



May 20, 2019

Dear Mayor Jones and Council Members:

After reviewing the city's written comments on our annexation application for the CU Boulder South property, received on March 28, 2019, we requested a meeting with council to discuss the key issues of concern identified by staff. We understand you are not able to schedule a study session with us before August. As always, we remain open to a face-to-face discussion as soon as you are able.

Due to the time sensitivity of this matter, however, and the current lack of agreement around key terms of the application, we believe it is our responsibility to send you this letter. This is particularly important in light of the work and direction that the city is currently headed in, including direct expenditure on flood design and negotiations with CDOT.

We are writing to you today to provide notice that the university, as the landowner, does not agree to Variant I 500. Due to the March 28 response which did not offer the university a feasible path forward around the additional acreage the city is asking for under Variant I 500, we are informing the city that any further expenditure for the development of preliminary designs for Variant I 500 should cease. Again, the university will not agree to that option. Neither of our organizations should expend further staff or financial resources to continue to pursue Variant I 500. We provide further detail below.

There remain other viable paths forward to provide flood protection and the university will support other options, including Variant II 500. Variant II 500 also removes the key obstacles outlined below and, with the guiding principles to which we have already agreed, moves us substantially toward full agreement and implementation of flood mitigation and protection measures for the broader community.

You may recall that in a letter to council on August 21, 2018 we requested, for a second time, that the city not select Variant I 500. When city council subsequently chose Variant I 500 we were dismayed, but diligently worked to identify and provide options for the city to be able to continue to pursue Variant I 500 using 30-36 of the acres marked for development by:

- a. substituting equivalent acreage for development within the OS-O area of the property;
- b. allowing the city to purchase the additional acreage desired (at the university's option and approval) beyond the 80 acres (which we have offered at no cost to the city), at a fair market value; or

- c. providing equivalent comparable land acceptable to the university in another location.

The city's comments in the March 28 response indicated that land designated as OS-O may not be used for development which has also been stated by city council members during public meetings and individually. Additionally, the purchase price of 30-36 acres at fair market value we believe would range from \$30 million to \$72 million, making the cost of Variant I 500, ***even with our donation of 80 acres***, equal to or greater than the amount city council rejected as too expensive at their meeting on February 5, 2019. Further, the inclusion of our tennis courts within the detention area of Variant I 500 does not allow for the required facilities we need to build there, necessitating the relocation of the courts/facilities on the property at additional cost and land requirements. Finally, in our estimation, there is no reasonably proximate, developable and comparable land available which can be offered by the city in exchange. The suggested property in the Area III Planning Reserve north of the city is not proximate, not comparable, not developable and not currently annexable under the BVCP.

As such, the city's response to the options proposed by the university, that could allow further evaluation of Variant I 500, are not feasible for either party. As clearly stated in our application, and in previous communications with city council and staff, the university requires development rights to a minimum of 129 acres granted no later than the date of annexation.

We believe there is still a good path forward. The city has several other flood mitigation options available to achieve the stated goals of flood protection. The city's consulting experts, staff and the Water Resources Advisory Board (WRAB) all recommended Variant II 500, which we believe is the best alternative to provide equivalent flood protection at a significantly lower cost, and again, is not burdened by the barriers associated with Variant I 500. Variant II 500 provides the full protection level of Variant I 500 while ensuring that the university has the required 129 acres to develop, and allows for the playing fields to be located in the area designated PK-U/O. Finally, with Variant II 500, the city need not spend additional public funds to purchase additional land from the university. Variant II 500 also provides the university greater flexibility to provide additional community benefit beyond what has been agreed to in the BVCP Guidelines.

**Variant II 500 creates a win-win for all parties, including the city, the county, the university and the community as a whole.**

We are eager to move this project forward following the agreed-to guidelines in the BVCP and to provide the significant community benefits outlined in our application. The cover letter of that application is attached for your reference. We have also attached our preliminary written response to the major points identified in the city's March 28 cover letter accompanying the city response to our application. Those answers are brief in the interest of your time, and we are happy to discuss them further in person.

We understand we have a preliminary study session date for August 13<sup>th</sup> with Council during which we hope we can rapidly resolve these issues. We continue to be very committed to working with the city to ensure annexation and flood mitigation can be achieved in a timely manner.

Thank you,

A handwritten signature in black ink that reads "Frances Draper". The signature is written in a cursive, flowing style.

Frances Draper  
Vice Chancellor for Strategic Relations  
University of Colorado Boulder

A handwritten signature in blue ink that reads "Derek Silva". The signature is written in a cursive, flowing style.

Derek Silva  
Executive Director, Real Estate Services  
University of Colorado Boulder

**May 20, 2019**

**CU Boulder Response to City of Boulder Planning Department Letter dated March 28, 2019**

**CU Boulder Responses provided in Blue text below.**

This letter and attached term sheet serve as the City of Boulder's staff response to your Annexation Application submitted on February 4, 2019. The application represents a significant work effort by the university and city staff looks forward to further discussions to resolve key issues for the project. The staff response to your application is included in the attached term sheet and follows the order of topics listed in your written statement. While the term sheet encompasses a wide range of topics with varying degrees of complexity, several topics stand out as needing further policy or technical analysis or direction from City Council; those topics are summarized in this letter.

As you are aware, City Council directed staff to engage city boards prior to presenting key issues and an engagement plan at a council study session (yet to be scheduled). At its Oct. 9, 2018 study session, Council also directed staff to bring any issues that are "political in nature" (i.e., policy issues) to them prior to visiting with boards. City staff acknowledges your interest in holding a study session with City Council around May and will seek direction from the newly formed CU South Process Subcommittee.

Again, we look forward to continued discussions with the university to achieve shared goals for the CU Boulder South Campus.

**Key Issue #1: Identify options for alternative use of 30 – 36 acres of land necessary for flood mitigation that is currently planned for university housing.** On Feb. 5, 2019, City Council directed staff to move forward with preliminary design for the original Variant 1, 500-year concept for South Boulder Creek flood mitigation. At the current conceptual level of design, City staff anticipates approximately 30 – 36 acres of land designated Public in the Boulