled, if any; and therefore it is

EXHIBIT B

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ORDERED, ADJUDGED AND DECREED that the parcel of land described in Exhibit A attached hereto and incorporated herein by reference has been duly and lawfully taken by Petitioner pursuant to the statutes and the constitution of the State of Colorado; and that all interests of the Respondents in said parcel have been acquired by Petitioner; and that title to the property described in Exhibit A attached hereto, together with all appurtenances thereto belonging, free and clear of all liens and encumbrances, is hereby vested in Petitioner; and it is

FURTHER ORDERED that Petitioner shall deposit the sum of $10,000 into the Registry of the Court, which sum, together with the $86,000 previously deposited by Petitioner in this action, represents the full amount of settlement of all claims against Petitioner for the condemnation of said property; and it is

FURTHER ORDERED that upon deposit by Petitioner of the additional $10,000 into the Registry of the Court, the Clerk of the Court shall forthwith disburse all funds on deposit herein, together with all interest accrued thereon, by issuing a check made payable to The Estate of Thomas P. Hogan and delivering said check by mailing it to Dietze and Davis, P.C., 2060 Broadway, Suite 400, Boulder, Colorado 80306, or, alternatively, by delivering it to a representative of Dietze and Davis, P.C. personally; and it is

FURTHER ORDERED that a certified copy of this Rule and Order be recorded and indexed in the office of the Clerk and Recorder of Boulder County, in like manner and with like effect as if it were a deed of conveyance from the Respondent to Petitioner herein.

DONE IN OPEN COURT this ____ day of _____, 1993.

BY THE COURT:

_____

District Court Judge

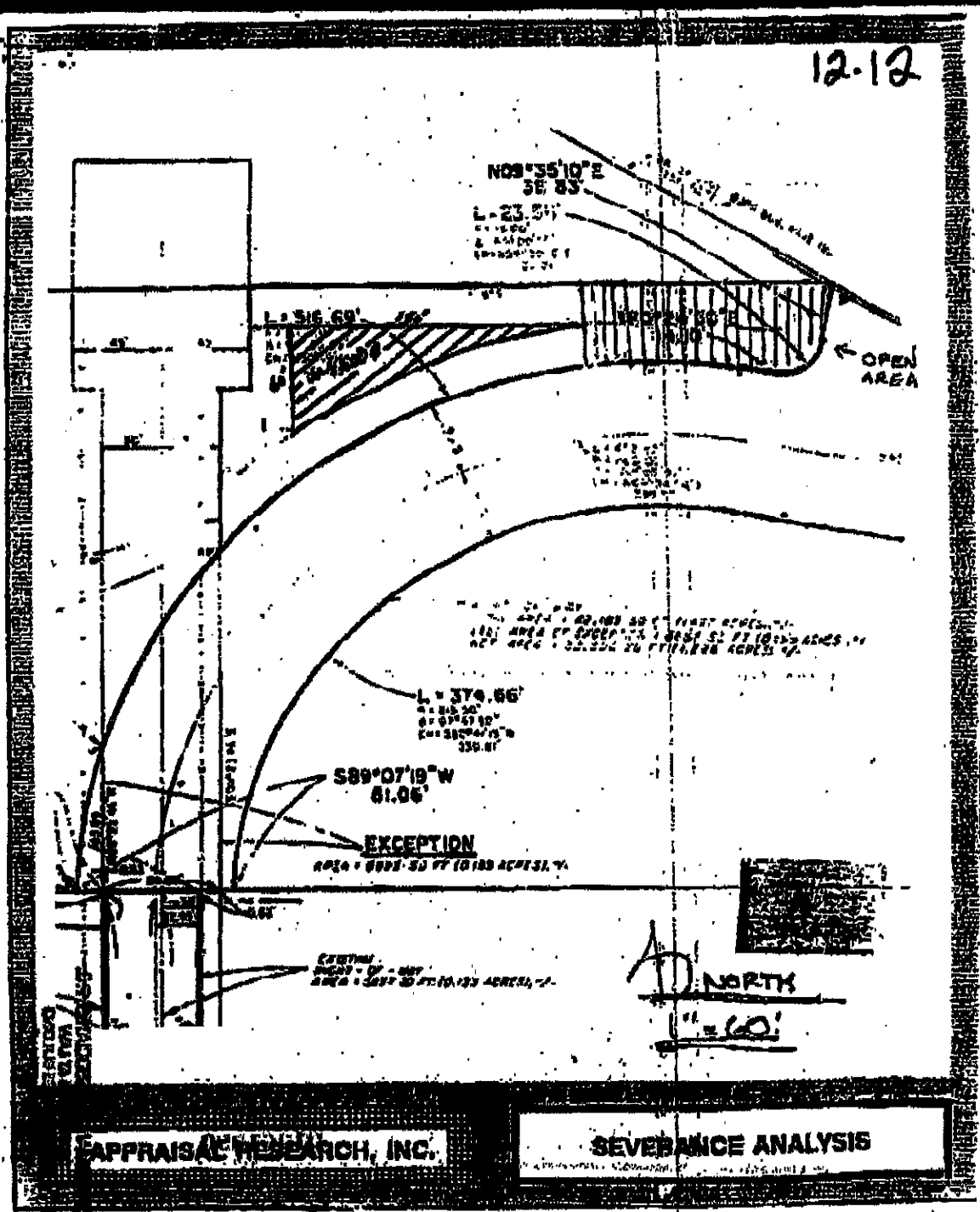
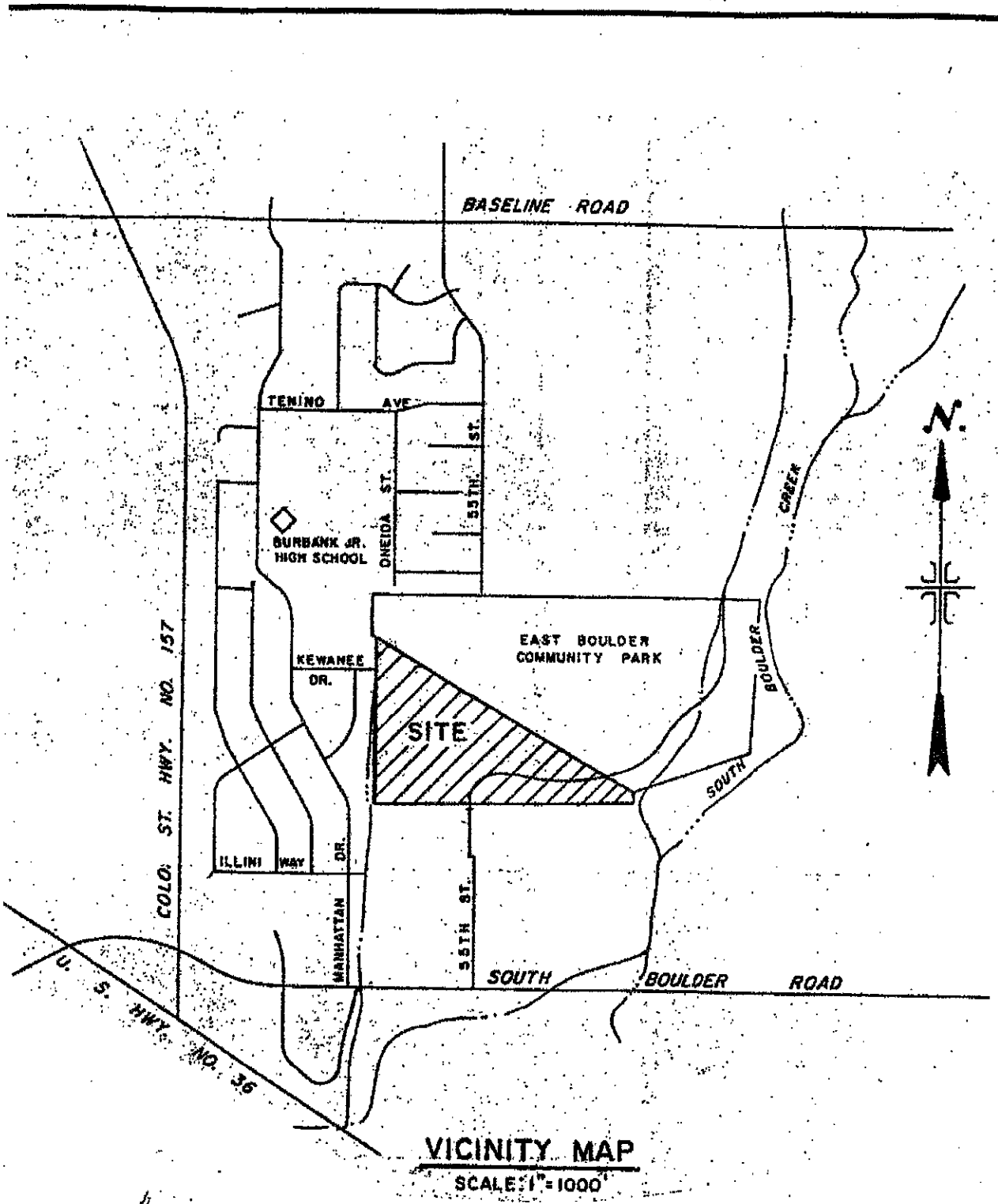


EXHIBIT 3

PORTION OF DOCUMENT MAY BE ILLEGIBLE



VICINITY MAP

SCALE: 1" = 1000'

BACKGROUND AND CONTEXT

The roughly 22-acre vacant site, known as the Hogan-Pancost property (see Figures 1 and 2 below) is located at 5399 Kewanee Drive and 5697 South Boulder Road in east Boulder near the East Boulder Recreation Center. The site can be accessed from 55th Street from South Boulder Road to the south of the site or from 55th Street from the north by way of the East Boulder Recreation Center.

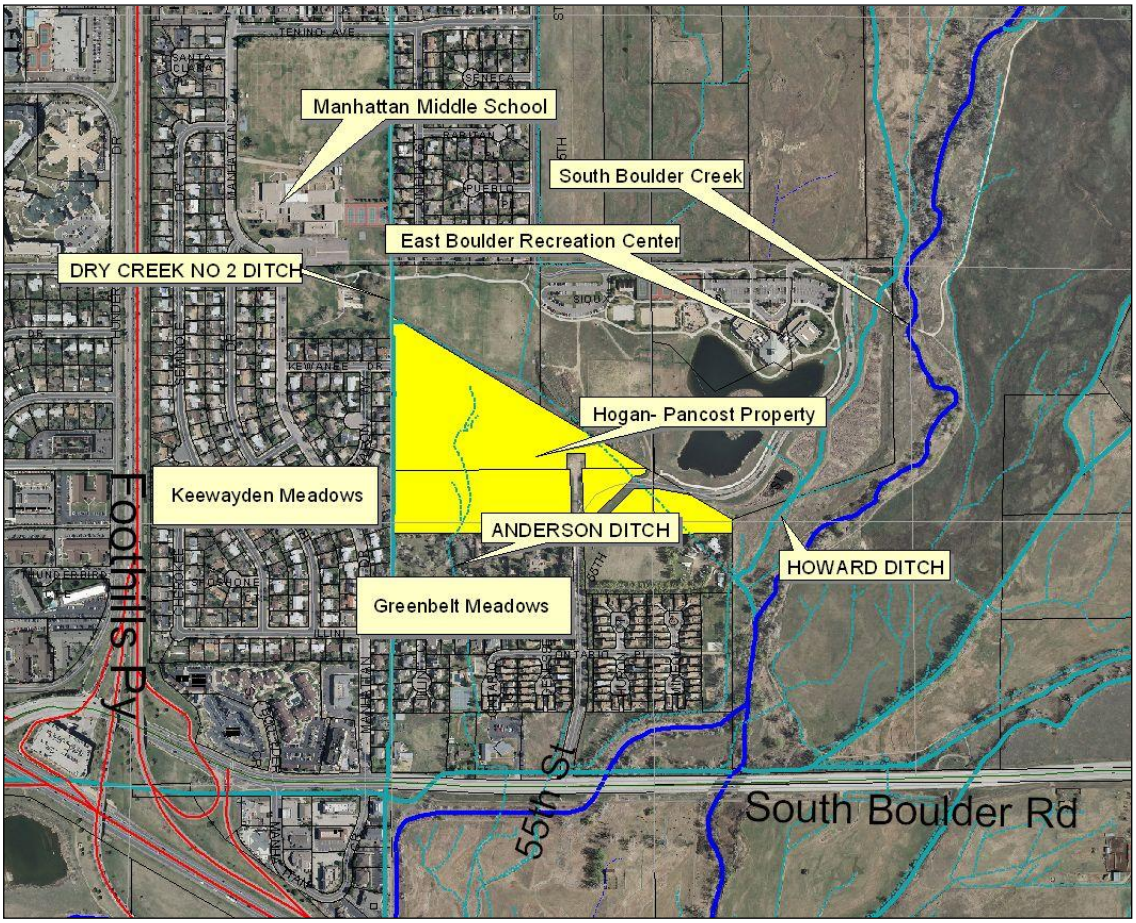


Figure 1- Vicinity map and context.

The Hogan-Pancost properties have been historically used for grazing and agricultural purposes and are within Boulder County; however, as shown in Figure 2 as follows, almost the entirety of the site is surrounded by city annexed land – namely the single-family residential developments of Keewayden Meadows to the west, Greenbelt Meadows to the south, and the East Boulder Recreation Center to the northeast.

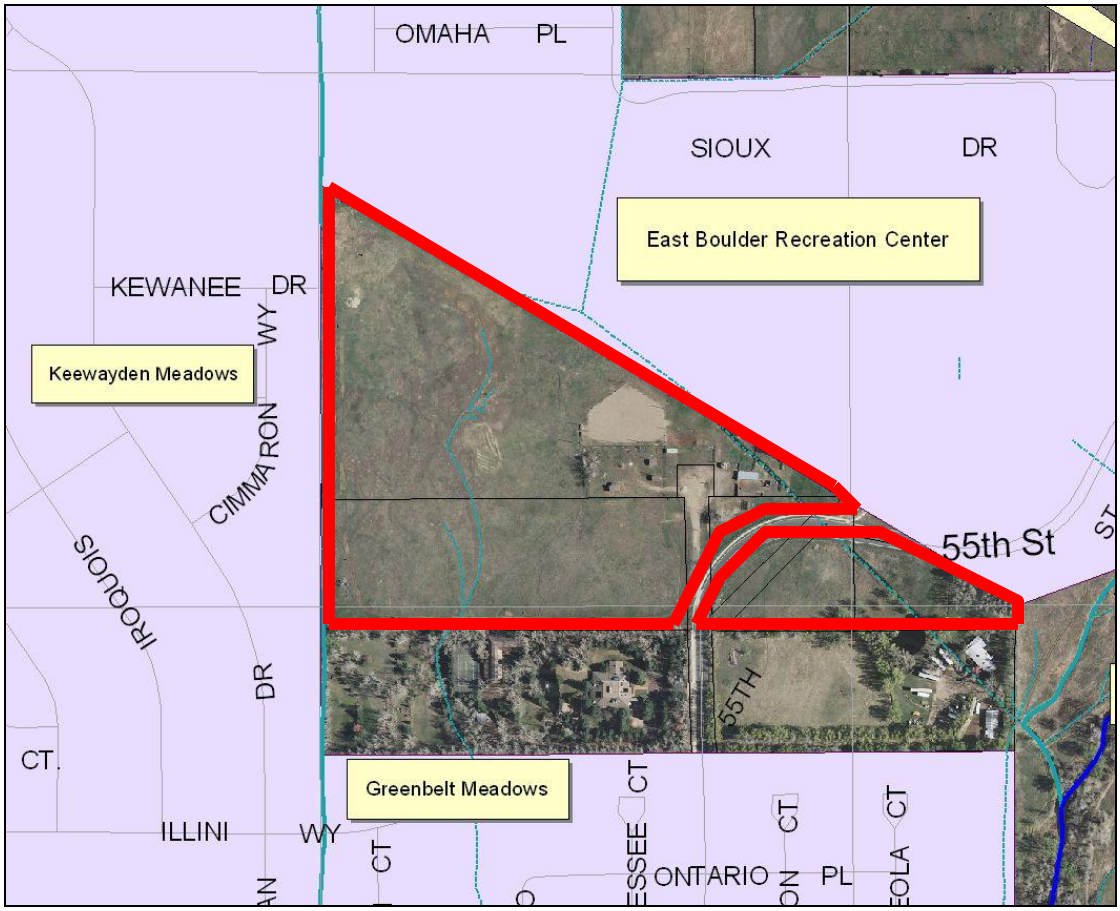
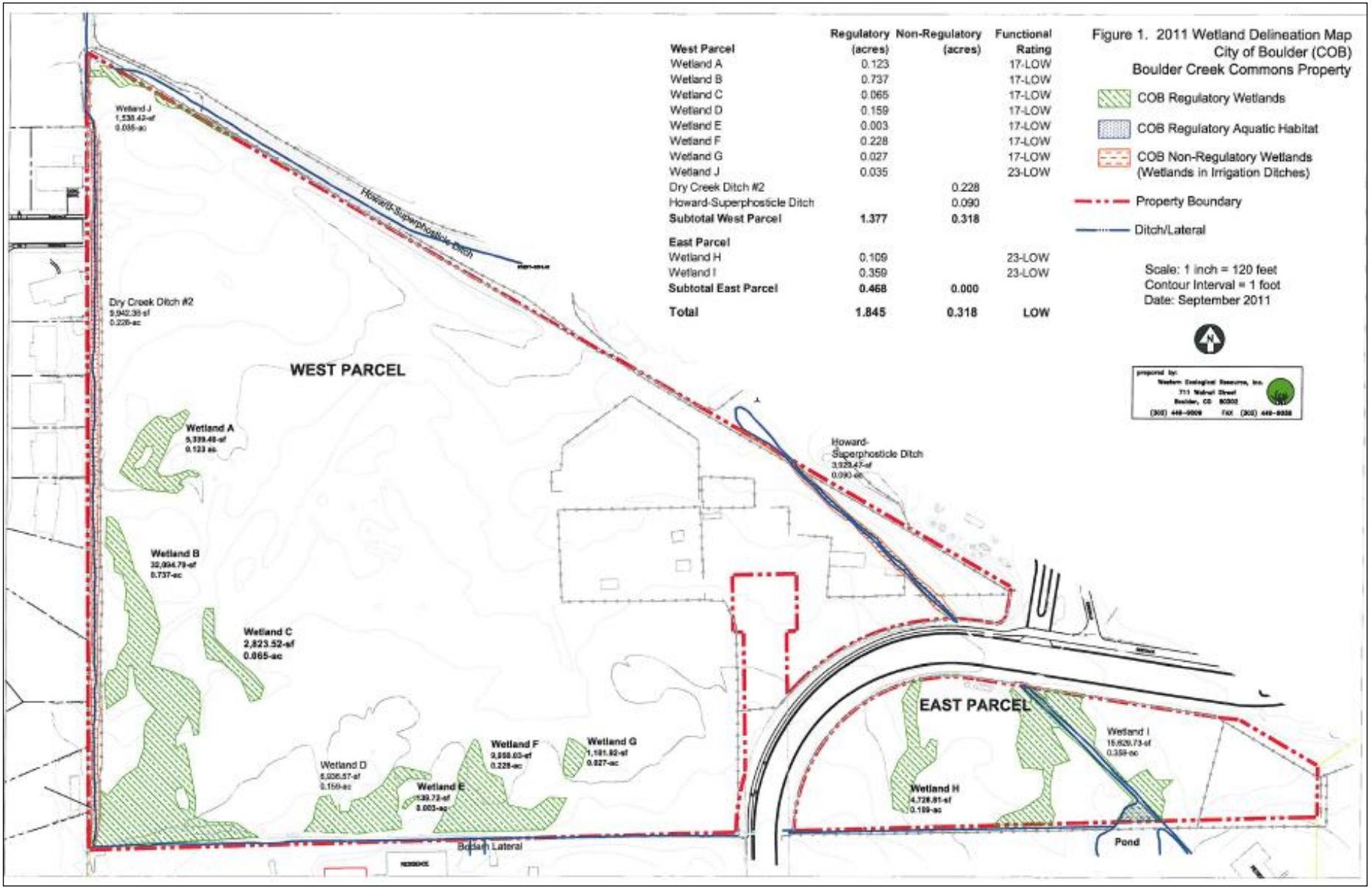


Figure 2- site respective to city limits shown shaded.

As shown in Figure 3, there are existing wetland areas on the site. There has been environmental concern from the community related to development upon wetlands and the impact to wildlife on the site, including but not limited to prairie dogs and Preble mice.

Environmental studies have indicated that the wetland areas are a result of seepage from unlined ditches that run through the site and that the property does not contain suitable habitat for Preble mice. Extensive environmental studies have been conducted on the site and conclusions have indicated that permanent impacts to wetland areas on the western parcel can be mitigated at a 2:1 ratio by creating additional wetland areas on the eastern parcel. The wetlands and natural areas on the eastern parcel would be preserved and enhanced. No development is proposed for the eastern parcel.



West Parcel	Regulatory (acres)	Non-Regulatory (acres)	Functional Rating
Wetland A	0.123		17-LOW
Wetland B	0.737		17-LOW
Wetland C	0.065		17-LOW
Wetland D	0.159		17-LOW
Wetland E	0.003		17-LOW
Wetland F	0.228		17-LOW
Wetland G	0.027		17-LOW
Wetland J	0.035		23-LOW
Dry Creek Ditch #2		0.228	
Howard-Superphosticle Ditch		0.090	
Subtotal West Parcel	**1.377**	**0.318**	
East Parcel			
Wetland H	0.109		23-LOW
Wetland I	0.359		23-LOW
Subtotal East Parcel	**0.468**	**0.000**	
Total	**1.845**	**0.318**	**LOW**

Figure 1- Wetland areas.

The site also contains 100-year and 500-year floodplain areas as shown on Figure 4. The majority of the 100-year floodplain areas is on the eastern parcel and would be preserved as a wetland area. Any development within the 100-year floodplain would require a floodplain development permit. Residential structures within the 100-year floodplain are required to have the lowest floor level elevated to the flood protection elevation (two-feet above the base flood elevation). There are limited areas of 100-year flood plain on the west side of the property. Most of these areas are proposed to be preserved within open space; however, there may be several homes that must meet the flood protection elevation. The City of Boulder does not currently have any regulations for the 500-year floodplain, but is in the process of developing regulations for critical facilities and lodging facilities within the 500-year floodplain. It is not anticipated that the proposed regulations would impact this development other than a possible need to floodproof the proposed congregate care facility and develop an emergency management plan.

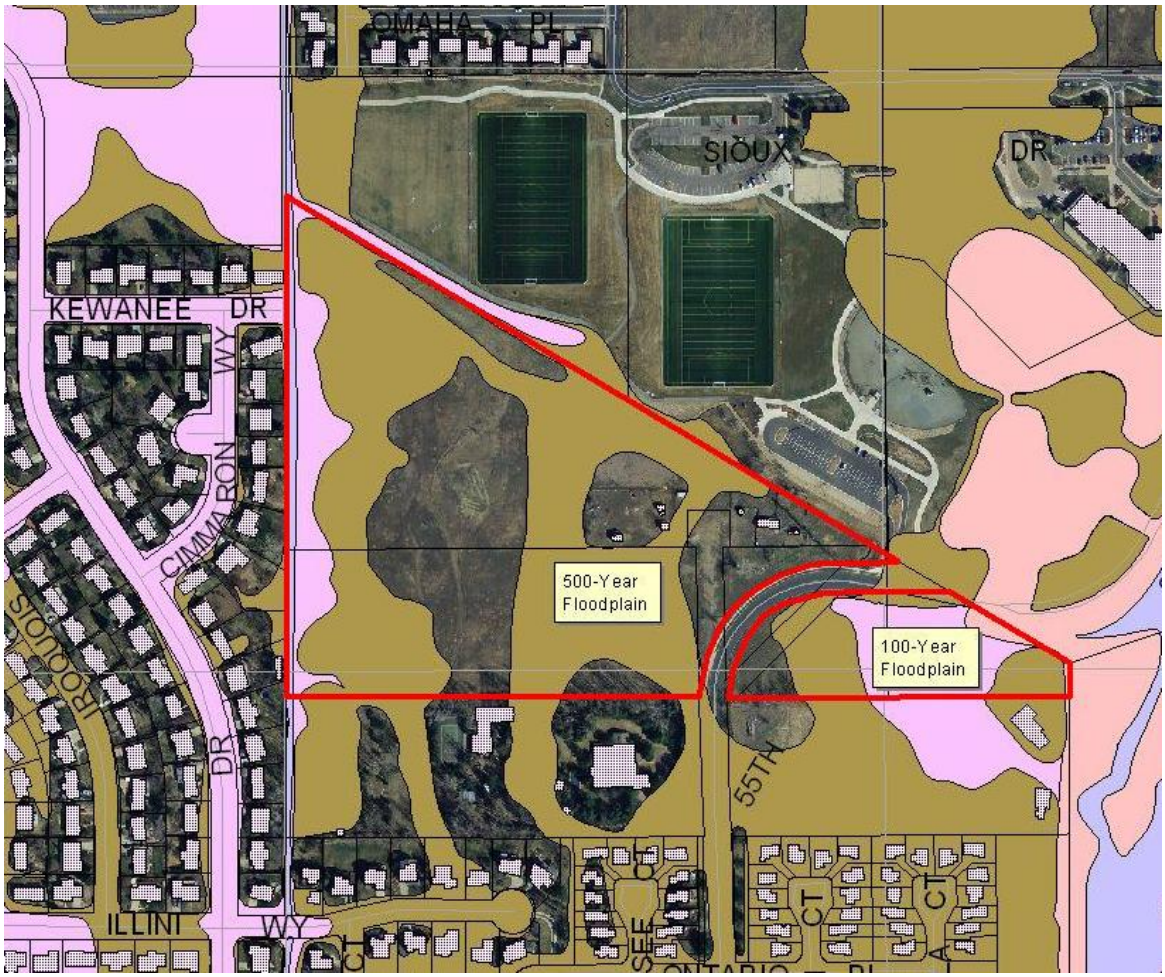


Figure 4- Floodplain Map

The properties are currently part of Boulder County. Like properties within the City of Boulder and those within Boulder Valley portions of Boulder County, the property is subject to the Boulder Valley Comprehensive Plan (BVCP). The BVCP is the overarching policy document that establishes the vision and policies that guide land use and development within the Boulder Valley. It is a jointly adopted plan between the City of Boulder and Boulder County and includes community adopted policies ranging from community design and community services to energy and the environment. The official BVCP land use map informs how properties will be zoned and informs city decisions on zoning and other community matters. Zoning and development in general is required to be consistent with the BVCP. The BVCP can be reviewed at the following web link:

Boulder Valley Comprehensive Plan

The BVCP also three specific "Planning Areas", where urban development is allowed (Area I), areas where future development may occur contingent on eventual annexation (Area II), and areas that are not intended for urban development (Area III- Rural Preservation). The line separating Area II lands from Area III lands is effectively the urban growth boundary for the City of Boulder. The subject property is designated Planning Area II making it eligible for annexation into the city.

As Figure 5 below shows, the BVCP land use map designates the site as Low Density Residential on the parcel west of 55th Street and Environmental Protection on the parcel east of 55th Street. Low Density Residential land use permits two to six dwelling units per acre.

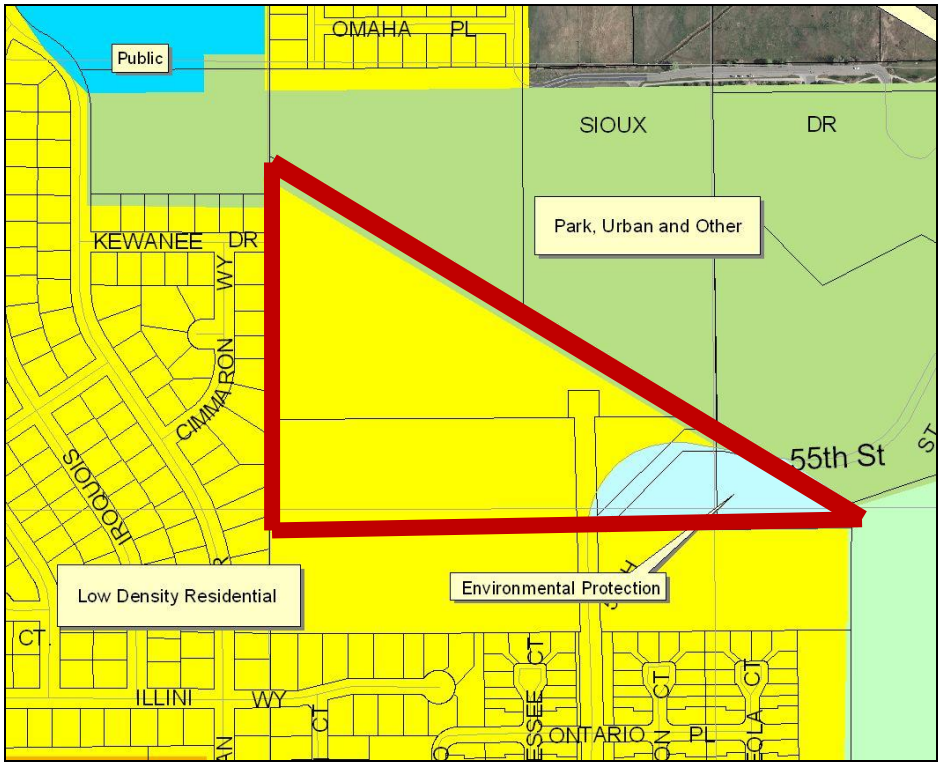


Figure 5- BVCP land use designations on and around the site.

The potential development of the Hogan-Pancost site has been a prominent discussion topic for several years. The topic of the property's eventual development, or likelihood of development, has spanned from earlier than the 1980s, and before consideration of the East Boulder Community

Park, to updates to the Boulder Valley Comprehensive Plan (BVCP) in the 1990s and 2000s where the site's Low Density Residential land use designation has been continually analyzed. Three Concept Plans have been reviewed in the last 10 years relative for this site. A comprehensive environmental study of wetlands, flood, groundwater, wildlife, and other environmental issues was undertaken by the applicant's consultants at the recommendation of city staff following review of the 2007 Concept Plan review to address the site's general suitability for development. The site's complex history is discussed below.

East Boulder Community Park master plan

During the 1980s, there was extensive public involvement in the Department of Parks and Recreation's preparation of a master plan for the East Boulder Community Park, where access to the park was a primary issue of discussion. Neighborhood concerns related to the extension of 55th Street north from South Boulder Road to connect to 55th Street north of the subject site and potential connections of Kewanee Drive from the adjacent Keewayden Meadows to the west to 55th Street.

The East Boulder Community Park master plan was approved in 1986, which included the extension of 55th Street (as it exists today) to provide park access and access to what would become the East Boulder Recreation Center. In order to address neighborhood concerns, the connection was designed in a manner that was circuitous to provide access, but discourage through traffic. Further, the Department of Parks and Recreation committed to not extending Kewanee Drive for access to the park. A 1992 memorandum from Parks and Recreation indicates that, "*during discussions on the future of traffic circulation in this area (related to the development of the park), staff and Planning Board made assurances to the neighborhood on Manhattan Drive that this connection would not be made in the future*." This is reflected in the master plan, which shows Kewanee Drive as a cul-de-sac.

Additional memoranda from the time indicate that the Planning Board reviewed the Kewanee Drive connection issue and concluded that the board would evaluate such a connection as part of any future development plans. Based on the attached 1986 memoranda, future consideration of a connection as part of a development plan was not specifically ruled out. The documents referenced above were attached to the April 18, 2013 staff memorandum to the Planning Board.

BVCP Updates and Land Use Analyses

A land use analysis that included the subject property was conducted in the 1990s when a Community Review Group, composed of neighborhood residents and a Staff Review Group, was created to evaluate the area and identify issues related to future development. Since 2000, three requests as part of the BVCP updates that have been made by the Southeast Boulder Neighborhood Association to change the BVCP Planning Area from Area IIA to Area III-Rural Preservation. As part of the Year 2000 major update to the BVCP, the city and county reviewed a land use suitability study of undeveloped Area II properties to determine their suitability for urban development as part of the consideration to change the Planning Area to Area III-Rural Preservation for the Hogan-Pancost site.

As part of that study, it was concluded by City Council that the west portion of the Hogan-Pancost site was appropriate for residential development while the portion east of 55th Street would be more

appropriate for environmental preservation. Consequently, the city and the county kept the site in Area II, changed the land use designation on the eastern portion of the site to Environmental Protection, and retained the existing Low Density Residential designation on the remaining portion of the site. Low Density Residential land use permits two to six dwelling units per acre.

In regard to the most recent request to change the BVCP land use designation, which occurred in 2010, staff recommended against a change to Area III-Rural Preservation pending the results of environmental studies discussed below and also to allow the review of the development applications currently under review. Ultimately if Planning Board and City Council did not agree with the proposed plans to develop the property, reconsideration of the Planning Area change to Area III-Rural Preservation would be appropriate. Staff presented this option to City Council as part of the 2010 BVCP Major Update and the council agreed.

Environmental Study and Concept Plans

The current applicant has been involved in the potential development of the site since the early 2000s. The applicant has been involved in several Pre-Application reviews and has applied for Concept Plan reviews in 2003 and 2007. The applicant also submitted their Annexation and Initial Zoning application in 2006 (#LUR2006-00099) and this application is included in this review. During these reviews, the applicant conducted a number of neighborhood meetings to solicit public input on the proposals where neighbors expressed concerns related to wetlands, ground water, flood and wildlife habitat as well as potential impacts to the surrounding neighborhood from additional density and traffic. Based on these concerns and the South Boulder Creek flood study, the applicant withdrew the 2007 application to further refine the proposal.

As part of a Concept Plan review application in 2007 (which did not proceed to Planning Board for review and was subsequently withdrawn as noted above), the property owners agreed that prior to the submittal and review of a subsequent Concept Plan application, the property owners would provide staff with more detailed environmental analyses for the property to determine whether the property could support any type of development. This is not a typical requirement of land use review, particularly during the Concept Plan review stage, but considering the concerns of neighbors and the history of the site, these comprehensive environmental analyses were completed by the applicant's consultants and were submitted to the city and city-contracted third party review consultants for analysis in 2010.

The studies were distributed to the neighborhood for review and were presented to the Planning Board at a public hearing on Jan. 6, 2011. To assist the board, staff retained an engineering consultant who prepared a "Groundwater 101" presentation to help inform the board about the complex groundwater issues in Boulder that would relate to the subject site. At the Jan. 6th public hearing, Planning Board found that the studies affirmed that the site could support residential development. The discussion from that meeting and all other relevant materials can be found at the following weblink:

Jan. 6, 2011 Planning Board packet including detailed environmental studies

Staff and the city's independent third party consultants concluded that the environmental studies affirm that the site would be suitable for development. Their analyses concluded the following:

- Stormwater management facilities designed to support the proposed development will not be adversely affected, and in some cases may improve, conditions on the surrounding properties and facilities,
- development of the site will decrease the overall recharge to groundwater by eliminating pasture irrigation and ditch leakage, which in turn will lower the groundwater elevation,
- existing soil conditions were shown to be able to support spread footings,
- there are no natural communities, rare plants, riparian corridors, or critical wildlife habitat as identified by the Boulder County Comprehensive Plan on the Hogan-Pancost property,
- all existing wetland areas on site will have to be maintained or mitigated per the Boulder Revised Code (1981), and
- the Traffic Impact Feasibility Study demonstrated that the existing street network will be able to accommodate the expected Hogan-Pancost traffic.

Based on the results, the board noted that a specific Concept Plan detailing proposed land use, density, site and building design etc. could be submitted for evaluation.

2012 Concept Plan

Planning Board reviewed the following Concept Plan on Jan. 19, 2012.

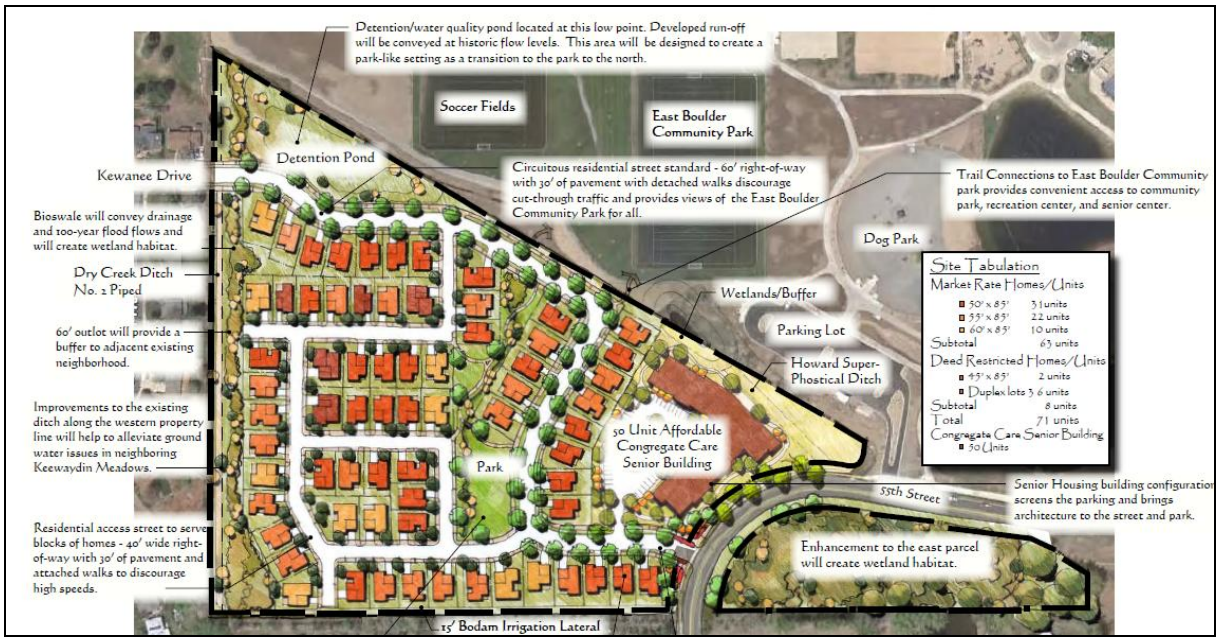


Figure 2- 2012 Concept Plan

A web link to the staff memorandum and materials is provided below followed by a summary of the board's analysis:

Jan. 19, 2012 Planning Board packet and Concept Plan materials

In summary, the board ranged on agreement on the appropriateness of development on the site due to the information provided by the Concept Plan and public information provided. At the Concept Plan hearing, members of the public provided information on groundwater and flooding

that conflicted with the engineering reports and analysis provided by the applicant's consultants. The board agreed that it would like to see more scientific information at the Site Review stage to evaluate the conflicting information that was presented at the public hearing. The chair recommended that all scientific information be provided in advance of any public hearings so that such technical and complicated information can be reviewed and analyzed by all parties in preparation for the public hearing. This would also allow staff to provide an overview in the memo and attach the information to the memo giving board members the opportunity to review such technical information in preparation for the hearing. This recommendation has guided staff's review of the current application. As part of that review, staff has retained a 4th party review consultant to review materials. Additional information on the role of the 4th party reviewer is included later in this memo. Staff has been working with the neighborhood throughout the process to answer questions and review the neighborhood studies prepared related to the project.

The following other points were discussed by the board on January 19, 2012:

- ***Land Use - RL2 zoning**:* The majority of the board felt the proposed land use and incorporation of senior housing was appropriate. One board member felt the land uses were not appropriate and the site should be designated Area III, Rural Preservation, due to the lack of availability of services and transit.

- ***Community Benefit**:* As discussed within this memorandum, a finding of community benefit is a requirement for properties proposed for annexation with additional development potential. This was preliminarily discussed at the Concept Plan level where some board members found the affordable housing benefit and the annexation acceptable. There was some concern that more senior affordable units would be preferable to the proposed eight middle income single family homes. Another board member felt it may not be acceptable to place 50 senior units in the 500 year floodplain.

- ***General Design***: The board agreed that the design needed to be simplified to be more gridded and with open space provided throughout the site. For the open space, the board acknowledged the area has a large city park next door, so the board wanted to see a more creative use of the open space and have it flow better through the project and be more consistent with wildlife corridors ("fingers of open space"). Regarding the grid, the board would like to see a simpler plan that is easier to navigate and provides a better connection to the north. It was suggested to take advantage of the open space by having the homes on it instead of the roads.

- ***Kewanee Drive connection:*** The board felt that from a city connection standpoint it makes sense to connect Kewanee to 55th Street to balance the traffic on 55th.

<u>Proposed Resolution</u>

At the Jan. 19th hearing, the board expressed concern about the conflicting environmental and engineering information as presented by the neighborhood and the applicant's consultants and asked that the applicant and neighborhood should share such technical information well in advance of public hearings to allow all parties and the board sufficient time to review such information so it can be adequately considered by the board. In response to this request, staff proposed that the board adopt a resolution encouraging cooperation and timely sharing of information among all

parties. The proposed resolution was not acted upon based on lack of support of the neighborhood and the applicant. The staff memorandum is found in the following web link:

Aug. 16, 2012 Planning Board packet relative to the proposed resolution

2013 Open House

Staff held an open house on the project on January 30, 2013. The purpose of the open house was to provide an opportunity for neighbors and other interested parties to view the proposed plans and ask questions of city staff about review process and standards and the applicant's consultants about the proposed plans. The open house was well attended and public comments were received. These comments will be attached to the packet included with the upcoming public hearing.

April 18, 2013 Study Session

Study Session in advance of Annexation and Site Review public hearing; reviewed by Planning Board on April 18, 2013.

> *Given the complexity of the project, a special study session before Planning Board was conducted in April 2013. At the study session, staff presented a detailed overview of the history of the project, the findings of the updated studies and a refresher on the BVCP and criteria by which the Planning Board would make a recommendation to City Council.*

April 24 and 25, 2013 Public Hearings

Public Hearing of Annexation and Site Review applications described as follows:

> ➔ Annexation and Initial Zoning, LUR2006-00099: Application to annex the approximately 22-acre properties at 5399 Kewanee Drive and 5697 South Boulder Road with an initial zoning of Residential Low -2 (RL-2) zoning; and
>
> ➔ Site Review and Preliminary Plat, LUR2012-00048: Application to subdivide and develop the site with 50 permanently affordable congregate care rental units, six permanently affordable duplex ownership units, two permanently affordable single-family ownership units, and 63 market rate single-family units for a total of 121 dwelling units.
>
> (Case #LUR2006-00099 and #LUR2012-00048, were reviewed by Planning Board on April 24 and 25, 2013.
>
> *In general, the board felt that the community benefits offered with the project, particular the permanently affordable housing, senior housing close to the senior center, and protection of environmentally sensitive areas, were significant and consistent with the BVCP. However, the following concerns were raised in the deliberations:*
>
> - *Considering the reported activity of sump pumps on developed properties in the area, the board discussed the potential effect of the development on groundwater levels and how that may potentially negatively impact already developed*

properties in the area. There were requests that additional testing be done and more extensive data on groundwater levels be obtained.

- *While stormwater channels were part of the proposed project plans and most of the proposed development would have been located outside of the regulatory (100-year) floodplain, board members were concerned about flooding based on testimony that flooding had been observed on and around the site in the past.*

- *Parts of the proposed development, including the proposed congregate care facility would have been located in the 500-year floodplain. The Board had reservations about allowing a facility for an at-risk population (i.e., seniors) within the 500-year flood plain.*

- *Some board members were concerned that the proposed wetland mitigation was not consistent with the Wetlands Ordinance in that there had not been a demonstration that the loss of wetlands on the site were appropriately minimized or mitigated.*

- *One board member felt that the environmental issues discussed above could be resolved through effective engineering.*

- *A majority of the board felt that RL-2 was appropriate for the site; however, one board member was opposed and alternatively suggested RL-1 zoning because it would permit accessory dwelling units, larger lot sizes and would not permit congregate care – a use the board member found to be incompatible with the neighborhood.*

- *One board member found that congregate care should not be permitted as a special use through the annexation process. Another board member expressed concern about the massing of the congregate care structure.*

- *Most of the board found the proposed site design consistent and compatible with the surrounding area, although some board members did not think that the layout of the project was conducive to solar energy installation.*

- *The board was generally supportive of the vehicular connections through the site, but did express concern about increased traffic impacts on surrounding neighborhoods.*

Following extensive deliberation and based on the concerns outlined above, Planning Board did not find the proposal fully consistent with the BVCP or Site Review criteria. The board concluded that the community benefits of the project did not outweigh the potential impacts from development of the site and unanimously recommended that City Council deny the Annexation and Initial Zoning and Site Review applications. The Planning Board passed the following motions:

Motion:
*On a motion by **S. Weaver** and seconded by **L. May** the Planning Board recommended 7-0*

that City Council reject the application for the annexation of the Boulder Creek Commons citing the reasons summarized by the board.

Motion:
*On a motion by **A. Brockett** and seconded by **S. Weaver**, the Planning Board recommend 7-0 that City Council deny the application for Site Review based on the findings that it failed to meet Site Review Criteria 1A: Consistency with the Boulder Valley Comprehensive Plan.*

Motion:
*On a motion by **A. Brockett** and seconded by **S. Weaver**, the Planning Board recommended 7-0 that should City Council move to approve the annexation, the project should be sent to the Planning Board for a full Site Review process.*

Motion:
*On a motion by **S. Weaver** and seconded by **J. Putnam**, the Planning Board recommended 6-1 (**C. Gray** in opposition) to City Council that RL-2 zoning would be acceptable should annexation be approved.*

City Council consideration of the Annexation and Site Review applications were scheduled for September and October 2013. However, due to the occurrence of the Sept. 11th flood of that year coupled with the board recommendation for denial, the applicant opted to withdraw both applications prior to the City Council public hearing.

In October 2015, the applicant submitted the subject annexation application. As a new application, Planning Board review and action is required before consideration by City Council. Although not explicitly required, the applicant did not submit a new Site Review application.

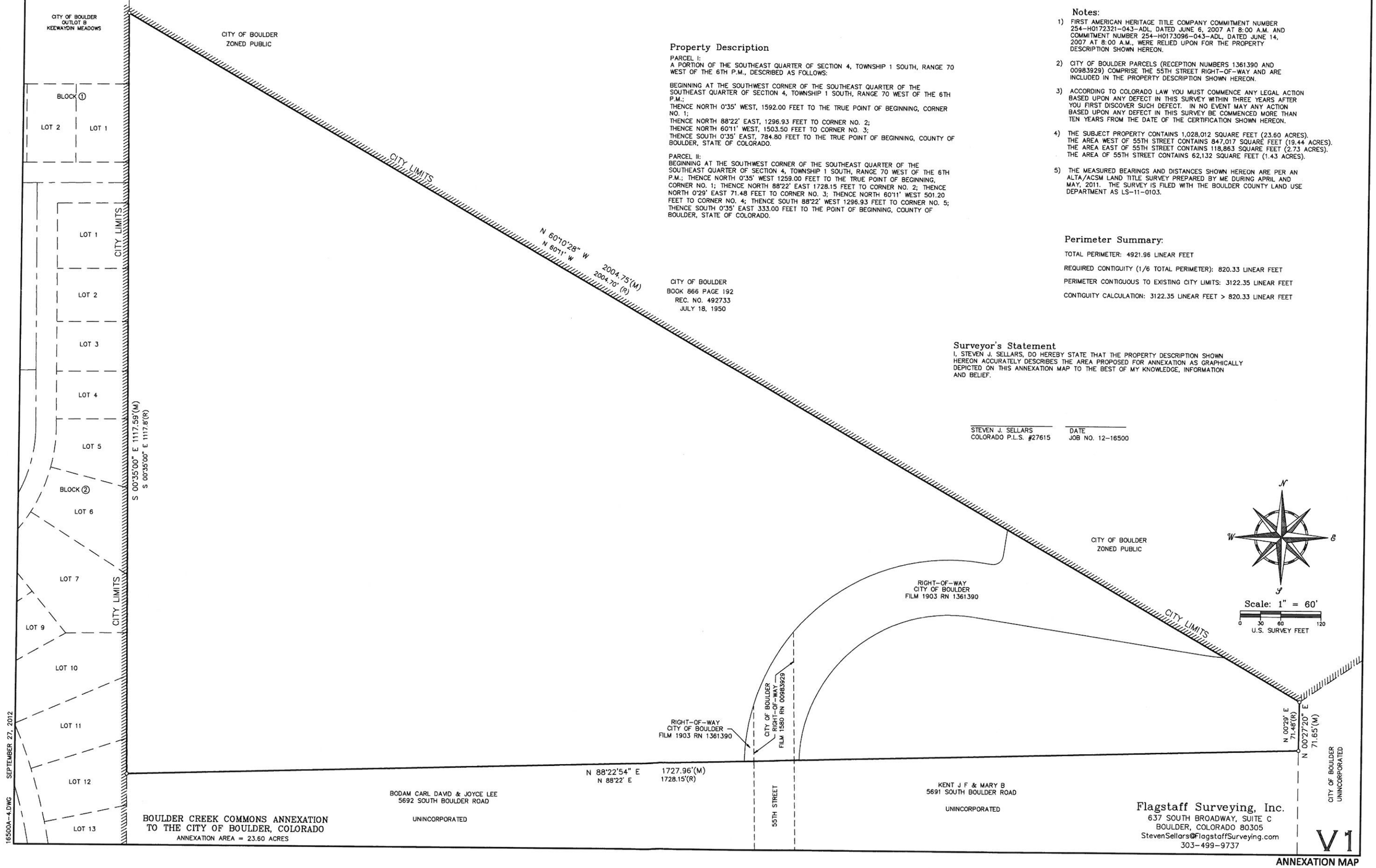
In 2015, requests to change the Planning Area designation on the site were also submitted by the Southeast Boulder Neighborhood Association to change the site from Area II (areas anticipated for annexation) to Area III- Rural Preservation (areas to remain in open space) as part of the Boulder Valley Comprehensive Plan update (see **Attachment E**). The applicant submitted a rebuttal requesting that the Planning Area not be changed (**Attachment F**).

In January 2016, the Boulder County Planning Commission recommended against further study of the proposed planning area change. Following a recommendation of the Boulder City Planning Board that the county reconsider this decision, the Boulder City Council opted to not move forward with further study of the planning area change.

The subject annexation application has been reviewed and processed independent of the planning area change requests pursuant to the city's normal land use review process.

BOULDER CREEK COMMONS ANNEXATION MAP

LOCATED WITHIN THE SOUTHEAST QUARTER OF SECTION 4 AND THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO



Property Description

PARCEL I:
A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M.;
THENCE NORTH 0°35' WEST, 1592.00 FEET TO THE TRUE POINT OF BEGINNING, CORNER NO. 1;
THENCE NORTH 88°22' EAST, 1296.93 FEET TO CORNER NO. 2;
THENCE NORTH 60°11' WEST, 1503.50 FEET TO CORNER NO. 3;
THENCE SOUTH 0°35' EAST, 784.80 FEET TO THE TRUE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

PARCEL II:
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M.; THENCE NORTH 0°35' WEST 1259.00 FEET TO THE TRUE POINT OF BEGINNING, CORNER NO. 1; THENCE NORTH 88°22' EAST 1728.15 FEET TO CORNER NO. 2; THENCE NORTH 0°29' EAST 71.48 FEET TO CORNER NO. 3; THENCE NORTH 60°11' WEST 501.20 FEET TO CORNER NO. 4; THENCE SOUTH 88°22' WEST 1296.93 FEET TO CORNER NO. 5; THENCE SOUTH 0°35' EAST 333.00 FEET TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

Notes:

1) FIRST AMERICAN HERITAGE TITLE COMPANY COMMITMENT NUMBER 254-H0172321-043-ADL, DATED JUNE 6, 2007 AT 8:00 A.M. AND COMMITMENT NUMBER 254-H0173096-043-ADL, DATED JUNE 14, 2007 AT 8:00 A.M., WERE RELIED UPON FOR THE PROPERTY DESCRIPTION SHOWN HEREON.

2) CITY OF BOULDER PARCELS (RECEPTION NUMBERS 1361390 AND 00983929) COMPRISE THE 55TH STREET RIGHT-OF-WAY AND ARE INCLUDED IN THE PROPERTY DESCRIPTION SHOWN HEREON.

3) ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

4) THE SUBJECT PROPERTY CONTAINS 1,028,012 SQUARE FEET (23.60 ACRES). THE AREA WEST OF 55TH STREET CONTAINS 847,017 SQUARE FEET (19.44 ACRES). THE AREA EAST OF 55TH STREET CONTAINS 118,863 SQUARE FEET (2.73 ACRES). THE AREA OF 55TH STREET CONTAINS 62,132 SQUARE FEET (1.43 ACRES).

5) THE MEASURED BEARINGS AND DISTANCES SHOWN HEREON ARE PER AN ALTA/ACSM LAND TITLE SURVEY PREPARED BY ME DURING APRIL AND MAY, 2011. THE SURVEY IS FILED WITH THE BOULDER COUNTY LAND USE DEPARTMENT AS LS-11-0103.

Perimeter Summary:

TOTAL PERIMETER: 4921.96 LINEAR FEET

REQUIRED CONTIGUITY (1/6 TOTAL PERIMETER): 820.33 LINEAR FEET

PERIMETER CONTIGUOUS TO EXISTING CITY LIMITS: 3122.35 LINEAR FEET

CONTIGUITY CALCULATION: 3122.35 LINEAR FEET > 820.33 LINEAR FEET

Surveyor's Statement

I, STEVEN J. SELLARS, DO HEREBY STATE THAT THE PROPERTY DESCRIPTION SHOWN HEREON ACCURATELY DESCRIBES THE AREA PROPOSED FOR ANNEXATION AS GRAPHICALLY DEPICTED ON THIS ANNEXATION MAP TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

STEVEN J. SELLARS
COLORADO P.L.S. #27615

DATE
JOB NO. 12-16500

BOULDER CREEK COMMONS ANNEXATION
TO THE CITY OF BOULDER, COLORADO
ANNEXATION AREA = 23.60 ACRES

Flagstaff Surveying, Inc.
637 SOUTH BROADWAY, SUITE C
BOULDER, COLORADO 80305
StevenSellars@FlagstaffSurveying.com
303-499-9737

16500A-4.DWG SEPTEMBER 27, 2012

V1

ANNEXATION MAP

Guiler, Karl

From: Spence, Cindy
Sent: Thursday, March 31, 2016 11:37 AM
To: Guiler, Karl
Subject: FW: Hogan-Pancost Annexation Request

Correspondence for you

Cindy

From: stelleen@comcast.net [mailto:stelleen@comcast.net]
Sent: Tuesday, March 29, 2016 3:29 PM
To: boulderplanningboard
Subject: Hogan-Pancost Annexation Request

I am writing in regard to the proposed annexation of the Hogan-Pancost property. There are a number of reasons why annexing this property, particularly without a specific development plan, is a bad idea. However, I would like to frame this problem in a slightly different light than previous discussions.

I am not going to rehash all the evidence supporting the likelihood of substantial monetary damage to the investments individuals in the surrounding neighborhoods might sustain from groundwater and flood damage if development of this property is allowed to go forward. Both sides can argue their position forever and never reach an agreement, and in reality, that is not the real issue.

What we are talking about here is risk and who is taking that risk. It is possible that the developer can come up with an engineering solution that will eliminate all the water problems those of us who live in the surrounding neighborhoods have legitimate reason to believe could happen. The problem is, we will never know which position is correct until the development is built. If their engineering solution fails, the neighbors are the ones who suffer the monetary losses, not the developer. And, at that point the damage is irreversible. In other words, approving the development puts all the risk from an engineering failure on the neighbors, not the developer.

This problem is aggravated because the developer is an LLC designed to shield their investors from personal risk. Therefore, if their engineering solution fails, the LLC can declare bankruptcy and go out of business with no real consequences to the investors. Meanwhile the neighboring homeowners are left to carry the financial burden of the consequences in perpetuity, again assuming most if not all of the risk.

A way to remedy this problem is for the City to insist that before any development on this land is approved, the individual investors in this development be required to come out from the cover of their LLC regarding these potential water issues, and put their own personal wealth on the line. If they have doubts that their engineering will fail, then they should not be demanding that the neighbors be forced against their better judgment to put their investments on the line.

While I understand the need for LLCs, in cases like this it removes any real culpability by the investors for actions taken on behalf of their LLC. Further, it encourages behaviors that when done by an individual would be considered unfair, unethical, and possibly illegal. We are talking risk here, and the investors are asking that the neighbors be *forced* to take all the risk so they do not lose money on an investment decision they *freely chose* to make.

If the investors are willing to step up and take *personal* (not corporate) responsibility for their "bet" that their engineering will hold, and that future water problems created by their development will not bankrupt them personally, then there may be grounds to talk. But until the investors are willing to assume that level of personal

(rather than corporate) risk, then approving any development on that property is forcing the risk on the neighboring homeowners while leaving the individual investors immune from the consequences.

Steven Telleen
225 Cimmaron Way

Jan. 26, 2016

Subject: Planning and Development Review, Hogan-Pancost properties.

To: City Council and Planning Board Members.

The purpose of this memo is to request the Boulder City Planning Board and Council members REJECT any proposed plan to annex the subject property request for development.

The property should be set aside for open space consideration and moved into the Area III, environmentally protected category.

As a resident of Kewayden Meadows for fifty years, my concerns relative to development are as follows;

1. Increased traffic on Manhattan Drive, Kewanee Drive and 55th Street. Conditions on South Boulder Rd. and Manhattan Drive are at a dangerous level now. Traffic will increase at Manhattan Middle School because of the increased number of students attending in the fall.

2. Increased sprawl and pollution resulting in higher taxes with the expansion of city infrastructure to the property.

3. The property in question is a flood plain. A four-foot-high fill in this area would effect both underground and surface water run off. (I have seen a foot-deep water cover the entire property.) My question to you is; Where will this water go in the event of a rainfall like we experienced in years 1969 and 2013?

4. Wildlife will be nonexistent. We now see fox, coyote, deer, ducks and numerous birds on this and the adjacent properties.

Lets keep this property void of development, increased traffic, congestion, pollution and more flooding to existing homes.

Thank You,

W. Olin

Walter L. Olin
120 Manhattan Drive
Boulder, CO 80303
303-499-9463

Guiler, Karl

From: Gary [gary@accentproperties.net]
Sent: Thursday, March 03, 2016 4:45 PM
To: Guiler, Karl
Subject: Boulder Creek Commons

Dear Karl,

As a property owner on Oneida street, I would like to voice my opinion on the future Annexation of the Hogan-Pancost property.
This project has been in an 2A designation for ever 20 years and in my opinion should be annexed and developed.

This is a wonderful opportunity for the city to get a wonderfully design product with a high amount of Affordable Housing.

Thanks for letting the public have an opportunity to voice it's opinion.

Gary Calderon

--
Gary Calderon
Accent Properties
2291 Arapahoe Ave
Boulder, CO 80302

Office 303-449-2900
Cell 720-297-7100
Fax 303-449-4749

Guiler, Karl

From: Spence, Cindy
Sent: Tuesday, March 01, 2016 1:33 PM
To: Guiler, Karl
Subject: FW: Hogan-Pancost Annexation

FYI

Cindy

From: Bobbi Richards [mailto:b_richards@comcast.net]
Sent: Tuesday, March 01, 2016 1:19 PM
To: boulderplanningboard
Subject: Hogan-Pancost Annexation

Dear Sirs:

I sincerely hope you will not approve this annexation. The road that would access that property is too small to handle the additional traffic in that quiet neighborhood. I live on S Boulder Circle and use that road a lot going to/from the Recreation Center. We don't need all those apartments and traffic.

Thank you,

Bobbi Richards

33 S Boulder Circle

Unit 107

Boulder CO 80303

Guiler, Karl

From: Robert Prostko [robertprostko@mac.com]
Sent: Thursday, February 25, 2016 6:23 PM
To: Appelbaum, Matt; Brockett, Aaron; Burton, Jan; Jones, Suzanne; Morzel, Lisa; Shoemaker, Andrew; Weaver, Sam; Yates, Bob; Young, Mary
Cc: neighbors SEBoulder; Guiler, Karl
Subject: Opposition to Hogan-Pancost annexation
Attachments: Scanned Image 160560002.pdf

Hello All,

How are you? Thank you for the opportunity to make my public opinion comments.

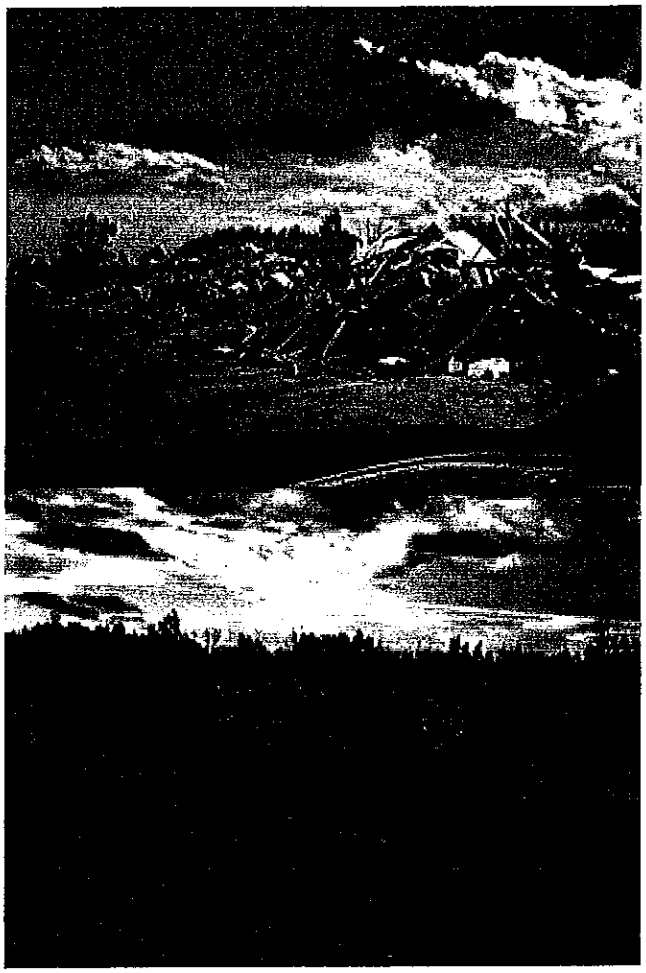
At the recent City Council Meeting I stood up to speak about the apparently very evident damage shown in my photographs that the Sept, 2013 flood inflicted on the neighborhoods surrounding the Hogan-Pancost property.

You viewed multiple photographs of the debris "MOUNTAIN" where the City of Boulder instructed us to pile up our water destroyed lower level household items. In my opinion there was no need to debate whether or not there were high water levels from the flood surrounding the HP property because I had photographic proof. The City of Boulder paid to have all of that debris removed and properly discarded. Does anyone have the financial amounts that cost the City? Does anyone have an estimate of the monetary value of damage to the neighborhood homes?

And that was WITHOUT any development of the HP property let alone the HIGHER DENSITY previously planned by the developer which, in my opinion, was to maximize their profit.

Does the City of Boulder want to pay these costs again? And in my opinion the costs will be exponentially higher if the area is raised FOUR (4) FEET and THEN DEVELOPED?

I remarked that I don't understand how an annexation can suddenly seemingly ignore planning and zoning restrictions and crowd in as much as possible?



Subsequently, we received a letter from the City of Boulder Planning and Development Services dated 02/04/2016, NOTICE OF UPCOMING PLANNING BOARD MEETING, RE: ANNEXATION OF THE HOGAN-PANCOST SITE.

I was totally bewildered when I read the DESCRIPTION where the City states in writing that "the previous applications were withdrawn by the applicant in 2013 following a Planning Board RECOMMENDATION OF DENIAL to City Council.

Then it reads even more bizarrely, in my opinion, that "This is a new application and does NOT include a site development plan; HOWEVER, THE APPLICANT HAS PROVIDED AN INTENT STATEMENT TO BUILD A TOTAL OF 121 DWELLING UNITS, SOME OF WHICH ARE PROPOSED AS CONGREGATE CARE AND PERMANENTLY AFFORDABLE UNITS.

Am I incorrect in thinking that this sounds almost exactly like the previous application that was voted against 7 - 0 by the Planning Board?

So now I am asking the same question again, REALLY? I don't understand how an annexation can suddenly seemingly ignore planning and zoning restrictions with the potential to crowd in as much as possible?

Would you kindly consider denying the application? Would you kindly consider changing this land to Area III?

Best regards, Robert Prostko 5454 Omaha Place, Boulder

YOUR CITY OF BOULDER PLANNING AND DEVELOPMENT SERVICES letter is shown here:

Guiler, Karl

From: pollyrogers@comcast.net
Sent: Thursday, February 11, 2016 2:05 PM
To: Guiler, Karl
Subject: Hogan-Pancost Site

Hello Karl,

My name is Pauline Rogers and I live at 345 Oneida Street. I am e-mailing to you all to PLEASE, PLEASE, PLEASE, PLEASE, *do not* let any development happen on Hogan-Pancost property.

I know Boulder now has limited places to build, but this is not a place to do it.

I know one thought is that there will be some "permanently affordable units"...but what about the people in this neighbor hood who pay taxes and are "barely making it"?

There are many elderly people in this neighborhood, myself included, who suffered through the flood. I was so stressed with the damage my house sustained that I lost my hair. I still get stressed when it rains for any length of time. I believe this property development will put all the house already here in danger of flooding.

Let me tell you about myself so you can start to know people who live in the Kewanee neighborhood. I have lived in Boulder since 1991 (moved here from Denver, because my ex-husband got a job at Storage Tek). After the divorce, I did not want to make another change for my children, so I worked 2 jobs and I STILL work 2 jobs now that I am 60 years old just so I can make "ends meet".

I am a Registered Nurse (school nurse) I took a 3% pay cut 5 years ago and just got a raise (after 5 years) of 18 cents an hour ($30 a month).
I cannot emotionally or financially afford to have my house damaged again.

I see children over there at the property site feeding the horses carrots....and this makes me feel happy. That property is just not the place to build. This neighborhood has fought for years to stop development. Why aren't you listening? Do you not care about us??

Thank you,

Pauline Rogers
345 Oneida Street Boulder, Co 80303
303-499-1116

Guiler, Karl

From: Nicole Day [nicolelfday@gmail.com]
Sent: Wednesday, February 10, 2016 5:42 PM
To: boulderplanningboard
Cc: Guiler, Karl
Subject: Annexation of the Hogan-Pancost Site

To the Planning Board,

I am writing to strongly urge you to deny the petition to annex the Hogan-Pancost properties on March 3. If the application is approved and the applicant develops 121 dwelling units as the intent statement suggests, the impact on the current residents of the surrounding neighborhoods and the environment will be deeply impacted in a negative way. As a current resident of Keewayden, I can assure you that the traffic on Manhattan Drive is already an issue given the volume of cars that drop off and pick up children from Manhattan Middle School. In the afternoons on school days, traffic gets severely backed up at the traffic light on Manhattan Drive and Baseline Road. Building the proposed dwelling units would increase the traffic on Manhattan Drive and the adjacent streets tenfold. Moreover, a large building will negatively impact the views for current residents (including many who have lived in this neighborhood for over 20 years), East Boulder Recreational Center members, visitors of the local dog park, soccer and football players who use the fields adjacent to the Hogan-Pancost properties, and others. In addition, the Hogan-Pancost properties are home to many animals and plant life, which would be displaced if the property is developed. Denying this application would preserve a small piece of untouched land, increasingly becoming a scare commodity in Boulder. The neighborhood already has numerous multiple-unit dwellings, to approve this application would be a shame.

Sincerely,

Nicole Day
205 Manhattan Drive
Boulder, CO 80303
NicoleLFDay@gmail.com
303-332-2082

Guiler, Karl

From: Scott Ortman [scott.ortman@colorado.edu]
Sent: Monday, November 02, 2015 9:29 AM
To: Guiler, Karl
Cc: Gigi Schwartz
Subject: Comment on Boulder Creek Commons LUR2015-00093

Dear Karl, I noticed a few typos in the letter I sent earlier this morning so I've corrected these in the version below. Thank you and my apologies.

Dear Karl:

I am writing to register significant concern regarding the impact of the proposed Boulder Creek Commons project for groundwater levels and drainage in my neighborhood. I am the owner of a home at 5478 Omaha Place, which lies immediately north of the subject area, across the East Boulder Community Center playing fields. When we purchased our home in July 2013 the previous owners mentioned that the city had recently raised the level of the playing fields and installed artificial turf where there had previously been grass fields. Prior to that time the sump pump that was installed when the house was built had never turned on. However, since the fields had been changed the sump pump had begun turning on following heavy rains.

Shortly after we moved in we experienced the flood of September 2013, during which the water table in our neighborhood rose above the level of our basement and overwhelmed our pump, leading to significant damage.
When we repaired the damage following the flood we installed a second sump pump in the location where seepage had been most severe. The contractor we worked with pointed out that huge storms like this often change the way water flows underground, and as a result we should expect there to be new groundwater patterns. This has in fact proved to be the case--the day we installed the new sump pump it started running, and it is still turning on regularly today, November 1, some two years later.
In other words, it is apparent that water now flows beneath our home, just a few feet below our basement level, all the time. We are basically living just above an underground river that flows into our property from the south, across the applicant property and the playing fields.

Given the magnitude of the 2013 flood and its effects on groundwater levels and drainage patterns (on top of the effects of the raised artificial turf fields), I believe that all previous studies of groundwater and drainage patterns in this part of the city are obsolete and need to be re-done to determine the effects of the proposed development for ground water and drainage patterns in my neighborhood.
And given the negative impacts that previous city actions and the 2013 flood have already caused, I am extremely concerned about the effects of creating an additional large impermeable and non-absorptive area and pushing an additional 140 house foundations into the water table immediately upstream of my home. I could not support the proposed annexation, rezoning and development project unless: 1) a new groundwater study is done and the effects of the proposed development for adjacent areas modeled; 2) appropriate mitigation measures for all negative impacts of the proposed project are identified; and 3) all such mitigation measures are performed at the developer's expense as a stipulation of annexation and rezoning.

Due to the existing vulnerability of this area to groundwater problems, and the impacts of the 2013 flood, I urge the city to take a fresh look at the situation in the project area before making any decisions that come back to haunt it. The city should not risk potential liability for negligence with regard to negative groundwater impacts of the proposed

development for current property owners. There is plenty of evidence that there are existing problems in this area.

Thank you for your concern,

Scott Ortman
970-560-0284

Guiler, Karl

From: jeff rifkin [jkchinkin@gmail.com]
Sent: Tuesday, October 20, 2015 2:01 PM
To: Guiler, Karl
Subject: annexation request of 5399 Kewanee Dr.

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Staff,
I am writing in response to your request for comments on the annexation request for 5399 Kewanee Drive and 5697 South Boulder Rd. First, I would also like to point out that there are several factual errors regarding dates of past development events (you can find and correct them). I would also like to remind you that at the 2012 site review by the Boulder Planning Board, development of the property was unanimously denied on all counts. It was also suggested by several members of the board to recommenced to City Council that annexation of the site be denied and it's zoning changed to Area III - Rural Preservation.
Finally, remember too, that at the last Comp Plan review, roughly a decade ago, a request was made by SEBNA to change the zoning of the property to Area III. At Staff's recommendation, a zoning change was delayed because a development proposal was in the pipeline and the City Council ruled to hold off on a zoning change pending the success or failure of that proposal.

In light of the fact that the development proposal was denied by the Planning Board and that none of the issues for which the proposal was denied have changed, along with the fact that SEBNA has again requested that the present Comp Plan review include a zoning change of the proposed development site to Area III, it seems premature to consider an annexation proposal until the new Comp Plan has been reviewed and accepted by the City Council.
Sincerely, Jeff Rifkin

Guiler, Karl

From: Nicky Marone [nicky@nickymarone.com]
Sent: Tuesday, October 20, 2015 10:54 AM
To: Guiler, Karl
Subject: Hogan-Pancost Application Public Comment

Dear Sirs and Madams:

I am writing you today in response to the notification I received of a new application by the would-be developer of the Hogan-Pancost site. I would like my comments to be considered as "public comment" written prior to Oct. 21 (the deadline on the notification) and therefore "to be considered in the City's initial response to the applicant" as is stated in the notification from the City of Boulder Planning and Development Services.

There are so many reasons why this or any application to develop the property should be rejected as shown below:

1. Manhattan Drive, located less than 2 blocks from the site, was the worst hit residential street in the entire city during the 2013 flood.

2. FEMA has not yet released it's new flood plain maps.

3. Since the site is *also* adjacent to Open Space (not just adjacent to city limits), it should be incorporated into that designation so that no future homeowners are subjected to the emotionally devastating event of another flood.

4. It is obvious that this developer is trying to get it approved in case the citizen initiatives of 300 & 301 pass and prevent him from doing anything he wants with the property. (Note: The notification reads, "The applicant intends to apply for an *initial* (emphasis mine) zoning of Residential Low-2.) The key word here is "initial." What are his *real* plans?

5. Finally, it's ill-advised , foolhardy and dangerous to build new buildings of any type in a flood plain, but particularly residences of any sort.

Also, is there a meeting to attend? I know public comment will not be accepted, but I want to hear what they have to say.

Ok, Thank you for your time. If it's convenient, could you let me know this was received and will be passed along to the Council?

Guiler, Karl

From: The Reed Family [thereeds@pcisys.net]
Sent: Monday, October 19, 2015 4:09 PM
To: Guiler, Karl
Subject: Boulder Creek Commons

Mr. Guiler:

I received your letter about the possible annexation of 5399 Kewanee Drive and 5697 South Boulder Road.

If the subject area is designated Environmental Protection, what specifically is meant to be protected there and is that consistent with building houses or condos on the land?

Is the land immediately south of the rec center (marked P on the map) in any danger of being built on?

Does 6 dwelling units per acre mean living space for six families or six buildings with dozens of apartments each?

Does RL-2 zoning require setbacks, height limits, solar access, etc., like RL-1 does?

I can see a certain number of homes being integrated into the space, but would hate to see something like the Violet-to-Yarmouth neighborhood east of Broadway, since the surrounding neighborhood has so many single-family houses.

Mightn't it be better to wait until after the election to proceed on this?

Thanks for your consideration,
Katherine Reed

Guiler, Karl

From: stelleen@comcast.net
Sent: Thursday, October 15, 2015 7:56 PM
To: Guiler, Karl
Subject: Notification of 5399 Kewanee Drive & 5697 South Boulder Road Boulder Creek Commons Proposal to Annex the 22 acre site by the City of Boulder.

Follow Up Flag: Follow up
Flag Status: Flagged

RE: Notification of 5399 Kewanee Drive & 5697 South Boulder Road Boulder Creek Commons Proposal to Annex the 22 acre site by the City of Boulder.

The information sent to the residents of Boulder regarding this property omitted at least two significant facts about the property status and its history that need to be rectified before the City of Boulder makes its initial response to the developer. I am assuming this information is not in the notice that was sent because they were omitted by the developer in the proposal. However, to be fair to all parties, the City should send out new notices that include the important omitted information. Given that you likely cannot do this before your October 21, 2015 deadline for comments I would suggest that you send out new notices with the omitted information as soon as possible and extend the deadline for considering comments by an appropriate length of time after the residents have received the new full-disclosure notices.

The two key items omitted from the notice are:

FIRST:

In the Description section it is stated that: "A previous annexation (and Site Review) request was submitted by the applicant in 2006, but was withdrawn." There is no statement that a second, more recent, previous annexation and site review was submitted in 2012, which was reviewed and unanimously rejected by the Boulder Planning Board. After being rejected by the Planning Board the applicant petitioned the City Council directly to annex the parcel with "no specific development plan," a request that was subsequently withdrawn a week after the 2012 flood.

It may be pertinent to mention that a major reason given by the Planning Board in their unanimous decision was their concern about the potential flood and ground water problems this development might cause, not just for the future residents who would occupy the development but also for the existing residents in neighborhoods adjacent to the property.

SECOND:

The Southeast Boulder Neighborhood Association has submitted a request, with detailed supporting material, to both the City and County to have this parcel moved from its current Area IIA status to Area III-Rural Preservation status in the 2015 Boulder Valley Comprehensive Plan.

Since residents were sent this notice because of potential impacts to their properties, in the name of full-disclosure, it would seem important to inform them of this prior, alternative request to change the property zoning and annexation status along with the notification of this new, competing request.

These are both important facts about the annexation request that both those who received this notification and those involved in determining "the City's initial response to the applicant" need to know to make informed comments and an informed decision. I hope you will make this partial disclosure whole.

Sincerely,

Steven Telleen

225 Cimmaron Way

Boulder, CO 80303

Request for Revision: Hogan-Pancost Area III-Rural Preservation Area Expansion
Southeast Boulder Neighborhoods Association

1.0 Introduction and Background

The Southeast Boulder Neighborhoods Association (SEBNA) is formally requesting a revision to the Boulder Valley Comprehensive Plan (BVCP) as part of the 2015 Major Update. We request the expansion of the Area III-Rural Preservation Area to include the properties located at 5399 Kewanee and 5697 South Boulder Road, aka the Hogan-Pancost property. The current land use designation under the BVCP is Low Density Residential, and the property is within Area II-A.

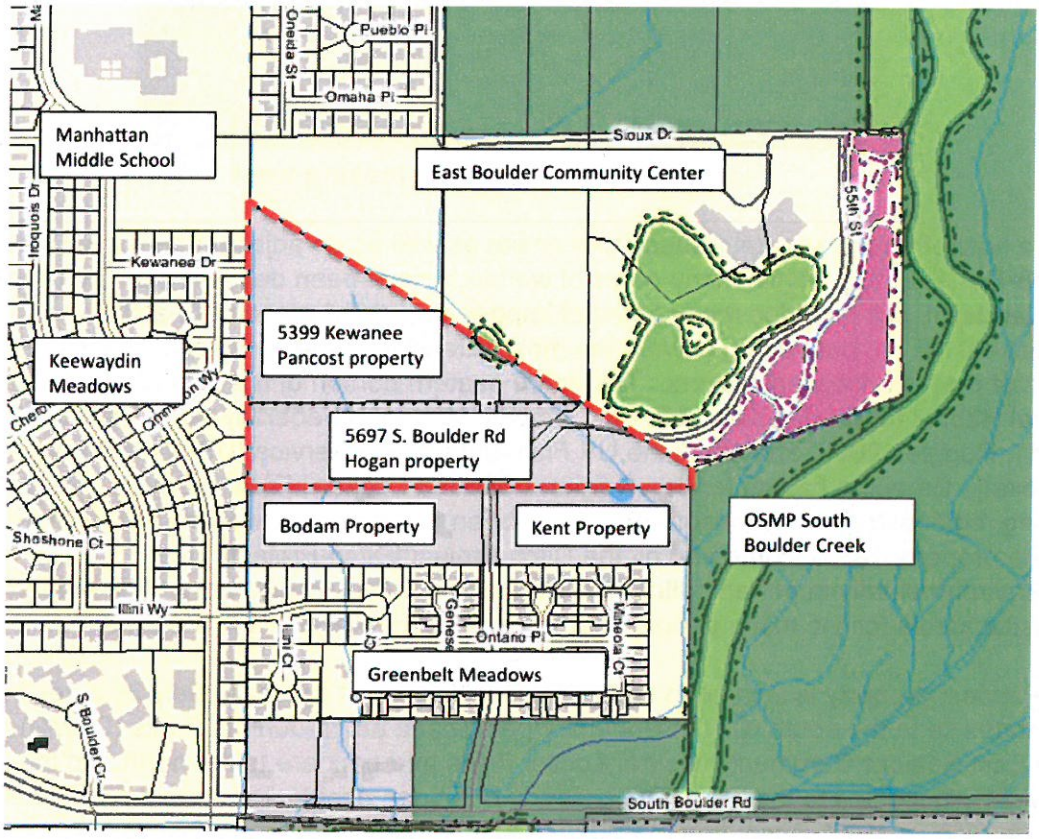


Figure 1: Site location

Few properties in the Boulder Valley Planning Area bring with them as many issues and have undergone such intense scrutiny as the Hogan-Pancost property. Concerns about the development of this property have been voiced for over 25 years. As documented by Urban Drainage and Flood Control [UDFCD], the property has experienced numerous large floods - in 1938, the 1950s, 1969, 1973 and 2013. The results of the South Boulder Creek Flood Study show an extensive High Hazard Flood Zone on the property. There are also deep and potentially intractable problems around groundwater and basement flooding [McCurry-2012]. Development on this 22 acre meadow, located on the edge of the city, would be far removed from most services and would rely on already congested local neighborhood streets for access [BCC-Traffic-2012].

Figure 2: View of property looking west

There exists a host of environmental issues, both onsite as well as on adjacent sensitive Open Space property [COB-BVCP-2005]. While many acres of wetlands have been destroyed on the property [SEBNA-Wetlands], it still provides many acres of important wetland meadows habitat [BCC-Wetlands-2010]. A prairie dog colony, the most extensive in the entire area, continues to expand on the site. Birds of prey are frequent visitors. The entire eastern portion of the property is under the Boulder County Critical Habitat for the Preble's Meadow Jumping Mouse, a Federally listed Threatened Species [Meaney-2001, Ruggles-2003] and abuts the US Fish and Wildlife Service (USFWS) Preble's Critical Habitat [USFWS-Habitat]. Breeding habitat for the Northern Spotted Leopard Frog, a Boulder County Species of Concern facing regional decline [Johnson-2011], has been found on City wetland areas immediately adjacent to the property. As documented by the Ditch Project [Ditch-Project], over 1 mile of 150 year old historic and environmentally important ditches surround and bisect the property. The property also plays an important aesthetic role for the many people that drive, walk, bike and live in the area.

The Hogan-Pancost property is located in southeast Boulder and is approximately 22 acres in size. Two large rural estates lie to the south, City of Boulder Open Space and Mountain Parks (OSMP) property is to the east, the East Boulder Community Center soccer fields and park are to the north and the Keewaydin Meadows neighborhood lies to the west. The property has been designated Area II-A of the BVCP since the inception of the plan in 1977. According to Boulder County records there are 2 separate parcels, purchased in 2007 from the original Hogan and Pancost families for a total of $4.5 million by East Boulder Properties LLC. In 2007 the property was (unsuccessfully) offered for sale by East Boulder Properties to the City of Boulder Open Space and Mountain Parks (OSMP) department with an appraised value of $8.3 million. Under current Boulder County land use regulations one home may be built on each 11 acre estate sized parcel.

In 2010 SEBNA requested that the BVCP land use designation for the Hogan-Pancost property be changed to Area III – Rural Preservation. The Boulder City Council was advised that a development plan was under review and that any change in designation of the property should wait until the review process was complete. The Site Review and Annexation request was heard before the Planning Board in April 2013 (overview included below). After a 3 day hearing, the Board voted unanimously 7-0 against the Site Review and Annexation. Moving the Hogan-Pancost property to Area III is the next step in a very long process. This change is the only legislative act that the City of Boulder can take at this time in order to ensure an adequate level of protection for this property and the community and environment as a whole.

This document presents an overview of the property along with the key elements of the BVCP, and discusses why designation of this property as Area III-Rural Preservation Area is in line with the goals and priorities of the BVCP and the community.

2.0 Alignment with Definitions and Key Policies of the BVCP

Since the initial designation of the Hogan-Pancost property in 1977 as Area II-A our understanding of the overall impacts of growth, the specific groundwater and flood hazards associated with the property and the sensitive environment and species in the area has substantially evolved. These changed circumstances and the position of the property adjacent to private rural estate and City Open Space and wetlands are in line with the requirements of the BVCP Amendment Procedures for Service Area contractions (changes from Area II to Area III-Rural Preservation Area):

> *Proposed changes from Area II to Area III-Rural Preservation Area must meet the following criteria:*
> *(a) Changed circumstances indicate either that the development of the area is no longer in the public interest, the land has or will be purchased for open space, or, for utility-related reasons, the City of Boulder can no longer expect to extend adequate urban facilities and services to the area within 15 years;*
> *(b) Any changes in proposed land use are compatible with the surrounding area and the policies and overall intent of the comprehensive plan.*

Areas I, II and III of the BVCP are defined as:

> ***BVCP 1.20 Definition of Comprehensive Planning Areas I, II and III.***
> *Area I is that area within the City of Boulder, which has adequate urban facilities and services and is expected to continue to accommodate urban development.*
>
> *Area II is the area now under county jurisdiction, where annexation to the city can be considered consistent with policies 1.16 Adapting to Limits on Physical Expansion, 1.18 Growth Requirements, & 1.24 Annexation. New urban development may only occur coincident with the availability of adequate facilities and services and not otherwise. Master plans project the provision of services to this area within the planning period.*
>
> *Area III is the remaining area in the Boulder Valley, generally under county jurisdiction. Area III is divided into the Area III-Rural Preservation Area, where the city and county intend to preserve existing rural land uses and character and the Area III-Planning Reserve Area, where the city and county intend to maintain the option of future Service Area expansion.*

And the sections referenced:

> ***BVCP 1.16 Adapting to Limits on Physical Expansion***
> *As the community expands to its planned physical boundaries, the city and county will increasingly emphasize preservation and enhancement of the physical, social and economic assets of the community. Cooperative efforts and resources will be focused on maintaining and improving the quality of life within defined physical boundaries, with only limited expansion of the city.*
>
> ***BVCP 1.18 Growth Requirements.***
> *The overall effect of urban growth must add significant value to the community, improving quality of life. The city will require development and redevelopment as a whole to provide significant community benefits and to maintain or improve environmental quality as a precondition for further housing and community growth.*

BVCP 2.07 Delineation of Rural Lands - a) Area III-Rural Preservation Area

"The Area III-Rural Preservation Area is that portion of Area III where rural land uses and character will be preserved through existing and new rural land use preservation techniques and no new urban development will be allowed during the planning period. Rural land uses to be preserved to the greatest possible extent include: [....] sensitive environmental areas and hazard areas that are unsuitable for urban development; significant agricultural lands; and lands that are unsuitable for urban development because of a high cost of extending urban services or scattered locations, which are not conducive to maintaining a compact community."

This property fails to meet a key criteria for Area II designation, that *"New urban development may only occur coincident with the availability of adequate facilities and services and not otherwise."* Critical infrastructure to manage groundwater and flooding impacts is lacking and transportation services are not adequate. The property, if designated as Area III-Rural Preservation, would more than meet the criteria for land preservation as spelled out in Section BVCP 2.07 - "*sensitive environmental areas and hazard areas that are unsuitable for urban development;"*

In addition to the above Area II and III definitions there are 2 key provisions that need to be taken into consideration and are of critical importance with regards to safety and equity:

BVCP 3.16 Hazardous Areas.

Hazardous areas that present danger to life and property from flood, forest fire, steep slopes, erosion, unstable soil, subsidence or similar geological development constraints will be delineated, and development in such areas will be carefully controlled or prohibited.

BVCP 8.03 Equitable Distribution of Resources

[...] The city and county will consider the impacts of policies and planning efforts on low and moderate income and special needs populations and ensure impacts and costs of sustainable decision making do not unfairly burden any one geographic or socio-economic group in the city.

These two provisions concerning safety and fairness embody beliefs that are deeply held by the community. In the case of the Hogan-Pancost property, these two concerns overlap. On the existing streets adjacent to the property there is a small group of 23 families - ranging from seniors who have lived in their homes for 50 years to young families who can afford their first home in this modest neighborhood. Many of them face long-term hazards from groundwater and surface flooding and the very real hazards from the increase in traffic that development will bring.

3.0 Flood Hazards

Adequate services are not in place to either manage the current regulatory FEMA 100 year flood or to manage the far greater flooding that the non-regulatory 100 year floods can bring. Nor are there adequate services in place in the Annexation review process to identify and possibly mitigate the risks that larger scale flooding can bring and the effect that development will have on the severity of the flooding.

As seen in the figures below, the Hogan-Pancost property is in the South Boulder Creek floodplain. Portions of the property are in the designated 100 year and 500 year flood zones and the entire western border of the property consists of a designated High Hazard Flood zone. There are currently no flood water management services in place to adequately mitigate flood impacts on this property or on the adjacent properties. While there has been an ongoing effort for many years to define and adopt a floodplain mitigation plan ([COB-SBC-Mitigation]), currently there is no plan adopted and the funding for the plan (approximately $40 million) has not been procured.

Flooding on this property has been an all too frequent occurrence. Since the development of Keewaydin Meadows, there have been 3 major flood events. The figure below shows photographs of the two flood events on the property in 1969 and 1973, taken from the backyards of adjacent homes.

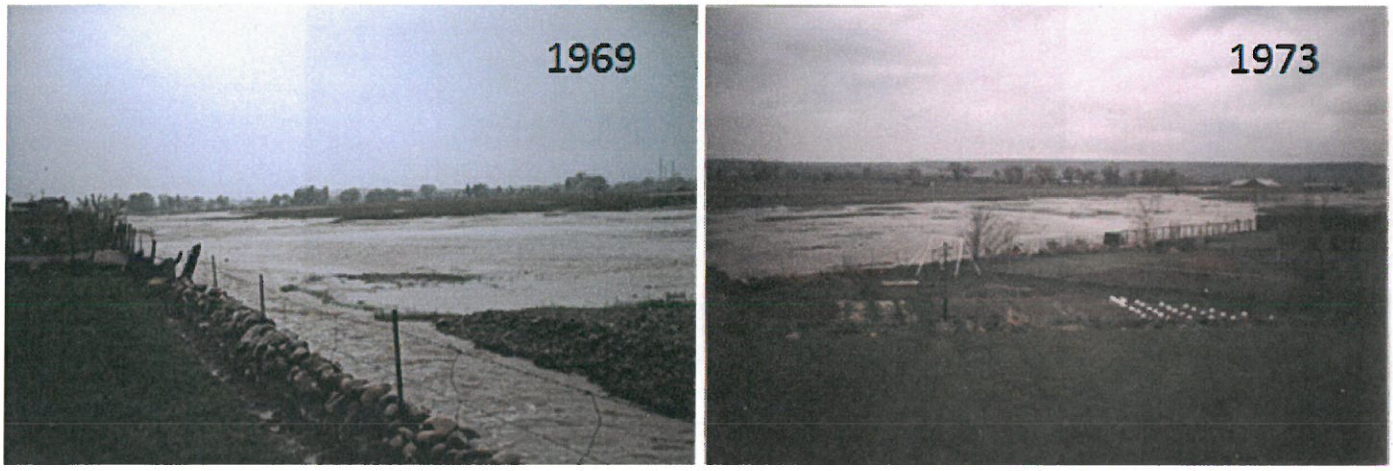


Figure 3: Flooding on the Hogan Pancost property in 1969 and 1973.

The September 2013 floods heavily impacted this property and the surrounding homes. The flood has been estimated by the City to be approximately a 50-75 year event, well below the 100 year FEMA flood level for the South Boulder creek drainage. However there was extensive flooding on the property, far more than is shown for the official 100 year regulatory flood. Figure 3 below shows City flood mapping (http://gisweb.ci.boulder.co.us/agswebsites/pds/floodmap/). On the left shows the 100 and 500 year FEMA flood zones. On the right is shown the much more extensive flooding on the property from the 2013 event.

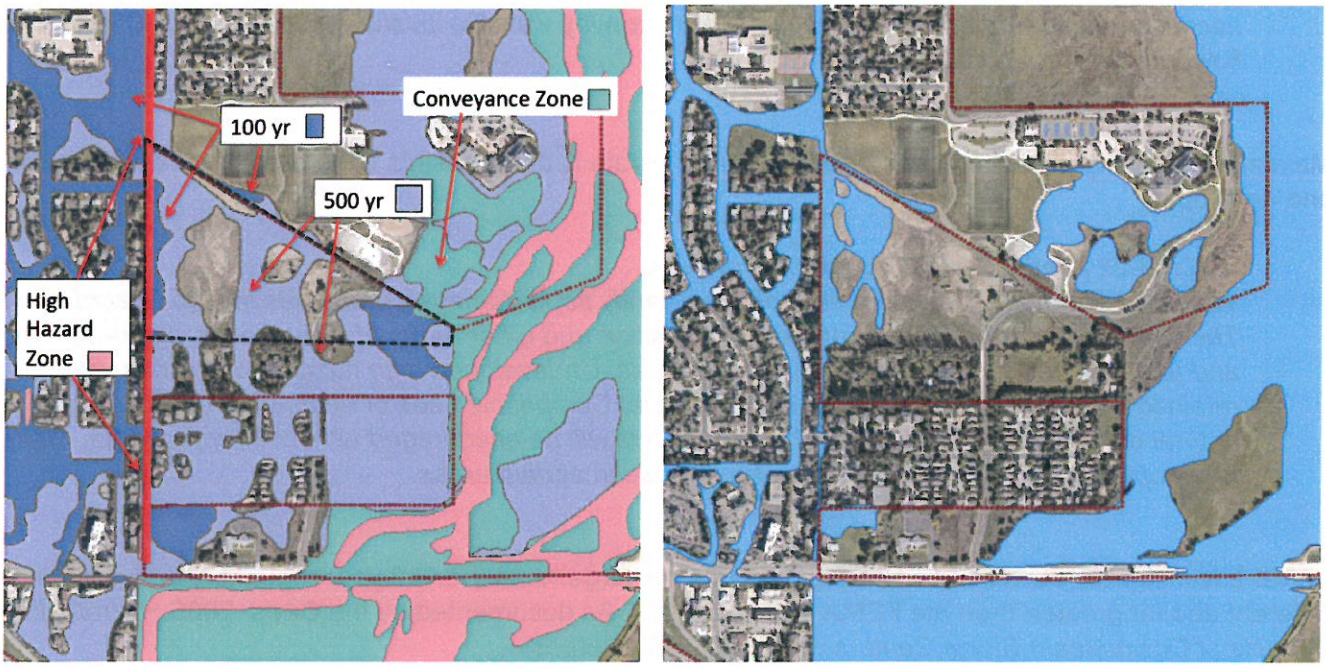


Figure 4: South Boulder Creek FEMA flood zones and September 2013 flood extents

Figure 5: Flooding on the Hogan Pancost property during the September 2013 flood

Section 3.22 of the BVCP specifically calls out the need to protect undeveloped high hazard flood areas -

> *"Undeveloped high hazard flood areas will be retained in their natural state whenever possible".*

The Hogan-Pancost property contains over 1100 linear feet of a designated High Hazard flood zone along the open undeveloped Dry Creek #2 Ditch corridor. All development proposals to date call for substantially narrowing and channelizing this High Hazard flood zone. This also runs counter to the wishes of the (40% City owned) Dry Creek #2 Ditch company:

> *"However, the company has met with the developer and has articulated a series of measures, including protecting the ditch from use as a flood conveyance channel, that the company believes is necessary to protect the ditch and its ability to convey water to its shareholders."* Bob Crifasi. Water Resources Administrator. OSMP. 2/26/2008.

Maintaining this High Hazard flood zone in its current state is only possible if the property is not annexed and developed.

> ***BVCP 3.22 Protection of High Hazard Areas***
> *The city will prevent redevelopment of significantly flood-damaged properties in high hazard areas. The city will prepare a plan for property acquisition and other forms of mitigation for flood-damaged and undeveloped land in high hazard flood areas. Undeveloped high hazard flood areas will be retained in their natural state whenever possible. Compatible uses of riparian corridors, such as natural ecosystems, wildlife habitat and wetlands will be encouraged wherever appropriate. Trails or other open recreational facilities may be feasible in certain areas.*

Lower basin storms [SEBNA-Lower-Basin] and storms larger than the 100 year regulatory limit pose risks far different and far greater than the FEMA 100 year flood. As documented by the City's 2005 *Hydrologic Impacts of Downstream Storm Centers* report [COB-Lowerbasin] :

> *... the location of the storm center not only affected flows along the mainstem, but, in many cases, profoundly affected the runoff from the tributary watershed.*

...
It is important to remember that the flood hazard associated with localized storms falling on other parts of the watershed should be defined and factored into any floodplain management and flood mitigation strategies.

Estimates from the City of Boulder [COB-SBC-Mitigation] put the flood risk from these non-regulatory 100 year floods to be the same as the regulatory 500 year flood:

> *"The 500-year damage estimates from the floodplain study may approximate the 100-year peak flows in the lower storm center analysis."*

A key provision of the BVCP specifically addresses this issue:

> ***BVCP 3.23 Larger Flooding Events***
> *The city recognizes that floods larger then the 100-year event will occur resulting in greater risks and flood damage that will affect even improvements constructed with standard flood protection measures. The city will seek to better understand the impact of larger flood events and consider necessary floodplain management strategies including the protection of critical facilities.*

Many times during the years of the Hogan-Pancost development review process City staff have repeatedly stated that there are not adequate tools in the current regulatory framework that allow the City to consider **any** flood other than the 100 year FEMA regulatory flood, including those cited above that can bring serious hazards to the community. The City regulations are narrowly focused on the 100 year FEMA flood and do not even call for identification of other flood hazards. This is in direct contradiction to BVCP Section 3.23. The same lack of regulatory tools applies to groundwater hazards as well.

.

There are a number of other relevant provisions in the BVCP regarding floodplains. Section BVCP 3.19 calls for preserving high hazard properties. Section BVCP 3.20 calls for preserving floodplains. Section BVCP 3.21 calls for a non-structural approach to floodplains. Any development on this property would require extensive alteration of the natural flood regime, including raising the property at least 2 feet above the current flood levels by bringing in 30000+ cubic yards of fill. The Dry Creek Ditch High Hazard Flood corridor would be channelized or piped, thus limiting its capacity. The impacts that these alterations would have on the existing floodplain in a flood other than the regulatory FEMA 100 year flood are unknown but is likely to increase flood hazards for the existing properties.

> ***BVCP 3.19 Preservation of Floodplains.***
> *Undeveloped floodplains will be preserved or restored where possible through public land acquisition of high hazard properties, private land dedication and multiple program coordination. Comprehensive planning and management of floodplain lands will promote the preservation of natural and beneficial functions of floodplains whenever possible.*

> ***BVCP 3.20 Flood Management.***
> *The city and county will protect the public and property from the impacts of flooding in a timely and cost-effective manner while balancing community interests with public safety needs. The city and county will manage the potential for floods by implementing the following guiding principles: a) Preserve floodplains b) Be prepared for floods c) Help people protect themselves from flood hazards d) Prevent unwise uses and adverse impacts in the floodplain e) Seek to accommodate floods, not control them. The city seeks to manage flood recovery by protecting critical facilities in the 500-year floodplain and implementing multi hazard mitigation and flood response and recovery plans.*

> ***BVCP 3.21 Non-Structural Approach.***

The city will seek to preserve the natural and beneficial functions of floodplains by emphasizing and balancing the use of non-structural measures with structural mitigation. Where drainageway improvements are proposed, a non-structural approach should be applied wherever possible to preserve the natural values of local waterways while balancing private property interests and associated cost to the city.

4.0 Groundwater Hazards

Groundwater levels on this property are exceedingly high. As shown in Figure 5, the property owner's engineering reports [BCC-Wetlands-2010] and their groundwater monitoring wells on the property show a high water table that seasonally extends to within 6 inches of the surface. The measurements show these high groundwater levels occurring in both the Spring/Summer irrigation season as well as during the winter months.

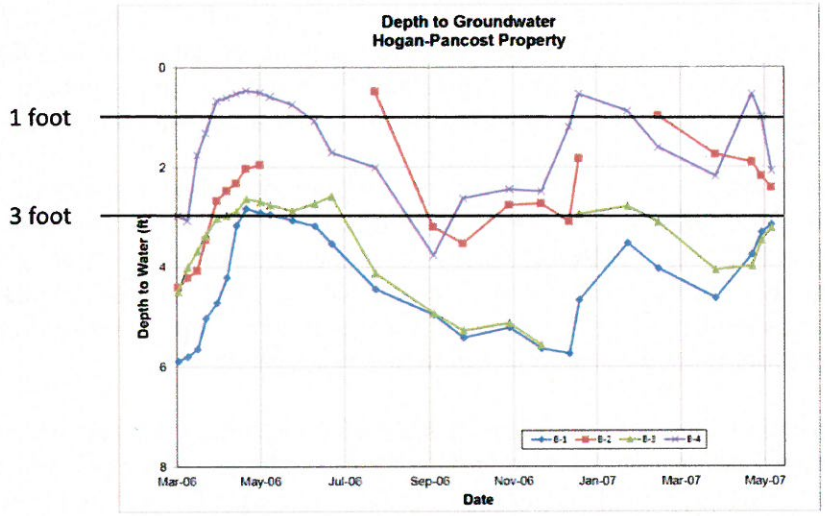


Figure 6: Groundwater levels

As the below map shows numerous homes adjacent to the property have had extensive and ongoing basement flooding problems due to high groundwater in the area. All of the homes to the west and south suffered severe basement flooding in the September 2013 flood event.

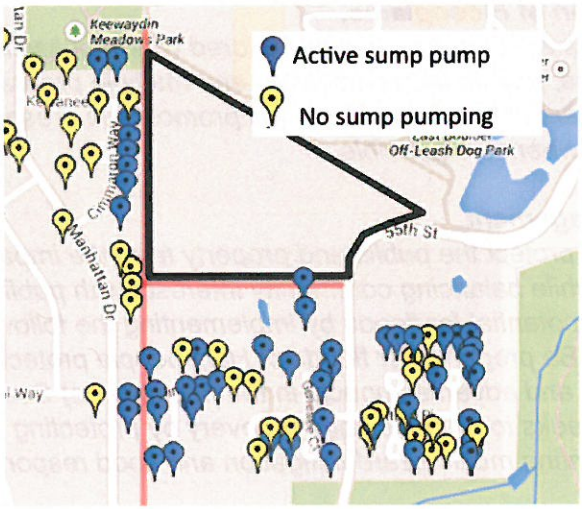


Figure 7: Pre-2013 sump pumping in the area

A resident on Cimmaron stated in June, 2005:

"I am still pumping water at 5 gallons every 20 to 25 seconds. That is over 20,000 per 24 hours! There are about 4 houses on my street alone that are probably pumping that amount."

As the timeline below shows, the sump pumping and basement flooding problems started immediately after the initial excavation and construction of the East Boulder Community Center soccer fields. For the 25 years leading up to that event there were no sump pumps on Cimmaron Way. Subsequent work installing fiber optic lines and the redevelopment of the EBRC soccer fields have been followed by increased sump pumping.

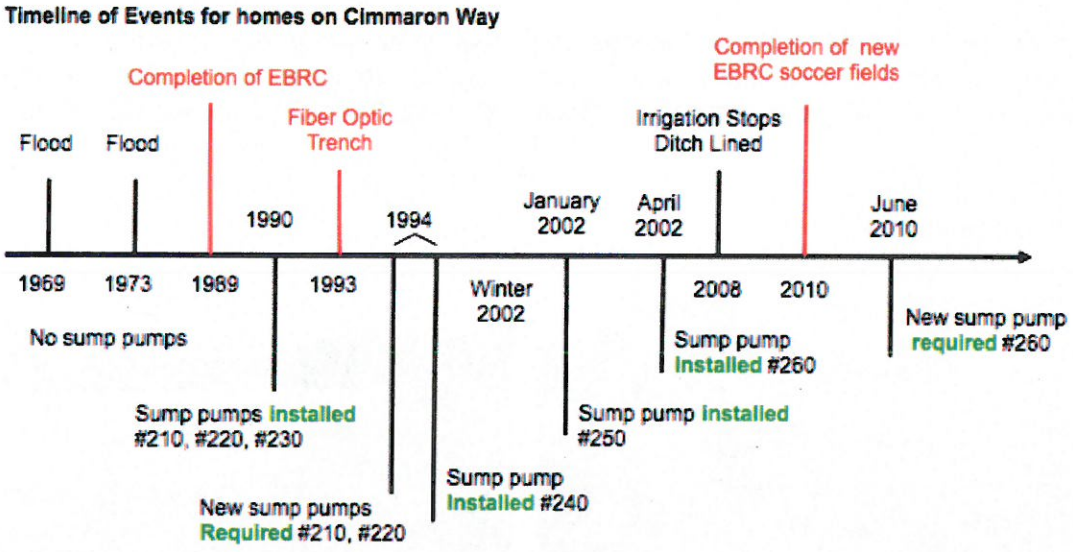


Figure 8: Correlation of sump pump installations with construction in the area.

The Hogan-Pancost property owner states in their 2003 Hogan Development Report [BCC-Grading-2003]:

Apparent man made hazards that affect this site are
1) a large detention pond to the northeast that was constructed some 12 years ago that may have caused a change in flow patterns for surface water on the site; and

2) filling of the City soccer fields to the north, which appear to have been filled by some 3 to 4 feet, causing some cessation of the natural drainage from this site to the north, and perhaps causing a higher water table on the site as well.

City staff have documented an area underdrain system that has been in place in the adjacent Keewaydin Meadows neighborhood since the early 1960s. There currently exists no active maintenance plan for this system and City staff have attributed the groundwater problems in the area to the drain system silting up and not being maintained.

As documented during the Hogan-Pancost 2013 Site Review, any proposed development of the Hogan-Pancost property would necessitate the installation of an underdrain system to manage the high groundwater on the site with no guarantees that it would even be successful. There is currently not an adequate drainage facility in place to accept this drainage water. This runs counter to Section 3.28 of the BVCP.

BVCP 3.28 Surface and Groundwater.

Surface and groundwater resources will be managed to prevent their degradation and to protect and enhance aquatic, wetland and riparian ecosystems. Land use and development planning and public land management practices will consider the interdependency of surface and groundwater and potential impacts to these resources from pollutant sources, changes in hydrology, and dewatering activities.

To provide minimum services for surface drainage as required by City of Boulder regulations, drainage water on the site must be contained through the use of detention ponds. However, the ability of the site to perform this key service is compromised by the high groundwater levels in the area as stated by senior City of Boulder engineering staff-

"Groundwater levels are between 6 inches and 2 feet below the ground based on previous studies. Therefore any excavation of this area would naturally fill with water unless a lining material was installed to prevent this from occurring." Robert Harberg, Principal Engineer City of Boulder Utilities

5.0 Environmental Impacts

Figure 9: Area ditches, wetlands and wildlife habitat (photos taken prior to 2008)

The Hogan/Pancost property is a 22 acre wetland/meadow complex. The City of Boulder Open Space and Mountain Park (OSMP) South Boulder Creek corridor is immediately adjacent east of the property. The wetlands to the northeast are Recreation Department property. There are 2 rural estate size properties to the south containing ponds and wetland areas.

There are a number of environmental land-use designations that are relevant:

- *USFWS Critical Habitat Zone for the Preble's Meadow Jumping Mouse* [USFWS-Habitat]
- *Boulder County Critical Wildlife Habitat zone #89 - South Boulder Creek Floodplain and Terrace*
- *Boulder County Comprehensive Plan [BCCP-ERE-Supplement]*
- *Boulder County Habitat Conservation Area for Prebles Meadow Jumping Mouse*
- *CIty of Boulder Recreation Department Northern Spotted Leopard Frog Habitat Closure Area [COB-Frog]*
- *Boulder Valley Comprehensive Plan (BVCP) Environmental Preservation area.*
- *South Boulder Creek Natural Area - Colorado Natural Areas Program [CNAP]*

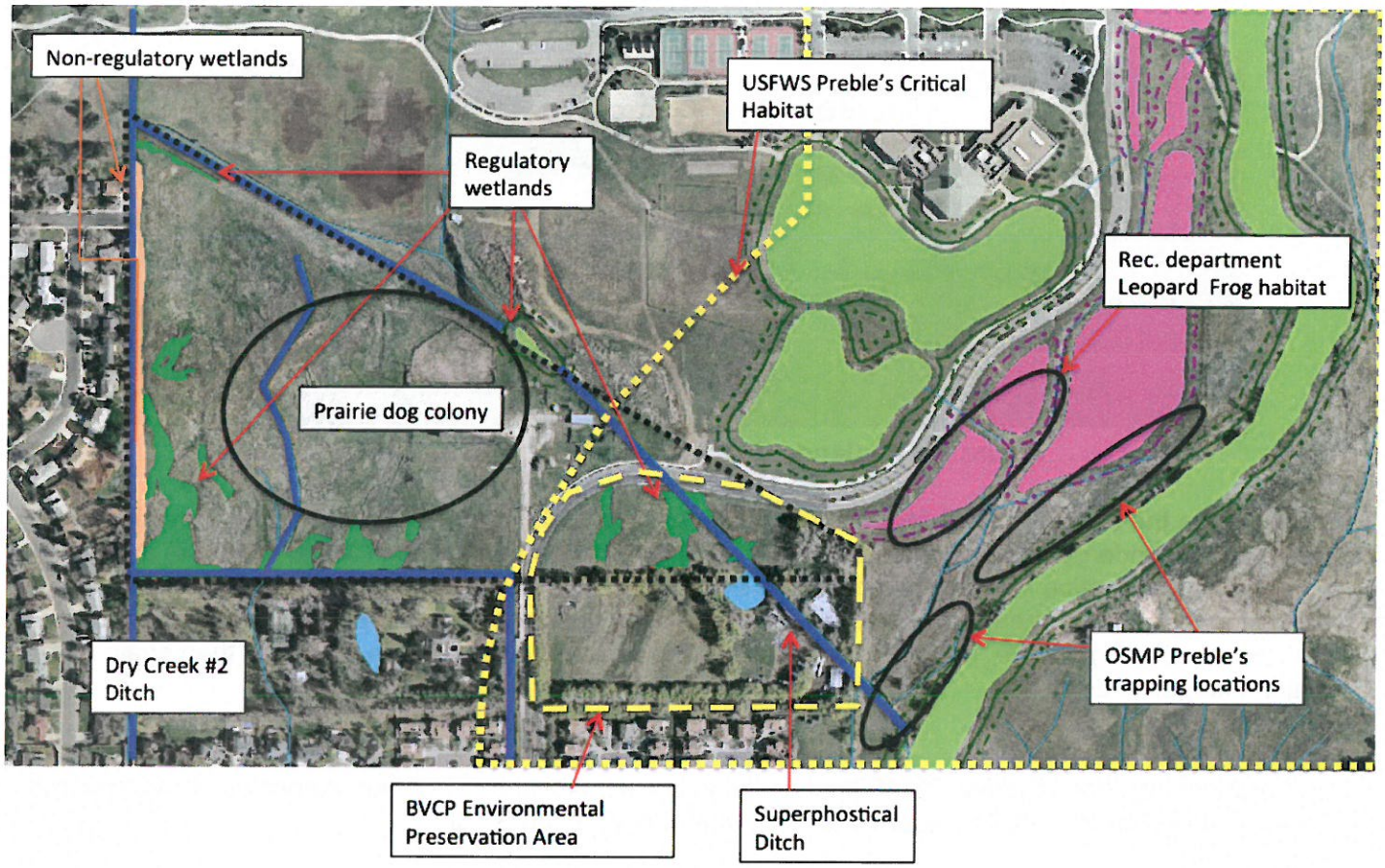


Figure 10: Area environmental assets

Wetlands

The BVCP recognizes the important role that wetlands play in our environment:

> ***BVCP 3.06 Wetland and Riparian Protection.***
> *Natural and human-made wetlands and riparian areas are valuable for their ecological and, where appropriate, recreational functions, including their ability to enhance water and air quality. Wetlands and riparian areas also function as important wildlife habitat, especially for rare, threatened and endangered plants, fish and wildlife. The city and county will continue to develop programs to protect and enhance wetlands and riparian areas in the Boulder Valley. The city will strive for no net loss of wetlands and riparian areas by discouraging their destruction or requiring the creation and restoration of wetland and riparian areas in the rare cases when development is permitted and the filling of wetlands or destruction of riparian areas cannot be avoided.*

The City of Boulder Planning Board expressed a number of concerns regarding wetlands during the 2013 Site Review. In particular there were concerns regarding the baseline. To quote from the recorded transcript [COB-Sitereview-2013] -

> *"I think that taking away those wetlands is the single biggest problem this project faces and it's the hardest one for me to square with the BVCP"*

> *"I think one of the broad points of agreement among the members was the baseline. What amount of wetlands we were going to base our mitigation of them on"*

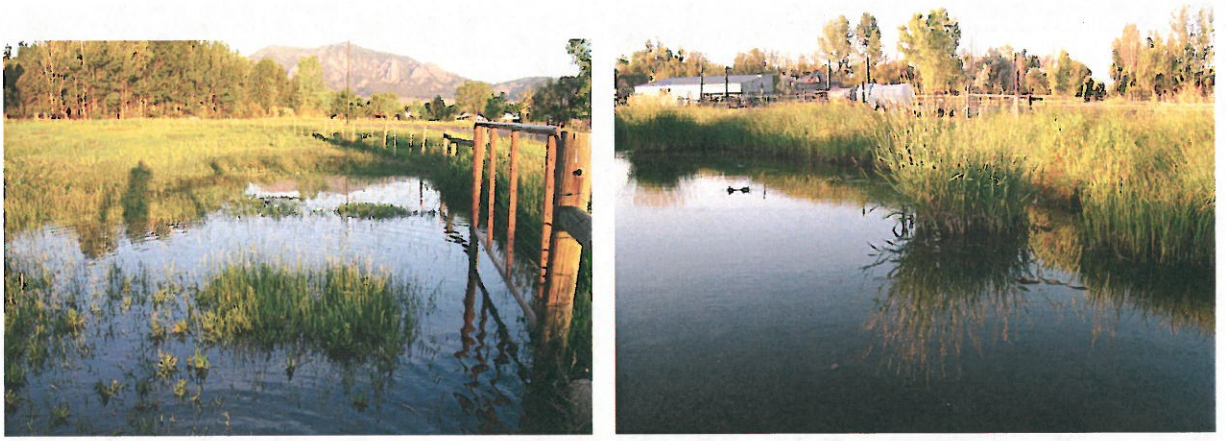


Figure 11: Wetlands on the property (photos taken prior to 2008)

Wetlands on the site have been documented dating back to 1988. However, the extent and location of the wetlands has undergone major changes over time. There have been cases of illegal fill (1994) as well as unpermitted excavation on the wetland corridors (2008) and decades long flood irrigation practices have been stopped (2008). There have been a wide range of published wetlands reports ranging from a "*a small, low-quality, drainage swale*" in 2002 to reports showing increasing wetlands in 2008 and then again more major changes in 2011.

Sensitive Species

The property and the adjacent OSMP lands provide critical habitat to a number of species. Protecting and preserving habitat for sensitive species is a key component of the BVCP:

> ***BVCP 3.03 Natural Ecosystems.***
> *The city and county will protect and restore significant native ecosystems on public and private lands through land use planning, development review, conservation easements, acquisition and public land management practices. The protection and enhancement of biological diversity and habitat for federal endangered and threatened species and state, county and local species of concern will be emphasized. Degraded habitat may be restored and selected extirpated species may be reintroduced as a means of enhancing native flora and fauna in the Boulder Valley.*

Preble's Meadow Jumping Mouse

The City of Boulder's Open Space and Mountain Parks (OSMP) Department states in their South Boulder Creek Area Management Plan [COB-SBC-Plan]:

> *The Management Area has the most concentrated population of Preble's meadow jumping mice (Zapus hudsonius preblei) in Boulder County.*
> ...
> *In addition to affecting orchids and birds, irrigation may play an important role in the preferred habitat of Preble's meadow jumping mouse. The Preble's meadow jumping mouse is found in wet meadow and willow/shrub habitat. This type of habitat is common along irrigation ditches in the riparian, floodplain, and terrace vegetation associations in the area. Preble's have been captured at several locations within the southern end of the Management Area. Presently, little is known about how management, in particular agricultural operations, affect this mouse. ...* The *ditches that deliver water often support riparian zone vegetation such as cottonwood trees and coyote willows that provide important habitat for raptors and the Preble's meadow jumping mouse.*

The observation that the South Boulder Creek corridor is an important habitat area for the Preble's is backed up by a number of City commissioned surveys - [Meaney-2001, Meaney-2003, Ruggles-2003]. This study states:

> *Irrigation ditches in the area are intensely used by the Preble's Mouse. ... The ability to travel long distances is of great utility to these mice, which inhabit linear habitats subject to flooding.*

The reach of South Boulder Creek immediately east of the Hogan-Pancost property was shown to contain the second highest average density of Preble's in the study area. This habitat area is very close to the Hogan/Pancost property and active ditch corridors lead directly to the property. While no trapping has been done along the ditches that run to the west, studies show that the Preble's makes extensive use of the ditches and that the Preble's is known to regularly travel long distances along ditch corridors.

A field trapping survey was done by the City of Boulder Open Space and Mountain Parks staff in 2014 to determine the impacts of the 2013 flood on this species. The report has not been produced yet, but preliminary results show a continued healthy population of the Preble's along this corridor:

> *"... a total of 12 transects along South Boulder Creek between area north of US 36 to Baseline Road and on 2 transects along the Enterprise and East Boulder ditches we captured a total of 72 unique individuals. This was during June and August."*
> *-Heather Swanson, Senior Wildlife Ecologist, City of Boulder Open Space and Mountain Parks*

It is unknown whether the Preble's inhabit the Hogan-Pancost property since the property was granted a trapping exemption requested by the owning group from the US Fish and Wildlife service in 2003 and has never been the subject of a trapping survey.

<u>Northern Spotted Leopard Frog</u>

The Northern Spotted Leopard Frog is a Boulder County Species of Concern [COB-Frog]. In 2012, populations of the frog were discovered on the Recreation Department wetlands adjacent to Hogan-Pancost property. Portions of this property have been fenced off to protect this breeding habitat. According to the 2012 report "Habitat Use of Northern Leopard Frogs Along the Front Range" [Joseph-Johnson-2012], the Leopard Frog, like the Preble's Mouse, uses irrigation ditches to travel from one site to another and makes use of both permanent and ephemeral ponds for habitat. As noted by OSMP wildlife staff the South Boulder Creek corridor provides an important movement corridor:

> *"A few years ago, the USFWS decided not to list the frog under the Endangered Species Act (USFWS 2010). However, they noted that the western population is in decline, particularly in Colorado (Johnson et al 2011). The decline of the species is one reason that we feel this species requires local protection and therefore do not release specific detection locations to the public. I can say though, that from our most recent monitoring, we know that South Boulder Creek represents an important movement corridor for the frog and we have detected the species between S Boulder Rd and Baseline Road, and more specifically, from the South Boulder creek bridge north to S Bldr Rd."*

No survey has been done for the existence of the Northern Spotted Leopard Frog on the Hogan-Pancost property and City staff did not address this issue during the 2013 Site Review and Annexation hearings.

<u>Black-tailed Prairie dog</u>

The property contains an extensive colony of Black-tailed Prairie Dogs, one of the few in the area. The Prairie dog plays an important role as both prey for the many birds of prey in the area as well as providing nesting habitat for Burrowing Owls and other species. No survey has been done on the property for the existence of associated sensitive species.

Off-site Impacts

The BVCP calls out the importance of preserving undeveloped lands and taking an ecosystem-based perspective of the overall impacts of development:

> ***BVCP 3.04 Ecosystem Connections and Buffers.***
> *The city and county recognize the importance of preserving large areas of unfragmented habitat in supporting the biodiversity of its natural lands and viable habitat for native species. The city and county will work together to preserve, enhance, restore and maintain undeveloped lands critical for providing ecosystem connections and buffers for joining significant ecosystems.*

The environmental impacts that annexation and development of the Hogan-Pancost property would bring extend far beyond the property itself. City of Boulder staff have stated:

> *The general area has some of the most sensitive habitat among Area II. Of major concern for this area is the impact of residential uses on several species of concern and two species listed on the Federal Endangered Species List in this area. Domestic cats have been found to have one of the most significant impacts on native bird and mouse populations. Further residential land use in this area could impact protection of the Preble's meadow jumping mouse as well as several grassland bird species using this area.*
> *-City of Boulder Staff Response #12, BVCP 2005 Review*

There are many acres of wetlands on and adjacent to the Hogan-Pancost property. Development would destroy the wetland meadow complex on the property and would also negatively impact adjacent wetland areas as attested to by City staff:

> *Boulder has experienced similar problems in the past where large wet meadows were destroyed due to changes in groundwater hydrology from adjacent development. A study completed in 1992 on the Burke II Open Space property just north of Baseline Road showed that development of the County Meadows subdivision to the west resulted in impacts to the open space wetlands as far as 300 feet from the property line of the subdivision. Nearly 1/3 of the open space wetland habitat which supports rare plant communities and animals species was lost.* [COB-BVCP-2005]

6.0 Transportation Impacts

This parcel is not well served by the current transportation system. As the below map shows, there are approximately 12,000 car trips/day throughout the area with poor connectivity. The build-out of the East Boulder Community Center Park and expanded parking capacity has created further traffic impacts in the area. Traffic studies [BCC-Traffic-2012] for the property show 3 access roads - 55th St. south, 55th St. north and Kewanee Drive - with over 50% of the site traffic traveling west through Kewanee, and 30% traveling north through 55th St (see below). During the past Site Review no mitigation options were offered in spite of the BVCP provision that calls for mitigation of unacceptable community impacts.

> ***BVCP 6.08 Transportation Impact.***
> *Traffic impacts from a proposed development that cause unacceptable community or environmental impacts or unacceptable reduction in level of service will be mitigated…*

The East Boulder Community Center Master Plan states very clearly that 55th St. through the recreation center is *"not intended to be used as a through street"* and therefore should not be considered an access road for any future development. Kewanee Drive, to the west, would be transformed from a quiet residential

street into a major neighborhood access road and would see a substantial increase in traffic if any proposed development goes forward. Relying on a non-through street and a residential street to provide over 80% of transportation services violates one of the core provisions of the Area II definition -

> *New urban development may only occur coincident with the availability of adequate facilities and services and not otherwise.*

Limited road access and major use by the neighborhood middle school and the East Boulder Community Center leads to major congestion at the peripheral intersections which suffer from some of the worst Levels of Service of any neighborhood arterial in the City of Boulder.

> **BVCP 6.03 Congestion**
> *The city and county will strive to limit the extent and duration of congestion, defined as Level of Service (LOS) F, to 20 percent of the roadway system within the Boulder Valley while providing for increased mobility.*

> ***BVCP 6.02 Reduction of Single Occupancy Auto Trips.***
> *The city and county will support greater use of alternatives to single occupancy automobile travel. It is the city's specific objective to continue progress toward 'no long-term growth in traffic' from 1994 levels through the year 2025 within the Boulder Valley. Both the city and county are committed to reductions in greenhouse gas emissions. These efforts will include other communities and entities and will include developing and implementing integrated travel demand management programs and new services. Within the city, new developments will be required to include travel demand management to reduce the vehicle miles traveled produced by the development.*

This property is located on the far edge of the City, far removed from any major commercial, retail or office service areas. While there are transit lines in the area, they are inconveniently located and would likely have a minimal impact on residents' transportation use.

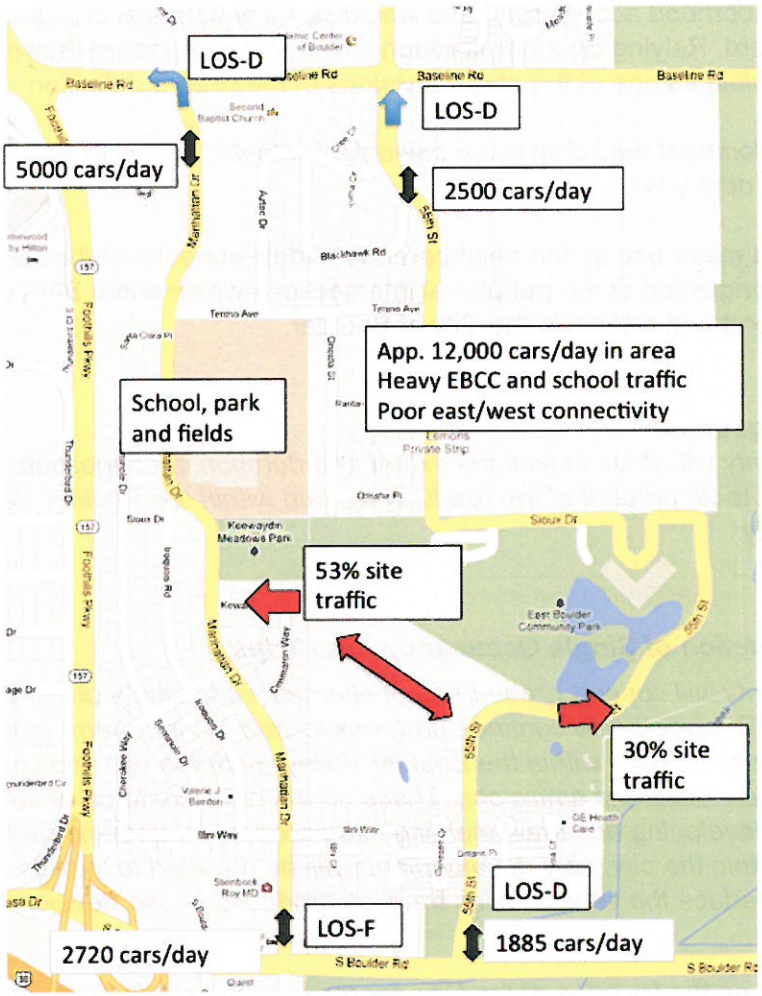


Figure 12: Transportation services

Figure 13: Traffic conditions on Manhattan

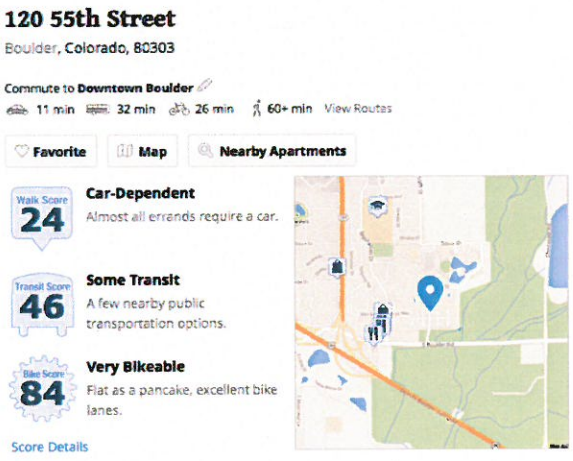


Figure 14: Walkability score from walkscore.com

BVCP 2.21 Commitment to a Walkable City.
The city and county will promote the development of a walkable city by designing neighborhoods and business areas to provide easy and safe access by foot to places such as neighborhood centers, community facilities, transit stops or centers, and shared public spaces and amenities.

While the recreational needs of the local community are well served by the nearby East Boulder Community Center and Open Space trails access, most required services are located far distances from this property. The property's walkability score from walkscore.com succintly and accurately describes the situation and shows that almost all errands require a car.

The map below shows distances from the property to nearby services. These would be some of the farthest drives to services of any neighborhood in Boulder.

- 0.6 miles to the nearest gas station and convenience store
- 2 miles to the Meadows Shopping Center.
- 2.4 miles to the nearest elementary school (Eisenhower)
- 4.8 miles to downtown Boulder

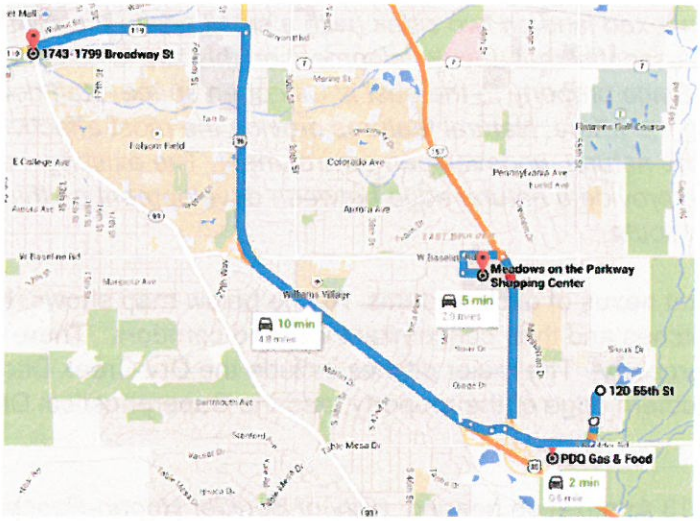


Figure 15: Transportation access

With increased congestion on local highways and roads into central Boulder, many local residents find it easier and quicker to drive to Superior or Broomfield via Highway 36 than it is to drive into Boulder for services. Unlike opportunities for development and redevelopment that are closer to core city services, increased residential development on this property would greatly encourage car use, far more than would be offset by providing new housing for the City work-force.

7.0 General Policies of the BVCP

The BVCP spells out 11 key policies that guide Boulder's future and that represent "long-standing community values." Changing the designation of this property to Area III is in line with these policies and serves to further the overall goals of the Comprehensive Plan.

- ***Recognition of sustainability as a unifying goal to secure Boulder's future economic, ecological and social health.***

Annexation and development of these 22 acres of wetland meadows and agricultural land adjacent to sensitive Open Space does not serve to address sustainability issues and secure our "economic, ecological, and social health."

- ***Commitment to open space preservation and the use of open space buffers to define the community.***

The Hogan-Pancost property serves an important role for the local neighborhood as a buffer between neighborhoods to the west and south, the recreational development to the north and the Open Space properties to the east. The property serves to define and delineate this transition zone and provides an important viewshed for the many visitors to the area.

- ***Encouragement of compact, contiguous development and a preference for infill land redevelopment as opposed to sprawl.***

Concern has been voiced around Hogan-Pancost site's unique and environmentally sensitive location for many years. The City of Boulder memo to Planning Board from 1995 [COB-CRG-1995] describes the importance of the site:

> *Well-defined edges for the City's boundaries are important as they support and understanding and appreciation of the City's image and create a clear sense of arrival and departure. While the property is surrounded by annexed land on two sides (with a small site to the south separating it from other annexed land), it is essential that any development on this site is designed with sensitivity to the eastern boundary. Since property to the east is City open space, staff does not expect that this area will be developed in the future. Natural features provide the most effective edges, delineating the built environment from the natural, undeveloped environment. The existing mature cottonwood trees to the south of the site provide a natural edge between development on this site and existing residential development to the south.*

The property is an important nexus of ditch systems. As the below map shows, the property is literally surrounded by irrigation ditches and their concomitant wetland corridors. There are also myriad lateral ditches that intersect the property. The major ditches include the Dry Creek Ditch #2 to the west, the Bodam Lateral Ditch along the southern edge of the property, and the Superphostical Ditch which forms the northern border.

The staff memo for the 2013 Annexation hearing (*City of Boulder Hogan-Pancost Annexation Council Memo, September 3rd, 2013 - Jane S. Brautigam, City Manager)* lays out the criteria for Annexation. The Hogan-Pancost property meets the basic legal criteria but, as the Staff memo describes, the property is only contiguous with developed City of Boulder properties on 20% of it perimeter. 40% (> ⅓ mile) of the property abuts rural Boulder County land - 2 estate sized parcels to the south and City of Boulder OSMP property to the east. The remaining 40% of the property is adjacent to the wetlands along the Superphostical ditch and the open soccer fields.

Figure 16: Area ditches

The staff memo goes on to state that "*no development is proposed for the eastern parcel*" and describes the concerns voiced around impacts to wildlife on the site.

"… impact to wildlife on the site, including but not limited to prairie dogs and Preble mice [SIC]."

These concerns are well founded considering the entire eastern portion of the site and part of the western parcel are part of the Boulder County Critical Habitat Zone for the Preble's Meadow Jumping Mouse, a Federally listed Threatened Species.

- ***Provision of quality urban spaces, parks and recreation that serve all sectors of the community and trails and walkways that connect the community.***

Hundreds of people walk, jog, bike and drive past this property every day. The property's openness and natural features serve as an important transition between the Community Center, Open Space lands and neighborhoods. The viewshed that this property protects plays an important role in the overall aesthetics and experience of the surrounding area.

- ***Commitment to preservation of natural, cultural and historic features that contribute to defining the unique sense of place in Boulder.***

For the many residents and visitors to this area, the Hogan-Pancost property is an important natural and historic feature that affects their experience of the natural environment every day. The 2013 Staff memo describes the historic uses of the property:

"The Hogan-Pancost properties have been historically used for grazing and agricultural purposes"

The agricultural nature of the area provides a glimpse of what the Boulder Valley was once like. There are not many places adjacent to neighborhoods and parks that allow our children to have these kinds of experiences.

Figure 17: Preserving natural, cultural, and historic community features

BVCP 2.06 Preservation of Rural Areas and Amenities.
The city and county will attempt to preserve existing rural land use and character in and adjacent to the Boulder Valley where environmentally sensitive areas, hazard areas, agriculturally significant lands, vistas, significant historic resources, and established rural residential areas exist. A clear boundary between urban and rural areas at the periphery of the city will be maintained, where possible. Existing tools and programs for rural preservation will be strengthened and new tools and programs will be put in place.

BVCP 9.01 Support for Agriculture.
The city and county will encourage the preservation and sustainable use of agricultural lands as a current and renewable source of both food and fuel and for their contribution to cultural, environmental and economic diversity. The city and county will encourage the protection of significant agricultural areas and related water supplies and facilities, including the historic and existing ditch systems, through a variety of means, which may include public acquisition, land use planning, and sale or lease of water for agricultural use.

As noted above approximately 1 mile of historic ditches surround and bisect the property. The Hogan-Pancost property has been used as irrigated grazing land for decades. The proximity of this agricultural land to the built environment of the City offers a unique experience and exposure to our shared agricultural past. As City of Boulder Staff points out, there is a long and historic use of this site. The current historic buildings exhibit a unique post-war dude ranch vernacular.

8.0 Planning Board Recommendations

In April 2013 the City of Boulder Planning Board heard a Site Review and Annexation Application for the Boulder Creek Commons project on the Hogan-Pancost property. The review process was exhaustive - spanning three days with many hours of technical testimony and discussion. At the end of the review the

Planning Board voted unanimously (7-0) against the Site Review and Annexation application. A summary of their findings based on the provisions of the Boulder Valley Comprehensive Plan is given below. The audio recordings of the deliberations can be accessed at:
https://bouldercolorado.gov/channel8/city-council-video-player-and-archive

BVCP Section 3.06: Wetland and Riparian Protection
The applicant had not demonstrated that filling of the wetlands was unavoidable. There was concern that the illegal earthwork performed on the site impacted the mapping of the wetlands and created a new baseline for the amount of wetlands impacted by development; the board did not want to see this become a precedent for development of future projects on similar sites.

BVCP Section 8.03: Equitable Distribution of Resources
The board felt that given all the uncertainties associated with the high water table at the site, the development proposal violated the intent of this section by unfairly burdening a geographic group *i.e* the adjacent neighbors.

BVCP Section 3.28: Surface and Groundwater
There were concerns about the lack of data and information about the impacts of groundwater and that engineering solutions would be "fraught with other challenges."

BVCP Section 3.23: Larger Flood Events
With one exception, the board did not want to see the costs and impacts of floods due to the development moved off site to the adjacent neighborhoods. They were concerned about putting a critical facility for a vulnerable population, the proposed senior congregate care center, in a floodplain. The board also felt that the development proposal used historical data for their flood mitigation plans, but felt that it was necessary to consider the probability of a larger flood event in the future. The board pointed out that there are other flood risks including local drainage problems.

Community Benefit
The board felt that while there was community benefit from the project *e.g.* wetland enhancement on the eastern parcel, it was outweighed by the potential negative impacts of the project. Though senior housing is a high priority in Boulder, this site was not the appropriate location for it.

The planning board voted unanimously that:

- The City Council reject the application for the annexation of the Boulder Creek Commons.
- The City Council deny the application for Site Review based on the finding that it failed to meet Site Review Criteria 1A: Consistency with the Boulder Valley Comprehensive Plan.

9.0 Conclusion

SEBNA believes that there are compelling reasons to change the BVCP land use designation of this property to Area III. There are few policies and elements of the BVCP that future annexation and development of this property would satisfy. However, as we have documented in this revision request, moving this property to Area III clearly furthers the goals of the BVCP.

Bibliography

[BCC-Grading-2003] *Hogan Development Report.* Submitted to Boulder County. 2003

[BCC-Traffic-2012] *Traffic Impact Analysis Boulder Creek Commons.*
LSC Transportation Consultants.
http://ramadda.org/repository/entry/show?entryid=d2da345a-cae6-4422-90f3-32972307fdb5

[BCC-Wetlands-2010] *Groundwater Hydrology Monitoring & Wetland Delineation Report - Hogan Pancost Property.* Western Ecological Resource.
http://ramadda.org/repository/entry/show?entryid=305e6c5c-d706-44af-b667-224e2c10f937

[BCCP-ERE-Supplement] *Supplemental Materials to the Environmental Resources Element of the Boulder County Comprehensive Plan (BCCP).* November 2013
http://www.bouldercounty.org/doc/landuse/bccp-supp.pdf

[COB-CRG-1995] *City of Boulder Community and Staff Review Group memo to Planning Board*
http://ramadda.org/repository/entry/get/1995_pb_memo.pdf?entryid=78cd0830-2fbc-419f-a814-f0587d12d9a0

[COB-BVCP-2005] *Site No. 4 Description: 5552 Baseline Road. 2005 BVCP Major Review.* City of Boulder memo.
https://ramadda.org:8081/repository/entry/show?entryid=d0192b4c-b07d-4046-8ae5-226c2f793118

[COB-Frog] *Northern Leopard Frog Inventory Surveys 2006 Report.* City of Boulder.
https://www-static.bouldercolorado.gov/docs/2006-northern-leopard-frog-inventory-1-201304101201.pdf

[COB-Frog-Email] Personal correspondence. 12/12/2014. Joy Master, Conservation Ecologist, City of Boulder Parks & Recreation

[COB-SBC-Plan] *South Boulder Creek Area Management Plan.* City of Boulder. October 1998
https://www-static.bouldercolorado.gov/docs/south-area-mgmt-plan-1-201304041642.pdf

[COB-Sitereview-2013] *City of Boulder Planning Board video of 2013 Hogan-Pancost Site Review*
https://bouldercolorado.gov/channel8/city-council-video-player-and-archive

[COB-SBC-Mitigation] *South Boulder Creek Major Drainageway Plan– Alternatives Analysis Report.* CH2MHILL.
https://www-static.bouldercolorado.gov/docs/south-boulder-creek-flood-mitigation-study-1-201407141309.pdf

[COB-Lowerbasin] *Hydrologic Impacts of Downstream Storm Centers. City of Boulder report.* February 24, 2005
http://ramadda.org/repository/entry/show?entryid=1a2a7693-21d8-43e6-beba-eb58b7e961f0

[CNAP] *Colorado Natural Areas Program*
http://cpw.state.co.us/aboutus/Pages/CNAP.aspx

[Ditch-Project] *The Ditch Project: 150 Years of Ditches: Boulder's Constructed Legacy.*
http://bcn.boulder.co.us/basin/ditchproject/

[Johnson-2011] *Regional decline of an iconic amphibian associated with elevation, land-use change, and invasive species.* Johnson et al. 2011. Conservation biology 25:556 - 566

[Joseph-Johnson-2012] *Habitat Use of Northern Leopard Frogs Along the Front Range* Joseph and Johnson. 2012

[McCurry-2010] *Review and Assessment of Ground Water Issues Related To Development of the Hogan-Pancost Property.* 2010. Dr Gordon McCurry.
http://ramadda.org/repository/entry/show?entryid=24e69c47-324c-4ff7-b174-0e3a9f60830a

[McCurry-2012] *Review and Assessment of Ground Water Issues Related To Development of the Hogan-Pancost Property.* 2012. Dr Gordon McCurry.
http://ramadda.org/repository/entry/show?entryid=24e69c47-324c-4ff7-b174-0e3a9f60830a

[Meaney-2001] *Monitoring for Preble's Meadow Jumping Mouse along Goodhue and Davidson Ditches off South Boulder Creek. Meaney and Ruggles.* Unpublished City of Boulder OSMP report.
http://ramadda.org/repository/entry/show?entryid=d8dff888-f406-42c4-b5fa-ff7ed395303d

[Meaney-2003] *Abundance, Survival, And Hibernation Of Preble'S Meadow Jumping Mice (Zapus Hudsonius Preblei) In Boulder County, Colorado.*
Meaney, et. al. The Southwestern Naturalist. 2003.
http://ramadda.org/repository/entry/show?entryid=60eba1ef-5e10-46f2-958a-6f1cbee04dd7

[Ruggles-2003] *Hibernacula locations for Preble's meadow jumping mice on City of Boulder Open Space.*
Ruggles, et. al.
https://bouldercolorado.gov/links/fetch/16842

[SEBNA-Lower-Basin] *Lower Basin Presentation.* https://ramadda.org:8081/repository/alias/hp_lowerbasin

[SEBNA-Wetlands] *Hogan-Pancost Wetlands.* http://ramadda.org/repository/alias/hp_wetlands

[UDFCD] *South Boulder Creek Historic Floods.* Urban Drainage and Flood Control.
http://www.udfcd.org/FWP/floodhistory/sbc_floodphotos.html

[USFWS-Prebles] USFWS. 2011. *12 month finding on a petition to list the northern leopard frog in the western United States as threatened.* Federal Register 76: 61896 - 61931

[USFWS-Habitat] *USFWS PMJM Critical Habitat.*
http://www.fws.gov/mountain-prairie/species/mammals/preble/CRITICAL%20HABITAT/CRITICALHABITATindex.htm

FORMAL REBUTTAL COMMENTS

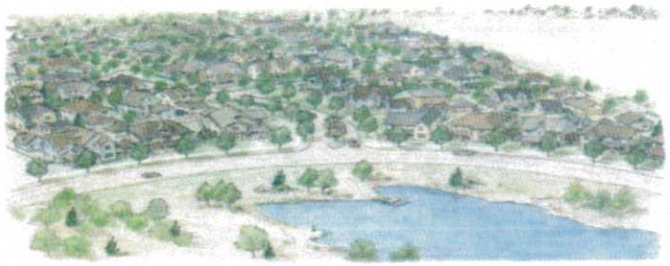
FOR THE APPLICATION

TO REVISE THE LAND DESIGNATION

OF 5399 KEWANEE AND 5697 S. BOULDER RD.

IN THE BOULDER VALLEY COMPREHENSIVE PLAN

FROM AREA II TO AREA III



Boulder Creek Commons, LLC

October 1, 2015

To: City of Boulder

From: Boulder Creek Commons, LLC

Re: Change of BVCP Land Designation

Mayor and members of Council,

We write today in response to (another) neighborhood application to change the BVCP Land Designation of OUR property from its long standing Classification of Area II to Area III. This land parcel has been owned by a group of local citizens for some 13 years now, with several attempts to get approvals to build on it, as is the purpose of Area II land, including the South Boulder Creek Flood Study which took more than 3 years to complete (during which time we were not allowed to submit for a Concept Plan), in addition to requiring us to perform detailed and extensive engineering and environmental studies (this had not been ever been done before our project to the best of our knowledge). All of these requirements combined to effectively delay our project submittals by more than 4 years!

The criteria for making such a change in classification under the BVCP is as follows:

Proposed changes from Area II to Area III – Rural Preservation Area must meet the following criteria:

> ***(a)Changed circumstances indicate either that the development of the area is no longer in the public interest, the land has or will be purchased for open space, or, for utility-related reasons, the City of Boulder can no longer expect to extend adequate urban facilities and services to the area within 15 years;***
>
> ***(b) Any changes in proposed land use are compatible with the surrounding area and the policies and overall intent of the comprehensive plan.***

We will address each of the criteria in detail:

(a) There have been NO changed circumstances that indicate that the development of our land is no longer in the public interest. Our land has been designated as Area II land for nearly 40 years and is one of the last larger parcels that could support affordable single-family housing in the City. It should be developed and it absolutely can be developed without any harm to the surrounding area. This land would be developed now if not for the long and drawn out effort by a small group of citizens to prevent any development on land that they believe is theirs to control. Neighborhood resistance has been fear-driven and not backed up by any factual engineering analysis.

Our land has been considered as potential open space land by the City, but there was no effort on the City's part of purchase the land for such use. We had a couple of meetings with the Open Space department during which they expressed no interest in acquiring our land for Open Space at any price In fact, our land is surrounded by large amounts of usable open space now, and the highest and best use of this land is for development and not open space;

There are more than adequate utilities adjacent to this land and therefore, this is not a factor for determining a change in classification

(b) To change our land to Area III would effectively "spot zone" one parcel. Land that is surrounded by developed City land, i.e. residential neighborhoods, a large City Park, the East Boulder Recreation Center, and City open space. The City through its intergovernmental agreements has declared that this land should become part of the City. To carve out an exception and designate our land as Area III is contrary to sound land use planning. This land parcel is virtually an enclave and development of our land is compatible with the surrounding area.

This land is NOT suitable for Area III and should be developed, as the four governing bodies in the County have agreed upon for nearly 40 years.

We purchased this land in 2002 because of the following:

1. It was identified as Area II in the BVCP, and had been Designated as Area II since 1977;
2. It survived a challenge to place it in into Area III (brought by the neighborhood);
3. The land, for all intents and purposes is an Enclave, surrounded almost entirely by City land;
4. It was, and still is, located within the City "Service Area Boundary", making it a logical parcel of land to annex and develop;

5. AND, most importantly, the proposed development of this land was strongly supported by City Planning Staff, from the first meeting with them, all through the entitlement process.

The only issue to be considered here is that the surrounding neighborhoods decided some 15 years ago that they did not want our land developed, for any use. They have spent years trying to convince the City that it is not developable for many reasons, i.e. flood problems, ground water problems, environmental problems, and anything else that might support their claims that this land is not developable.

The South East Boulder Neighborhood Association (SEBNA) has fabricated constant claims of all of the so-called "problems" on our land. However they have failed to provide ANY factual engineering studies to back up the claims they have made, and continue to make, about our land. Our attorney asked SEBNA's representative to meet to review the claims made in their request. His response was, "***I don't think that would be appropriate or productive at this time. If there are any errors or inaccuracies in the request we'd be more than happy to correct them.***" Jeff McWhirter, September 23, 2015 email.

This refusal to substantiate SEBNA's claims is critical. For example, page 1 of their request contains eight (8) claims that are irrelevant and do not address the criteria. The first paragraph contains irrelevant and inflammatory statements such as "*...the property brings many issues...*" and "*... has undergone intense scrutiny...*" without providing any explanation. We had hoped to ask SEBNA what issues it meant. The groundwater concerns have been satisfactorily addressed by experts and so have any flood concerns. Despite the expert's analysis and reports, SEBNA goes on to state that "*...the property has experienced a large number of floods...*" attempting to imply that these conditions exists today. They do not.

Nearly 25% of all land inside the City limits of Boulder is located in the 100 year Flood Plain. Less than 5% of the BCC land is located within the 100-year floodplain. And yet, much of the land within the City that is in the 100-year floodplain, has been successfully developed and is now providing homes and offices for residents of Boulder.

Most important, is that during the September 2013 flood, our land did not suffer the flooding that much of the surrounding area did. Our flood expert, Alan Taylor, formerly of the City Staff, walked our land on Thursday (the day the rain finally stopped) of that devastating week, took photos of the standing water on that day, and wrote a report on his findings. His report as well as his rebuttal to the current neighborhood claims that our land has flood "*problems*" is attached here. As you will see, there are very little flood or floodplain problems on our land.

In fact, the neighbors to the west had many more problems caused by this flood than did our land. And by using modern construction methods such as Clay

Dikes surrounding all underground utilities, plus having no basements on our land, new development can take place on our land.

Also on page one of the SEBNA request, they allude to "... *deep and potentially intractable problems around groundwater...*" and "... *problems with basement flooding...*"

Nearly 100% of the land in the City of Boulder is subject to high groundwater tables, due to the nature of the shale "*shelf*" that resides some 20 +/- feet below grade, and keeps groundwater levels high. Many houses, offices, a new hospital, downtown mixed-use buildings, etc. have been built under the same conditions that our land experiences. And, they are inhabited everyday by local citizens who experience no problems living or working in these buildings. The groundwater flow in the area of our land is flowing from the mountains (at the west) "downhill", northeast to the plains. Our land is located east of the SEBNA neighborhoods that are complaining about future groundwater problems. Engineering will show that all of our groundwater (present and future) will flow away from these neighborhoods.

We discovered early that our land has a higher than average groundwater level much of the spring and summer, and therefore never proposed to build any basements in any buildings there. Due to that above average groundwater level, basements very likely should not have been built anywhere in the area. However, the lack of testing, and other factors, many basements were built in this area and have experienced many drainage, basement flooding, and sump pump problems.

Specifically to the neighborhood to our due west, those people also have a large farmer's ditch running next to several of their homes. This ditch leaks considerably in the spring and summer and may add to the existing problem of an above average groundwater level, that was there before any houses were built in the area. The bottom line is that the houses located to our west already have groundwater and flooding problems and through extensive engineering, we have proven beyond a doubt that any development as proposed to date on our land will not exacerbate the already existing problems these neighbors are having.

The last two SEBNA claims on page one are self-serving statements that are simply untrue. Our property is no "...*further removed from most services...*" than those of SEBNA. The streets are not "...*already congested local neighborhood streets...*" Staff has reviewed these claims during their reviews and found no problems with proximity to services and congestion.

On page 2, SEBNA continues to make vague unsubstantiated claims about "...*a host of environmental issues both onsite and adjacent...*" The attempt to call out so-called environmental issues adjacent to our property is irrelevant to the City's decision before the City. And, our expert consultants have performed extensive environmental studies on this land and have found NO environmental problems. Those reports are attached to this letter.

SEBNA's wetlands claims are internally contradictory. First they claim that "*...many acres of important wetlands have been destroyed...*"and then state that our property "*...still provides many acres of important wetland meadows habitat...*" Then SEBNA proceeds to list an array of birds and animals that would be impacted by development of our property, from"*...prairie dogs, birds of prey, Prebbles Jumping mice to frogs...*" They conclude with a reference to a "*...1 mile historic ditch that bisects the property...*," as if to imply that a culturally significant historic feature would be lost.

Finally, SEBNA focuses on what appears to be their main goal, preserving our property to ***"...play an important aesthetic role of many people that drive, walk, bike and live in the area...***," the neighbors.

In some 2,000+ pages, our expert engineers and expert environmental consultants outlined exactly why this land is (very) developable (copies of all such reports are attached here for review). To date, we have seen no fact-based reports to back up the SEBNA's claims that our land is not developable. It appears that there are two different standards of performance that are in play here, which are patently unfair. The owners of the land have been forced into spending large sums of money and large amounts of time to produce engineering and environmental studies and reports showing that the land is developable. The neighbors are not being held to anything approaching that standard. They are free to make any claims they choose to make without ANY detailed analyses of those claims. This double standard needs to stop now. If the neighbors are going to submit an application for a Major change is land use for OUR land (taking away our property rights), than they should be required to supply the same levels of engineering and environmental studies to support their clams. They have NOT done so, or at least are unwilling to share them if they have them, and therefore they should NOT be allowed to submit their application at all.

As long time owners of this land that was designated as developable, we have been frustrated that development has not come close to being approved here, and we feel that it is high time that our property rights are recognized, and development to be permitted to commence.

IF this land is deemed undevelopable, then much of the land in the City of Boulder that experiences the same (or worse) engineering issues should not have been developed at all, and further, this would mean that the City has major liabilities to face by allowing "undevelopable land" to be developed based on the claims of a small group of neighbors and citizens.

Using the vehicle of changing the BVCP land classification is simply not appropriate here, under the BVCP Criteria for making such a change. We hope that the four body governing bodies will make the correct, and legal, decision on this matter.

Growth Management

1.17 City's Role in Managing Growth and Development.

In order to achieve community goals and policies, the city will implement growth management tools that control the scale, location, type, intensity and timing of new development and redevelopment. Where appropriate, the county will work with the city in developing and implementing growth management tools.

1.18 Adapting to Limits on Physical Expansion.

As the community expands to its planned physical boundaries, the city and county will increasingly emphasize preservation and enhancement of the physical, social and economic assets of the community. Cooperative efforts and resources will be focused on maintaining and improving the quality of life within defined physical boundaries, with only limited expansion of the city.

1.19 Growth Projections.

In order to ensure that past and projected growth impacts can be better mitigated or avoided, and to maintain a desirable community size, the city will set projections for population and employment for the year 2030. Proje[illegible] will be limited unless sufficient progress is made in reducing the cumulative negative growth impacts to an acceptable level and other significant community benefits can be achieved.

1.20 Growth Requirements.

The overall effect of urban growth must add significant value to the community, improving quality of life. The city will require development and redevelopment as a whole to provide significant community benefits and to maintain or improve environmental quality as a precondition for further housing and community growth.

1.21 Jobs:Housing Balance.

Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts including economic prosperity, significant in-commuting, and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new mixed use neighborhoods in areas close to where people work, encouraging transit-oriented development in appropriate locations, preserving service commercial uses, converting industrial uses to residential uses in appropriate locations, and mitigating the impacts of traffic congestion.

This is an important paragraph as it agrees that Boulder needs MORE housing.

Framework for Annexation and Urban Service Provision

1.22 Definition of Comprehensive Planning Areas I, II and III.

The Boulder Valley Planning Area is divided into three major areas.

Area I is that area within the city of Boulder, which has adequate urban facilities and services and is expected to continue to accommodate urban development.

Area II is the area now under county jurisdiction, where annexation to the city can be considered consistent with Policies 1.18, 1.20, & 1.27. New urban development may only occur coincident with the availability of adequate facilities and services and not otherwise. Departmental master plans project the provision of services to this area within the planning period. Area IIA is the area of immediate focus within the first three years, and Area IIB is available to accommodate development within the balance of the planning period.

DEFINITION OF AREA IIA CONTAINED HERE.

ALAN TAYLOR CONSULTING, LLC
Alan Taylor, P.E., CFM

1167 Purdue Dr., Longmont, CO 80503 taylor.alan@comcast.net 720.334.9260

TECHNICAL REBUTTAL TO PROPOSED BVCP REVISION

to

Request for Revision: Hogan-Pancost Area III-Rural Preservation Area Expansion
Submitted by Southeast Neighborhood s Association
(October 1, 2015)

The Southeast Neighborhoods Association (SEBNA) submitted a "Request for Revision" under the Boulder Valley Comprehensive Plan (BVCP) 2015 Major Update process. The request proposes changing the BVCP designation for 5399 Kewanee Drive and 5697 South Boulder Road (formerly known as the Hogan-Pancost property) from Area II to Area III – Rural Preservation Area. The application states, in part, the revision is based on critical flood hazards and lack of adequate services.

This technical rebuttal demonstrates that the BVCP revision requested is unwarranted. The SEBNA request offers an assessment biased towards a few local neighborhood residents. It relies on the gullibility of city and county decision makers to accept a self-serving argument to prevent neighborhood change at the expense of the Boulder community and private property owner.

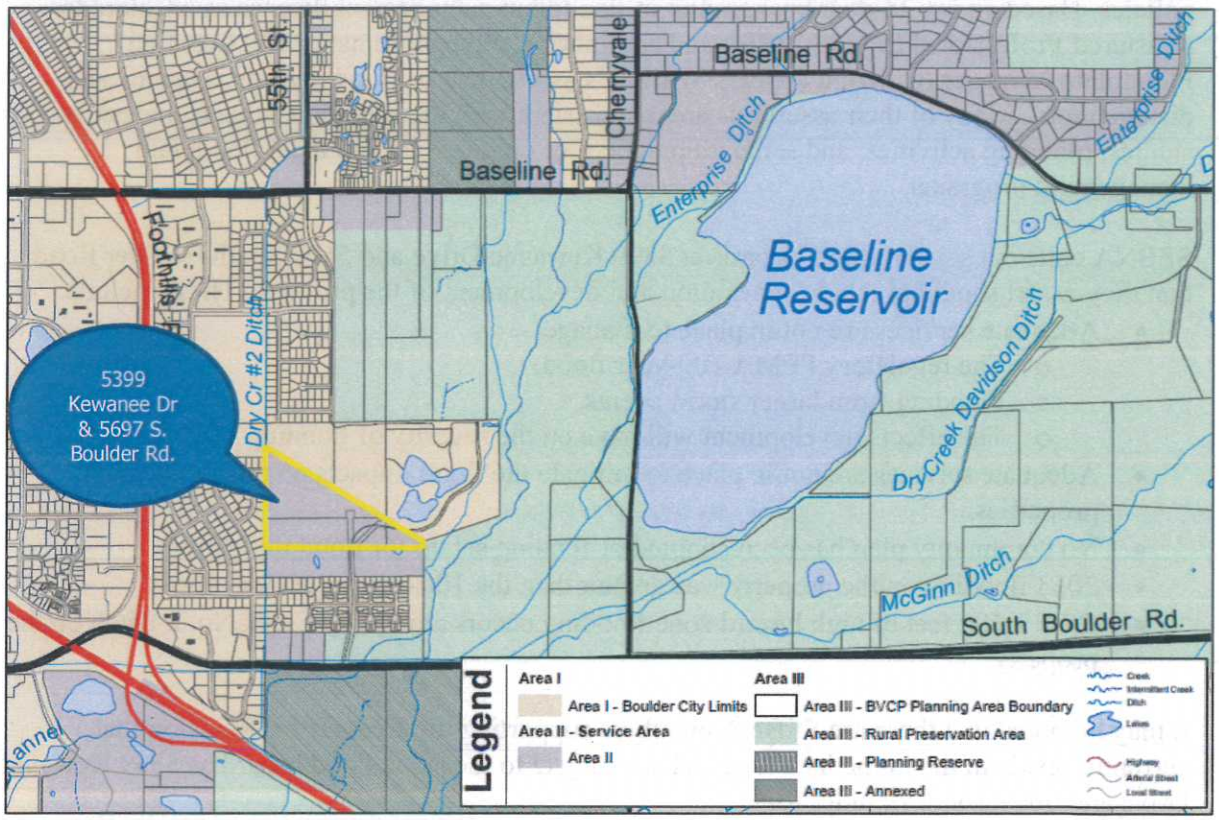


Figure 1- Excerpt BVCP Area I, Area II, Area III Map

Land Contiguity

The property located at 5399 Kewanee Drive and 5697 South Boulder Road is bordered by the East Boulder Community Center and Park to the north, Keewaydin Meadows and Dry Creek No. 2 Ditch to the west, two developed rural estate residential properties to the south, and City of Boulder Open Space to the east. The property perimeter totals 4,922 feet of which:

- 3,122 feet on the north and west borders Area I land.
- 1,728 feet on the south borders Area II land.
- 72 feet on the east borders Area III land.

Less than two percent of the property's border is contiguous with Area III land. The remaining border is surrounded by Area I and Area II lands that will ultimately become Area I land annexed into the city. If revised to Area III, this property could become a virtual enclave of Area III inside the corporate limits. This would be unprecedented. It appears senseless to designate a 22 acre site surrounded by community development as an Area III – Preservation Area when tens of thousands of connected acres of Open Space surround the city.

Flood Hazards

SEBNA argues in their Request for Revision that critical flood hazards exist at 5399 Kewanee Drive and 5697 South Boulder Road that call for a re-designation to Area III under the BVCP policies. Based on my 35-year background in floodplain management, license as a Colorado registered Professional Engineer (PE), and continued standing as a nationally Certified Floodplain Manager (CFM), it appears SEBNA's assessment of flood hazards is technically disingenuous. Many of their assertions are inconsistent with the accomplishments, measures, studies, planning activities, and standard practices of our national and local floodplain management programs.

SEBNA calls out several flood hazards at 5399 Kewanee Drive and 5697 South Boulder Road that they assert should preclude annexation and development of the property. These include:

- Adequate services are not in place to manage:
  - The regulatory FEMA 100-year flood,
  - Flooding from larger storm events.
  - The effects development will have on the severity of flooding.
- Adequate services are not in place to mitigate the flood impacts on this or adjacent properties.
- No community plan has been adopted or funding set up for flood mitigation.
- 2013 flooding on the property was greater than the 100-year regulatory flood.
- Over 1,100 feet of high hazard zone flooding occurs along Dry Creek No. 2 Ditch on the property.

It may be noted that there are SEBNA members supporting the Request for Revision that currently reside in the immediate area and are subject to the same flood hazard as 5399 Kewanee Drive and 5697 South Boulder Road.

Adequate Services

Floodplain Studies. Adequate floodplain information services are in place for flood hazards at 5399 Kewanee Drive and 5697 South Boulder Road. The projected regulatory 100-year and 500-year floodplain and observed flooding in September 2013 indicate minimal flood impact without property damage or high hazard conditions. The Floodplain Conditions at Hogan-Pancost Property White Paper – September 15, 2013, prepared by Alan Taylor Consulting, LLC (ATC), offers a detailed report detailing the history, studies, regulation and observed impacts of 2013 flooding for South Boulder Creek at the property.

Flood impacts observed and recorded at this property in 2013 were minimal, with limited short duration surface ponding of depths less than one foot in a few depressed areas, and no indication of erosive scouring or defined flow channels on the site. Photographs from the ATC white paper taken the morning of September 12, 2013, following an overnight of heavy rainfall and runoff in South Boulder Creek and Viele Channel showed no indication of hazardous flooding at the property.

Figure 2- West Side of Hagan-Pancost Property Looking South Along Dry Creek No. 2 Ditch (2013)

Figure 3- Hogan-Pancost Property Looking West from SE Corner at 55th Street (2013)

Figure 4 - Hogan-Pancost Property Looking NW from 55th Street (2013)

Figure 5 - Hogan-Pancost Property Looking SW from East Boulder Soccer Field Area (2013)

The observed conditions in the 2013 flood were consistent with the South Boulder Creek Flood Mapping Study findings and projections for the property. Site flooding in 2013 occurred substantially within modeled areas and calculated depths from the study.

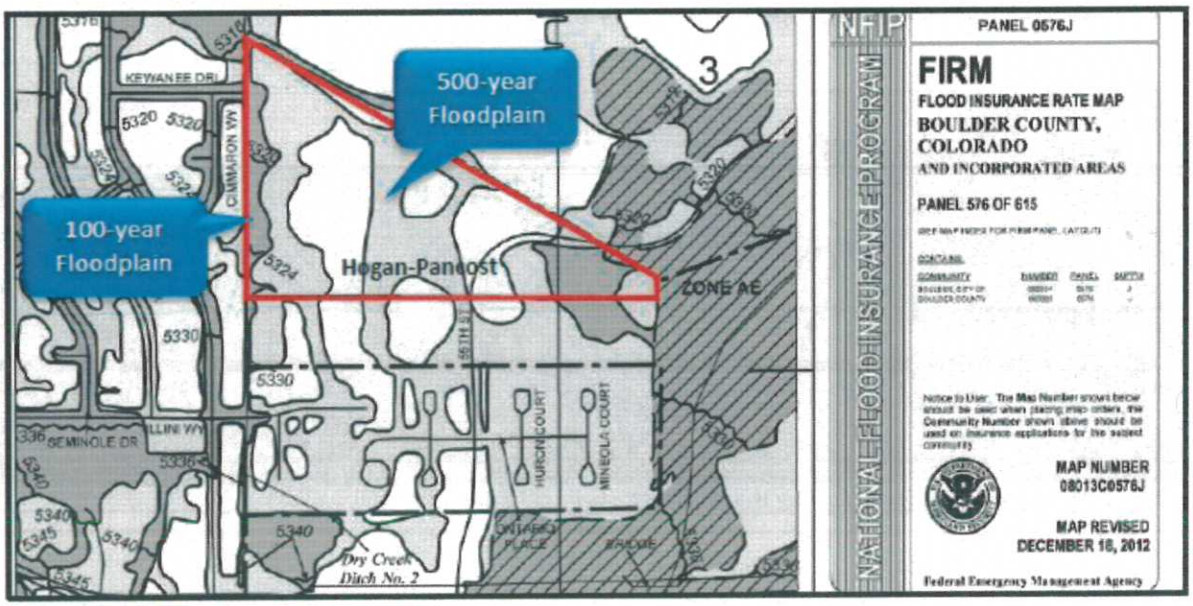


Figure 6 - FEMA Regulatory Floodplain Map

The Flood Insurance Rate Map (FIRM), revised December 18, 2012, provides adequate information to support regulatory services by assessing and identifying the flood risk on a community-wide basis. It establishes zoning standards and requirements for land use and development to ensure flood protection measures are provided. The flood study maps below illustrate the flood risk used to develop the FIRM based on modeled flooding areas and depths. The shallow flood depths indicate the flood risks are manageable, especially when compared with neighboring lands.

Figure 7- 100-year Flood Depths

Figure 8 - 500-year Flood Depths

Floodplain Regulations. The City of Boulder provides adequate regulatory services to manage and mitigate flood impacts on this and adjacent properties by virtue of stringent local floodplain regulations. City regulations exceed FEMA standards, offering greater protection measures and prohibiting development in high hazard flood zones.

Local floodplain regulations require that residential structures (in the regulatory 100-year floodplain) be elevated such that the lowest (or first) floor, including basement, is constructed at or above the flood protection elevation; two feet above the 100-year flood elevation. Site filling and elevating the ground may also be used to mitigate possible flood and drainage impacts, and offers a benefit to better avoid high groundwater conditions. Future building on a filled site could eliminate any flood potential altogether, including both 100-year and 500-year flood conditions.

A standard requirement for all city development is to convey drainage from the property in an historic manner that will not adversely affect neighboring properties. This regulation serves to mitigate onsite impacts and prevent adverse offsite flooding impacts. It requires that future development includes measures and improvements to accept and pass historic drainage and flooding patterns entering the property, crossing the property, and leaving the property consistent with historic conditions. Onsite runoff generated in excess of historic conditions is required to be managed to ensure historic flow rates are not exceeded and that required storm water quality standards are maintained.

Annexation Conditions. Conditions of annexation offer adequate services to address an expanded range of flood concerns. Restricting basement construction at 5399 Kewanee Drive and 5697 South Boulder Road, whether in a regulatory floodplain or not, can prevent the potential for basement flooding on this site, avoiding flood hazards experienced by the neighboring areas. Basement flooding was the major problem that affected many existing dwellings in the Keewaydin Meadows and Greenbelt Meadows during the 2013 flood. Avoiding future basement construction in this high groundwater area adequately mitigates basement flooding problem.

Preserving the Dry Creek No. 2 Ditch corridor can ensure that irrigation and drainage conveyance along the existing facility will be maintained and allows for system improvement.

Floodplain Management Programs and Facilities. Following the major flooding Boulder experienced in 1969, the City adopted a major drainageway master plan for Viele Channel and other citywide drainageways. Viele Channel was intended to mitigate flooding from the Table Mesa area that drained to the intersection of US 36 and South Boulder Road and into the Frasier Meadows and Keewaydin Meadows neighborhoods (referred to as the South Boulder Creek West Valley). Viele Channel collects and conveys flood waters to South Boulder Creek east of 55th Street. These publicly funded drainageway improvements were completed in the mid-1970s and have helped to mitigate the severity of flooding along the Dry Creek No. 2 Ditch corridor.

The SEBNA Request for Revision presents historical photographs from 1969 and 1973 to emphasize the impact of past flooding at 5399 Kewanee Drive and 5697 South Boulder Road.

Figure 9- Historic Flooding on the Hogan-Pancost Property in 1969 and 1973 (from SEBNA Report)

These photos offer an impressive perspective of past flooding along the Dry Creek No. 2 Ditch corridor. However they are misleading because they do not demonstrate the specific location and extent of flooding at the "Hogan-Pancost" property, or define the current (2013 and future) flood hazard that may occur at this site. The 1969 photo is aimed northeast across Dry Creek No. 2 Ditch and likely captures a portion of the Hogan-Pancost property. The 1973 photo is aimed southeast and does not include the Hogan-Pancost property considering the existing buildings that can be identified along South Boulder Road.

Figure 10- Dry Creek No. 2 Ditch at Kewanee Drive Looking West (1969)

The Dry Creek No. 2 Ditch is shown in the SEBNA 1969 flood photo overflowing its banks along the east border of Keewaydin Meadows. The western edge of 5399 Kewanee Drive and

5697 South Boulder Road can be seen in the 1969 aerial photo (Figure 10) receiving shallow flooding from ditch overflows. The aerial view offers a clear perspective of the extent of past flooding on this property.

Figure 11 - South Boulder Road East of US 36 Looking West (1969)

The buildings on the north side of South Boulder Road in the foreground of the aerial photo above are captured in the SEBNA 1973 flood photo demonstrating that the photo was not taken of the Hogan-Pancost property. In the 1969 aerial photo (Figure 11) it is clear that flooding overtopped South Boulder Road near the Dry Creek No. 2 Ditch crossing and flowed in a shallow widely dispersed path to the north. This area has changed significantly since 1969.

Today, Viele Channel collects and channels flood waters east along the south side of South Boulder Road and crosses east of 55th Street to its confluence with South Boulder Creek. In addition, the reconstruction and expansion of South Boulder Road modified street grades to eliminate roadway overtopping at Dry Creek No. 2 Ditch and relocated roadway overtopping east of 55th Street near the main creek bridge. The US 36 interchange has dramatically changed the highway layout from the historical South Boulder Road flyover. The development of Greenbelt Meadows in the mid-1980s filled and raised the land north of the historical buildings obstructing most overland flood flows moving north, leaving the ditch corridor as the only open flow path. Figure 12 provides a current view of this area to compare with the 1969 aerial.

Figure 12 - Google Earth Image of Viele Channel, South Boulder Road and Part of Greenbelt Meadows (2015)

Figure 13 - South Boulder Road Overtopping at Dry Creek No. 2 Ditch Duiring 1969 Flood

Figure 14 - South Boulder Road Overtopping Near South Boulder Creek (2013)

Greenbelt Meadows Subdivision south of 5399 Kewanee Drive and 5697 South Boulder Road was developed in 1984. This development was an extension of the Keewaydin Meadows neighborhood connecting to a planned Illini Way street extension like original planning for Kewanee Drive. The development encroached the Dry Creek No. 2 Ditch floodplain corridor with land fill in the same manner that could be proposed at 5399 Kewanee Drive and 5697 South Boulder Road.

Note that Greenbelt Meadows suffered flood damages to basements and garden levels in 2013 without significant surface flooding. If construction activities at Greenbelt Meadows had precluded basements and below grade floor levels there would have been minimal flood impacts or damages in that area. Today, the raised Greenbelt Meadows land grades serve to obstruct the northerly flowing overland flood potential for areas east of the Dry Creek No. 2 Ditch corridor.

Figure 15 - Initial Development of Greenbelt Meadows in 1984

Community Mitigation Plan

SEBNA states in the Request for Revision that "currently there is no [floodplain mitigation] plan adopted and the funding for the plan (approximately $40 million) has not been procured." SEBNA may have been unaware at the time of preparing their request that the City of Boulder adopted the South Boulder Creek Flood Mitigation Study on August 4, 2015.

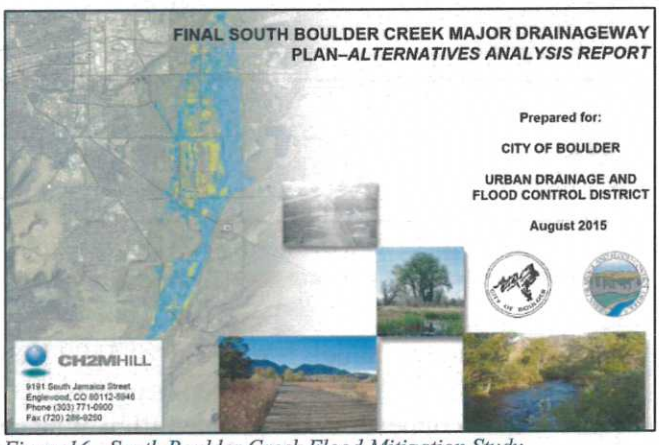


Figure16 - South Boulder Creek Flood Mitigation Study

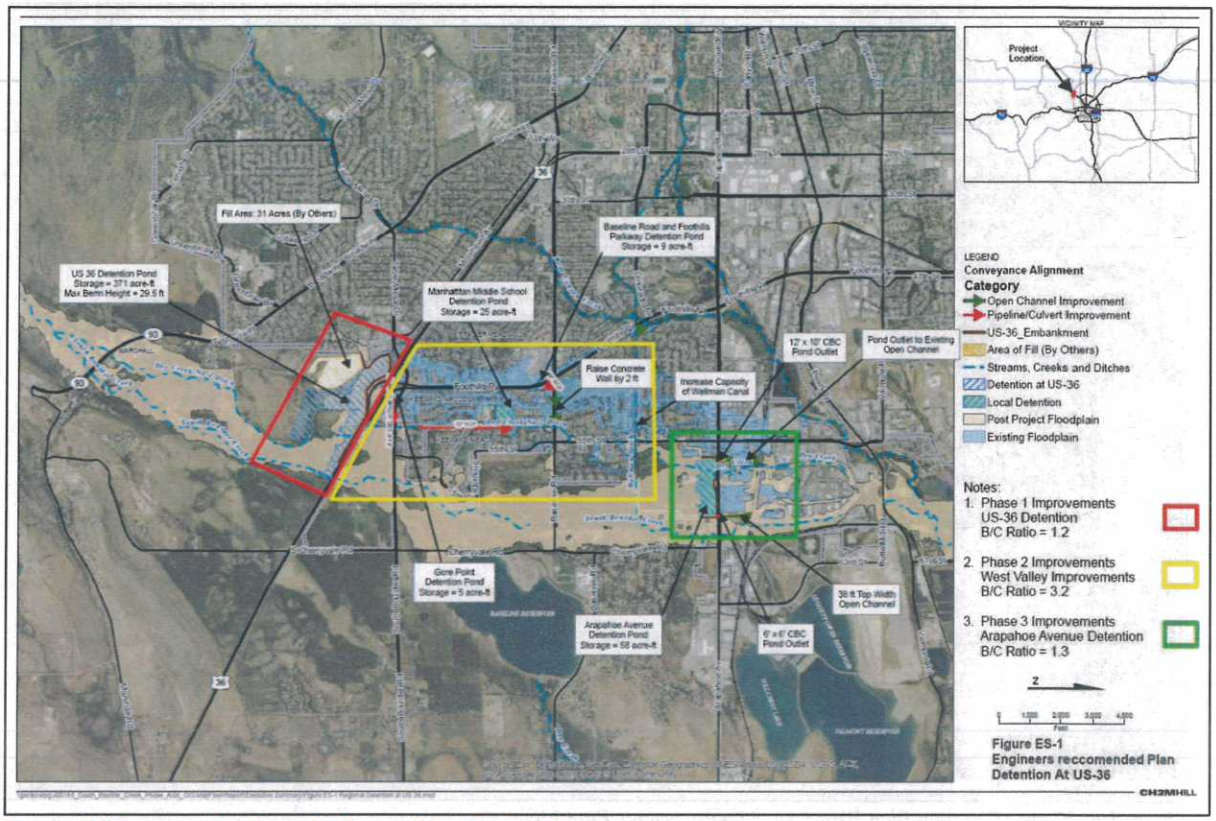


Figure 17 - Recommended Flood Mitigation Plan Project Elements

The flood mitigation study proposes West Valley Improvements that include Dry Creek No. 2 Ditch. These improvements will ultimately eliminate flooding in the West Valley.

Priority 2 – Local West Valley Improvements

The proposed improvements in the West Valley address a number of different flood related issues and are comprised of several smaller elements including:

- Local detention at Manhattan Middle School (or an adjacent feasible location),
- Dry Creek No. 2 Ditch improvements,
- Local detention at Baseline Road and Foothills Parkway,
- Floodwall improvements along Baseline Road,
- Improvements to the New Anderson Ditch, and
- Improvements to the Wellman Canal.

Implementation of these elements should generally follow broad drainage facility implementation guidance. That is, detention should be implemented early in the process to fully exploit the flow reduction realized through these facilities. Then the flood control measures such as the pipeline improvements along Dry Creek No. 2 Ditch and along Baseline Road should be implemented to provide adequate conveyance of the remaining flows. The improvements to the other irrigation ditches are intended to prevent overflows and contain those flows in the original system. These can often be done independently of any other improvements and can be implemented as need or opportunities arise. In aggregate, these improvements are expected to cost $11.0 million to implement and result in a benefit-cost ratio of 3.2. A total of 134 structures (386 dwelling units) would no longer be located within the 100-year floodplain if this phase were implemented.

Figure18 - Flood Mitigation Plan Local West Valley Improvements Overview

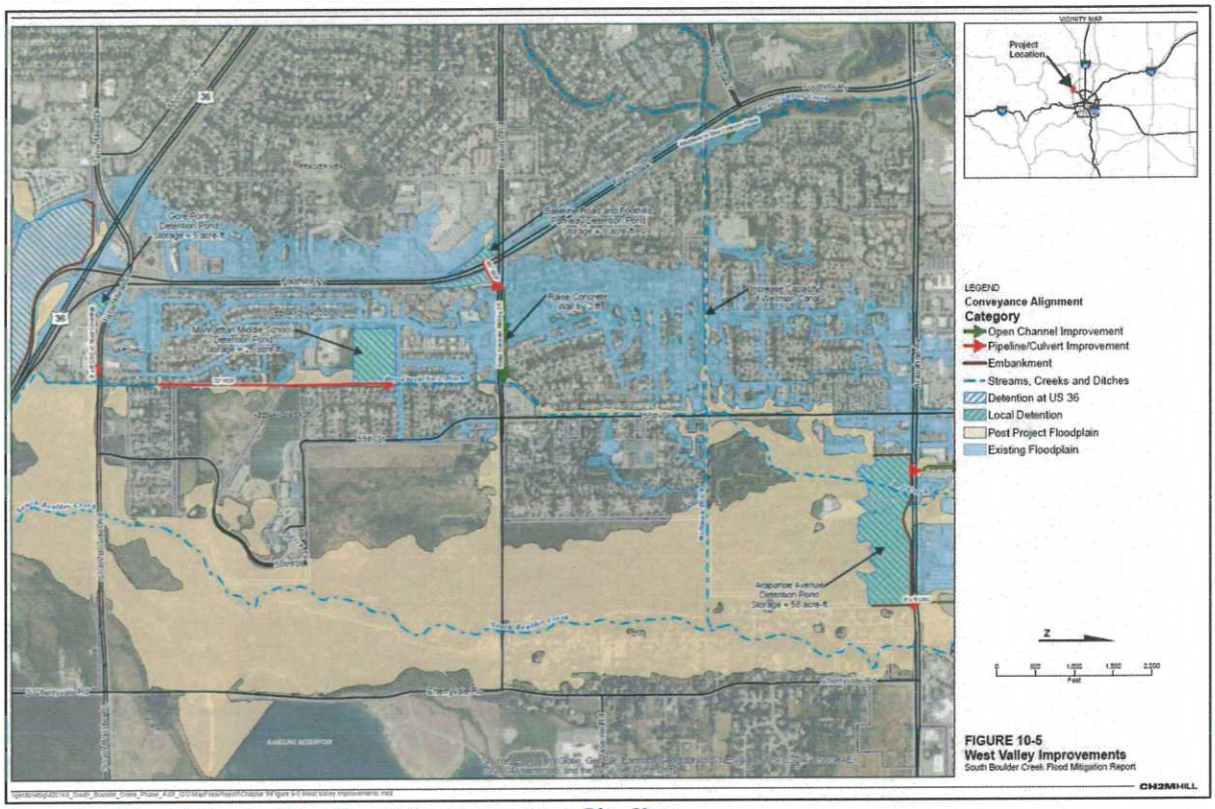


Figure 19 - Flood Mitigation Plan West Valley Improvements Plan View

Dry Creek No. 2 Ditch is planned to be conveyed in a 72-inch diameter reinforced concrete pipe from Illini way to a 25 acre-ft detention pond at Manhattan Middle School. This improvement will not deter from future land use activities at 5399 Kewanee Drive and 5697 South Boulder Road. It will provide for adequate surface flood mitigation services to this property as well as for the surrounding neighborhoods.

Figure 20 - Close Up of Flood Mitigation Plan West Valley Improvements

2013 Flood Exceeded 100-year Regulatory Flood

SEBNA claims in the Request for Revision that flooding in 2013 at 5399 Kewanee Drive and 5697 South Boulder Road was greater than the official 100-year regulatory flood. SEBNA uses this claim as an emphasis for revising the BVCP land designation from Area II to Area III – Rural Preservation. SEBNA included two maps from the City of Boulder Web site. The first map reflects the Regulatory Floodplains and the other reflects the 2013 Urban Flooding Extents.

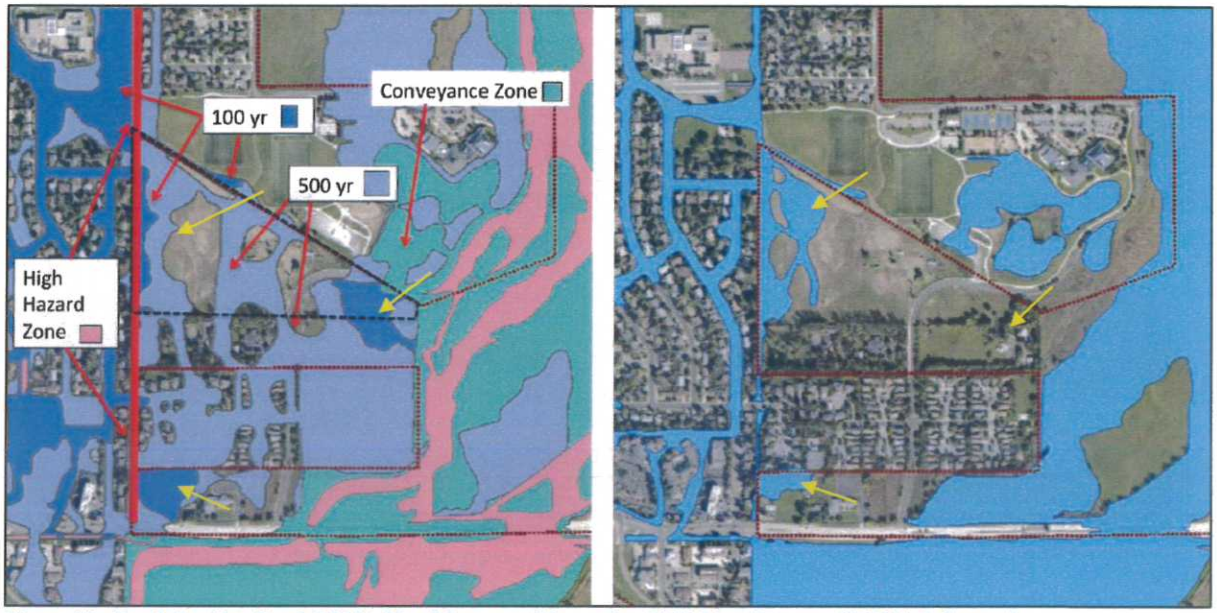


Figure 20 - South Boulder Creek FEMA Flood Zones and September 2013 Flood Extents (SEBNA Reference)

The 2013 flood extent map indicates a larger area of flooding on the property at 5399 Kewanee Drive and 5697 South Boulder Road than reflected on the 100-year regulatory floodplain map. The 2013 flood extent map also reflects smaller flooding south of Greenbelt Meadows at Dry Creek No. 2 Ditch and east of 55th Street on this and the Kent Estate property than reflected on the 100-year regulatory floodplain map. This appears to be incongruous.

Figure 21 - "Hogan-Pancost" Photo from SEBNA Report

A photo of "Flooding on the Hogan-Pancost property during the September 2013 flood" was referenced in the SEBNA Request for Revision as emphasis to the larger level of flooding 5399 Kewanee Drive and 5697 South Boulder Road experienced. There is no dispute the photo captures an area of the "Hogan-Pancost" property. However closer inspection of the photo reveals it does not show the true extent of flooding on the entire property. The view in the photo is misleading given it doesn't offer real evidence of greater flooding onsite than past events indicate and regulatory mapping predicts. Detailed review demonstrates concern about the validity of the increased flood hazard assertion.

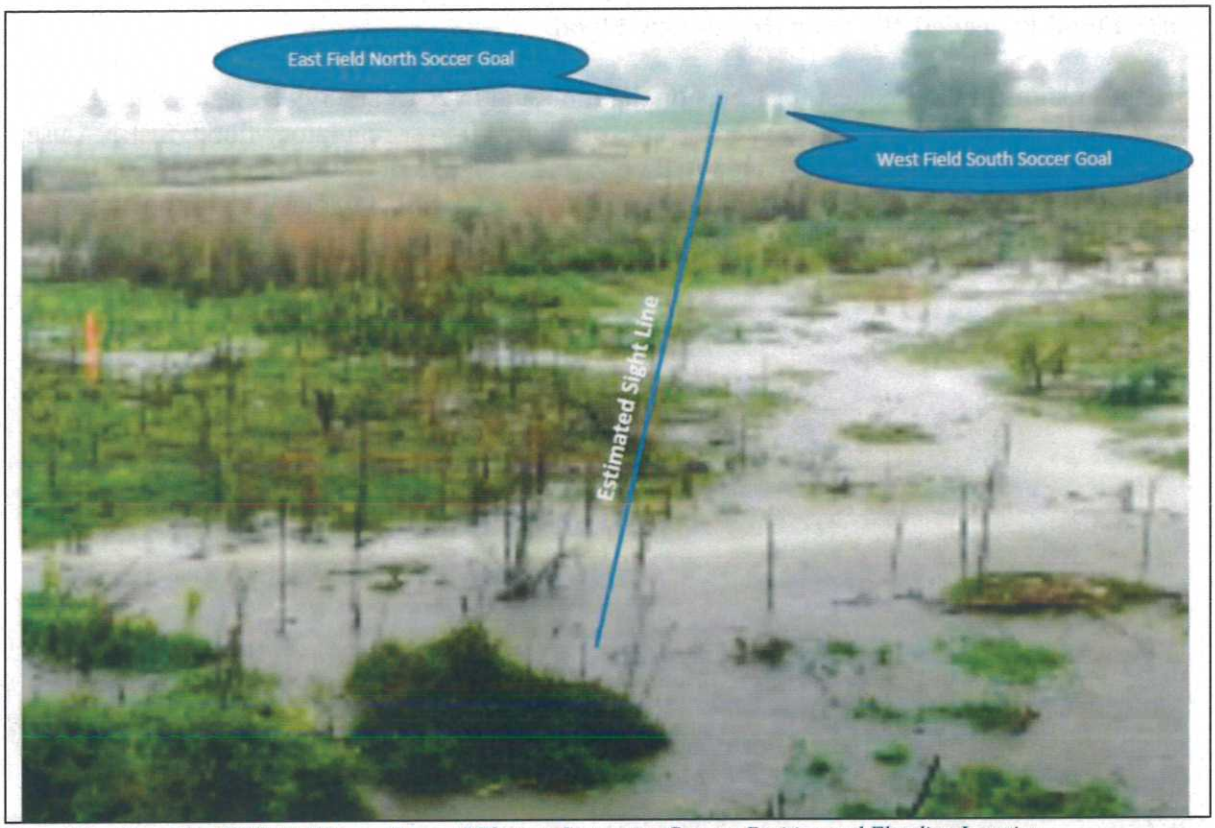


Figure 22 - Close Up of SEBNA "Hogan-Pancost" Photo to Determine Camera Position and Flooding Location

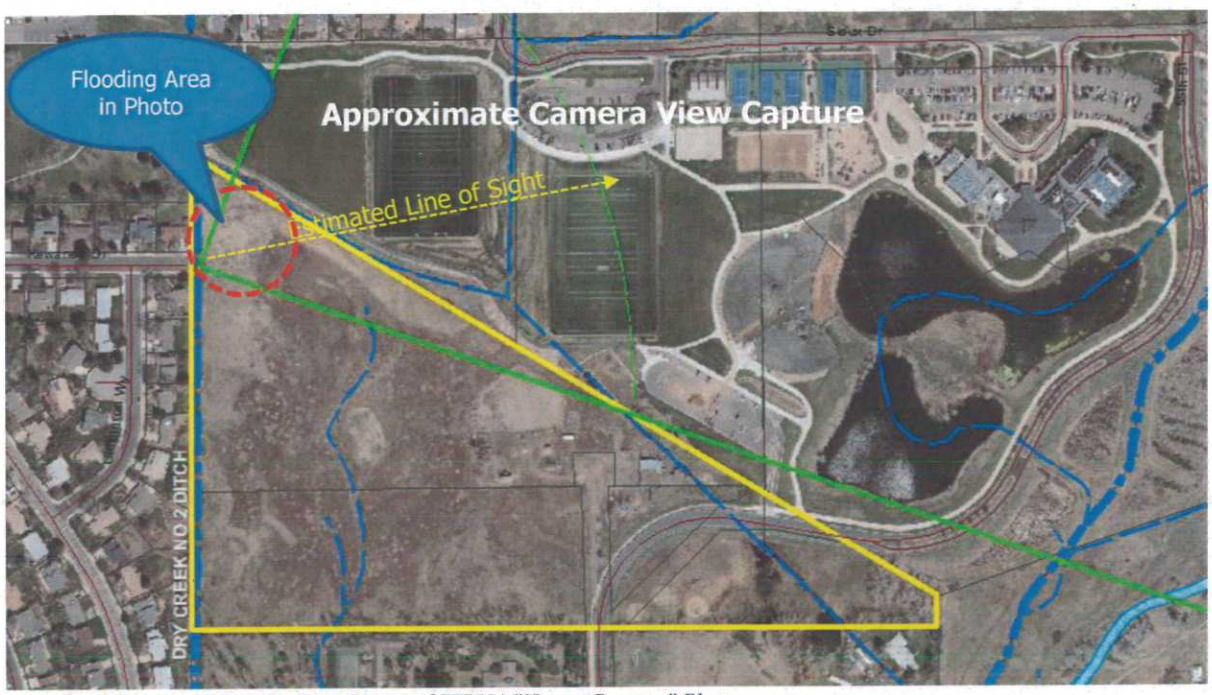


Figure 23 - Estimated Camera View Range of SEBNA "Hogan-Pancost" Photo

The photo included in the SEBNA Request for Revision appears to be taken from the east end of Kewanee Drive at Dry Creek No. 2 Ditch. Ponding of water on the property at 5399 Kewanee Drive and 5697 South Boulder Road is evident but is limited to the area located adjacent to the ditch at the north end of the site where surface waters tend to backup. Ponding depths in the photo outside the ditch itself are shallow and not fully inundated. The ground surface reflected in the aerial image above shows evidence of surface ponding in the northeast corner that may be from occasional flooding, storm runoff, ditch overflows and irrigation practices. Proof of a greater flood hazard is not evident from this photograph.

It is not clear that greater flooding of the property than projected in the regulatory mapping occurred in 2013. Photographs of the site taken the morning of September 12, 2013, included in the ATC White Paper, do not indicate greater flooding of the property or that the flood hazards are so significant that future development should be prevented and the property should become rural preserve.

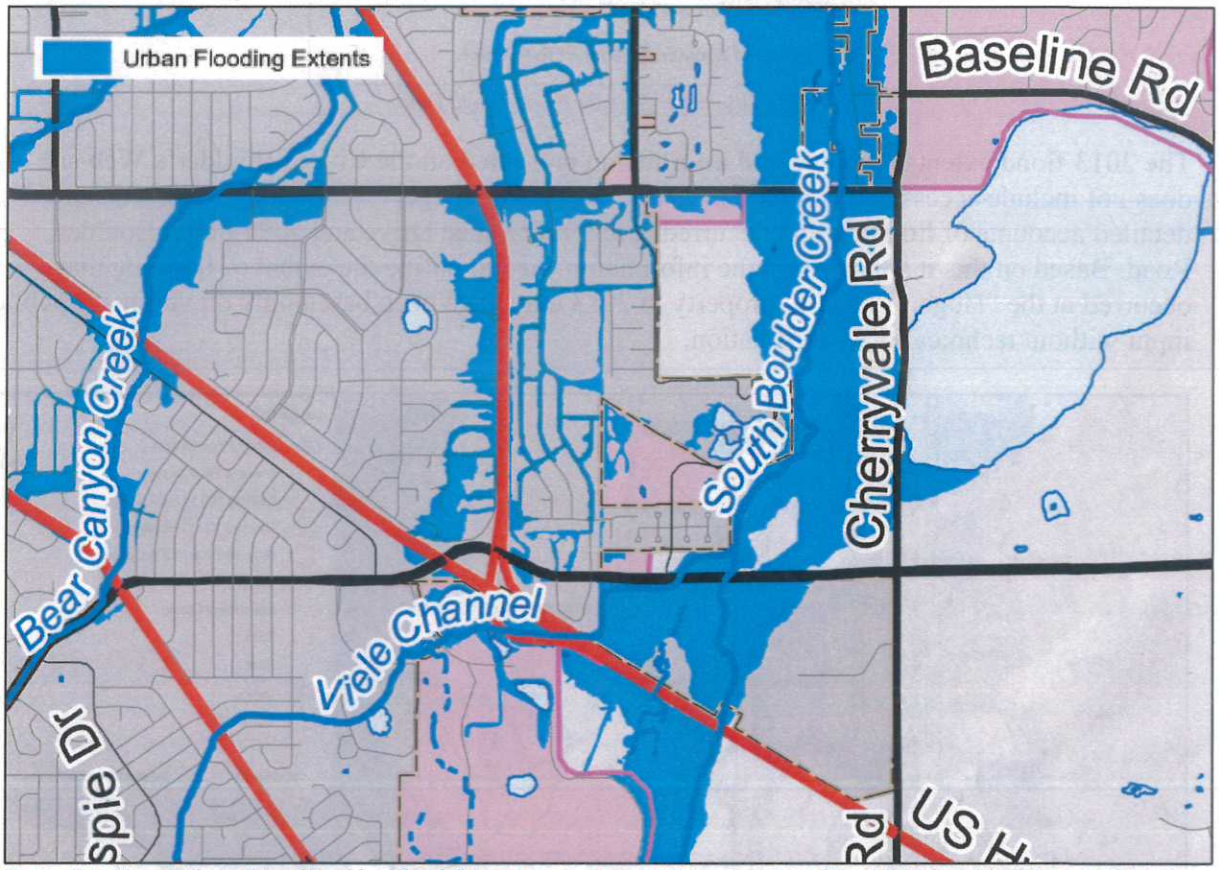


Figure 24 - Excerpt from City of Boulder Flood Extent Maps - Map 1 - September 2013 Flood (Map Revision Date: 03/28/14)

The map above (Figure 24) is available on the City of Boulder 2013 Flood Maps Web page. It reflects the onsite flood extent information SEBNA presented in their Request for Revision. The City Web page notes that "All Mapping Data is Draft and Subject to Revisions." Closer research of the mapping finds the following disclaimer:

Map Revision Date: 04/01/14

NOTE: The 2013 urban flood extent data was developed using field surveys completed by City of Boulder staff and consultants, Digital Globe Worldview-2 satellite imagery (9/13/13), Boulder County Pictometry imagery (10/3/13), public input from the Boulder Crowd Sourcing online map, public input from community meetings, online flood survey data, and input from discussions with affected property owners. Only drainages with a FEMA mapped floodplain were surveyed. Other areas of Open Space and Mountain Parks land without a regulatory floodplain were not included. The City of Boulder will continue to make updates to this data as necessary.

The 2013 urban flood extent data does not supersede the Special Flood Hazard Area Designation (SFHA), or 100 yr floodplain, used by FEMA for Digital Flood Insurance Rate Maps or the proposed floodplain delineations from ongoing flood studies. This data is provided as graphical representation only. The City of Boulder provides no warranty, expressed or implied, as to the accuracy and/or completeness of the information contained hereon.

© 2014 City of Boulder, CO Subject to Revision

Figure 25 - Disclaimer Note for Flood Extent Data

The 2013 flood extents mapping and information presented on the City of Boulder's Web site does not include access to any detailed survey or satellite imagery, photographic records, or detailed accounts of flooding that occurred at 5399 Kewanee Drive and 5697 South Boulder Road. Based on this it appears that the information used to define the extent of flooding that occurred at the "Hogan-Pancost" property in 2013 may have been based only on voluntary public input without technical field verification.

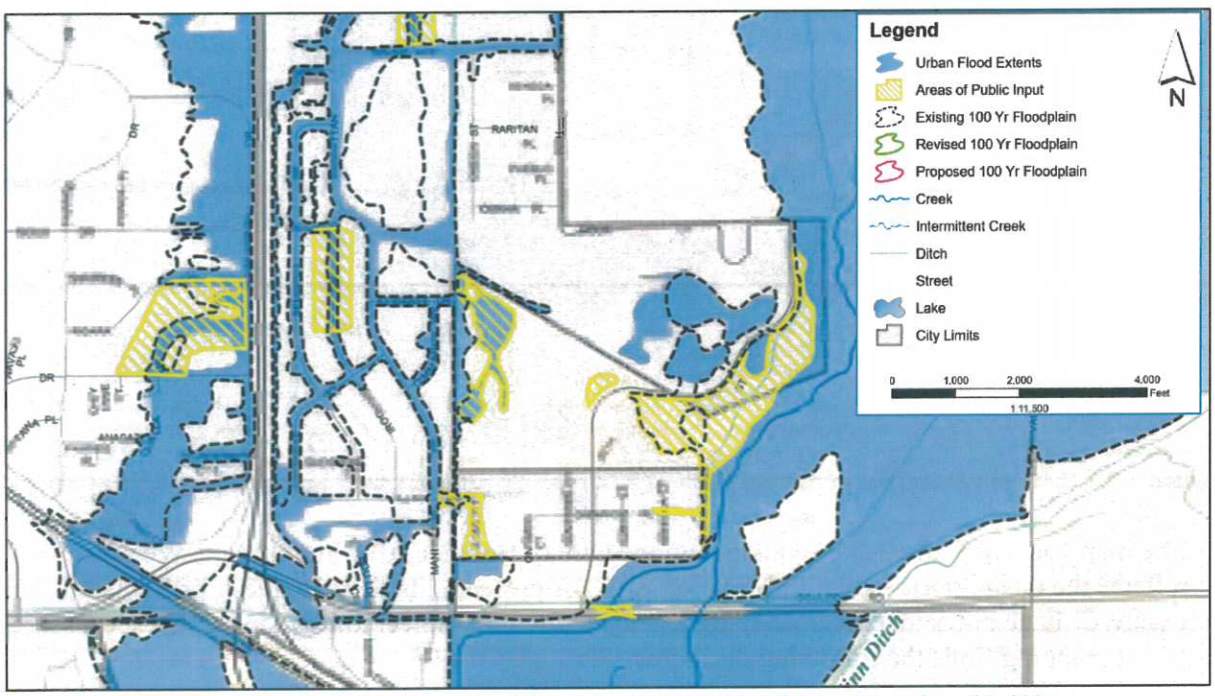


Figure 26 - Excerpt from September 2013 Urban Flood Extents and 100-Year Floodplains, Revised April 1, 2014

Another 2013 flood extents map on the Web site, the "September 2013 Urban Flood Extents and 100-Year Floodplains" map, revised April 1, 2014 (Figure 27), does indicate that the Urban Flood Extents identified at 5399 Kewanee Drive and 5697 South Boulder Road are based on "Areas of Public Input." It is interesting that public input for this area of Boulder identified an increase in flooding beyond 100-year regulatory conditions at this property when other nearby areas at Greenbelt Meadows Subdivision, Keewaydin Meadows Subdivision, East Boulder Community Center, and the Kent Estate experienced decreased flooding. It is also interesting that public input focused carefully on an undeveloped property that experienced no flood damage compared with the surrounding neighborhood areas that were impacted by significant damages from flooded basements.

Figure 27 - Excerpt from South Boulder Creek - South of Baseline Map 1 Public Input Meeting Notes

Public meeting input notes reflected on another flood extents map, the South Boulder Creek South of Baseline – Map 1 shown above (Figure 27), did acknowledge that South Boulder Road had no overtopping west of the South Boulder Creek bridge, indicating that the roadway overtopping that occurred in 1969 no longer occurs. The notes on this map also cross-out and eliminate what appear to have been initially identified 2013 flood extents that occurred outside the regulatory floodplain in Greenbelt Meadows. This floodplain extent map did not identify any floodplain concerns at 5399 Kewanee Drive and 5697 South Boulder Road. It is not clear how this public input was incorporated into the 2013 Flood Extents Map that expanded the "Hogan-Pancost" floodplain.

The argument by SEBNA that flooding in 2013 was greater than 100-year regulatory flood projections appears to be unfounded, and may actually be suggestive to support their Request for Revision. This claim is not supported by objective technical analysis or documentation, and the City 2013 Flood Extents Map should be accurately revised to avoid any biased or detrimental public decision making for this property and its ownership in the 2015 BVCP Update process. Possible future development at 5399 Kewanee Drive and 5697 South Boulder Road and implementation of the City's South Boulder Creek Mitigation Plan can eliminate any flood potential through improvements to raise site grades as part of development or convey flood waters through the provision of adequate mitigation services and facilities.

High Hazard Flood Zone

The SEBNA Request for Revision states that "The Hogan-Pancost property contains over 1,100 linear feet of a designated High Hazard flood zone along the open undeveloped Dry Creek # 2 Ditch corridor. All development proposals to date call for substantially narrowing and channelizing this High Hazard flood zone. This also runs counter to the wishes of the (40% City owned) Dry Creek #2 Ditch company."

The 1,100 linear feet of "high hazard zone" occurs within the banks of Dry Creek No. 2 Ditch only which is less than 20 feet wide. The ditch is privately owned by the Dry Creek No. 2 Ditch Company, has existed for a century, and is well defined as a water resources irrigation facility. The ditch will remain in its location within a dedicated 60-foot wide conservation corridor and is not subject to future development. The ditch also extends upstream through Greenbelt Meadows and downstream through Keewaydin Meadows and Country Club Estates. Dry Creek No. 2 Ditch has no bearing on the existing BVCP Area II land designation.

FINDINGS

The SEBNA Request for Revision to the BVCP 2015 Update is disingenuous and is not based on technically factual information or analysis for flood hazards. My review finds that a BVCP revision for 5399 Kewanee Drive and 5697 South Boulder Road is unwarranted based on demonstrable flood hazards at this location. The property is surrounded by developed lands, and has full access to adequate services and community plans for area flood mitigation.

Assertions made by SEBNA about flood hazards, adequate services, and mitigation planning are inaccurate and appear biased towards the interest of a few local neighborhood residents who wish to prevent future development of the property. The Request for Revision relies on the gullibility of city and county decision makers to accept a selfish argument to preserve this property at the expense of the greater Boulder community and private property owner.

I recommend against consideration of the BVCP Request for Revision based on flood hazards at the property and failure to demonstrate a need for the change under BVCP flood hazard policies.

Alan R. Taylor, P.E., CFM
Alan Taylor Consulting, LLC
Colorado P.E. #27075

02 October 2015

Michael Boyers
BCC, LLC
1526 Spruce St., Suite 260
Boulder, CO 80302

Re: **Hogan-Pancost Property**
2015 Major Update to Boulder Valley Comprehensive Plan (BVCP)
Boulder, CO

File: B1006

Dear Mr. Boyers:

Per your request, The Sanitas Group reviewed the Southeast Boulder Neighborhood Association (SEBNA) request to revise the Hogan-Pancost property land use designation from Area II-A to Area III- Rural Preservation Area.

The Hogan-Pancost property is comprised of two separate properties and are addressed as 5399 Kewanee Drive and 5697 South Boulder Road. The Boulder Creek Commons is the proposed name for the development of the Hogan-Pancost property. For clarity, the two names refer to the same property. Since the adoption of the Boulder Valley Comprehensive Plan (BVCP) in 1977, the Hogan-Pancost property has been included in Area II-A. The BVCP further designates the area west of 55th Street for Low Density Residential development and the area east of 55th Street as Environmental Preservation with development restricted.

The SEBNA current request to change the Hogan-Pancost property designation to Area III-Rural Preservation is largely based on the assertion by the adjacent neighborhood that the property cannot be reasonably developed due to traffic concerns, flood hazards, ground water hazards and environmental impacts. The SEBNA request includes misrepresentations of the Traffic Impact Assessment for the Hogan-Pancost property, exaggerations with regard to floodplain impacts and completely disregards several property specific environmental studies regarding wetlands, vegetation and wildlife assessments, ground water studies and flood hazard mitigation.

Transportation/Traffic

The SEBNA request wrongly cites the 2012 Boulder Creek Commons Traffic Impact Assessment as the source stating the development ... "would be far removed from most services and would rely on already congested local neighborhood streets for access". The Traffic Impact Assessment neither states nor implies these conclusions.

The Hogan-Pancost property is located within a mile of several retail businesses, service providers, grocery store, gas stations, restaurants, bank, a major transportation hub and

community facilities and open space. The property is immediately adjacent to the East Boulder Community Center, East Boulder Community Park and Manhattan Middle School. Within half a mile of the property at Manhattan Circle, there are services that include medical services providers, a restaurant, and a gas station with convenience store are located at Manhattan Circle. Within a mile, the Meadows Shopping Center includes Safeway grocery store and other retail businesses. Table Mesa Park and Ride is a major regional transit hub and is located within a mile of the Hogan-Pancost property.

Further, the 2012 Boulder Creek Commons Traffic Impact Assessment stated that the "site is located near Boulder's extensive network of on-street and off-street bikeways. The proximity to this network and to several bus routes will likely reduce the number of vehicle-trips generated by Boulder Creek Commons". The Traffic Impact Assessment concluded that "traffic associated with the Boulder Creek Commons can be safely accommodated by the adjacent roadway network".

Flood Hazards

The SEBNA request misrepresents the flood hazards on and adjacent to the Hogan-Pancost property and states "the results of South Boulder Creek Flood Study show an extensive High Hazard Flood Zone on the property". The mapped High Hazard Zone is not extensive and is a narrow band located along the Dry Creek Ditch No. 2 channel at the far western edge of the property. The SEBNA request includes a quote from the ditch company stating that the Dry Creek Ditch No. 2 should be protected from use as a flood conveyance channel. Yet SBNA, is requesting that the High Hazard Zone remain in its current state and cites a BVCP 3.22 "Protection of High Hazard Areas" as the basis. The High Hazard Zone is not following natural drainageway but is associated with Dry Creek Ditch No. 2. The SBNA request runs counter to the ditch company's desire to protect the ditch from flood waters. The development proposal presented to the City included piping Dry Creek Ditch No. 2 through the Hogan-Pancost property to separate ditch flows from flood waters. A separate flood mitigation channel was proposed to safely convey the floodwaters through the property. The flood channel included wetland areas for flood storage and provide water quality treatment of lower frequency storm run-off from the adjacent neighborhood.

Site planning studies have shown that the Hogan-Pancost property can be reasonably developed under the following scenarios:

1. Using flood mitigation measures to safely manage and convey the flood water through the property and piping the Dry Creek Ditch No. 2 to protect the ditch from floodwaters.
2. Preserving the existing 100-year floodplain and the ditch in its current state and locating development beyond the mapped 100-year flood plain limits.

In each scenario, that portion of the Hogan-Pancost property east of 55th Street, the South Boulder Creek floodplain will be preserved.

As part of the South Boulder Creek Flood Hazard Mitigation Study, the current preferred mitigation plan includes piping the 100-yeard flood flows through the Hogan-Pancost property which will effectively eliminate the High Hazard Zone and substantial reduce or eliminate the 100-year floodplain along the western boundary of the Hogan-Pancost property.

Environmental Impact

The SEBNA request asserts that because the Hogan-Pancost property is adjacent to the South Boulder Creek corridor, the property is not developable based on habitats found within the corridor. Assessments conducted specifically on the Hogan-Pancost property are not cited.

The 2010 study of "Vegetation & Wildlife Habitat Existing Conditions, Hogan Pancost Property" by Western Ecological Resource, Inc. found:

"In its current degraded state, most of the property does not offer useable habitat to most wildlife species except those capable of existing within highly modified landscapes. Since these species are generalists, they are capable of existing across a wide range of the landscape. Therefore, development of this property is likely not to have a negative impact on the local wildlife population."

The Hogan-Pancost property does not have suitable habitats for either the Preble's Meadow Jumping Mouse or the Northern Spotted Leopard Frog. The US Fish and Wildlife Service agreed that the Hogan-Pancost property was not suitable habitat for the Preble's Meadow Jumping Mouse and exempted the property from a trapping survey.

Hogan-Pancost property can be reasonably developed without adversely affecting Northern Spotted Leopard Frog habitat including potential travel routes. The report "Habitat Use of Northern Leopard Frogs Along The Front Range" cited by the SEBNA request also includes the following statement relevant to the Hogan-Pancost property:

"Based on surveys of known leopard frog habitat and extensive surveys stratified by land use type, our research group has found that large wetlands that are <u>not</u> surrounded by urban or suburban development are important for leopard frog population persistence in the Front Range".

The Hogan-Pancost property west of 55th Street is surrounded by suburban development and does not include large wetlands. The study found that the leopard frogs used the irrigation ditch systems to move between aquatic water bodies. There are no aquatic water bodies located west of the Hogan-Pancost property which would make Dry Creek Ditch No. 2 and the western portion of the Howard-Superphostical ditch unsuitable for the leopard frog migration.

The wetlands on the Hogan-Pancost property are ephemeral, irrigation feed and fluctuate in response to variations in irrigation rates applied on the property and adjacent properties. Several wetland delineations surveys have been conducted on the Hogan-Pancost property

since 1995 and show the wetland areas changing over time. With each delineation study, the U.S. Army Corp of Engineers and City of Boulder staff walk the property and review the wetland limits and the study findings. The most recent wetland delineation survey was conducted in 2011 "City of Boulder Wetland Delineation Report, Boulder Creek Commons Property" by Western Ecological Resources, Inc. The report found that the wetland areas on the Hogan-Pancost property were not naturally occurring and were irrigation fed. As a result, the wetlands were low functioning with respect to vegetation and habitat. In 2012, Western Ecological Resources prepared a "Wetland Mitigation Plan, Boulder Creek Commons Property" to document how the property could be reasonably developed in accordance with the City of Boulder "Stream, Wetland and Water Body Regulations" through a combination of wetland avoidance, wetland enhancement and wetland mitigation. The existing wetland areas on the Hogan-Pancost property are anticipated to continue to fluctuate over time.

In 2012, as part of the Site Review process, Western Ecological Resources prepared a "Black-tailed Prairie Dog Removal Plan" for the Hogan-Pancost property. The study found that the "black-tailed prairie dog (Cynomys ludovicianus) colony located on the Boulder Creek Commons property is directly adjacent to the area identified in the 2006 City of Boulder Urban Wildlife Management Plan (UWMP) as part of the East Boulder Community Center Colony (Colony #13). The City's Management Classification/Action Plan for the private portion of Colony #13 is lacking and does not provide guidance; the portion of the colony that occurs on City of Boulder property was slated in 2006 for 'Near-term Removal'." The colony occurring on the City property has since been removed and prairie dog barriers have been constructed by the City to prevent the prairie dog colony from repopulating on City lands. The 2012 removal plan outlined the steps for removing the prairie dog colony that were in compliance with the Boulder Revised Code.

In conclusion, based on the scientific and engineering studies noted previously, the Hogan-Pancost property can reasonably support low density residential development as allowed under the current BVCP land use designation and within Area II-A. The SEBNA request to move the Hogan-Pancost property from Area II-A to Area III- Rural Preservation Area includes misrepresentations of studies specific to the Hogan-Pancost property and completely ignores or disregards the findings engineering and scientific studies on public record supporting the development of the Hogan-Pancost property.

Sincerely,
THE SANITAS GROUP, LLC

Leslie R. Ewy, P.E.
Principal/Civil Engineer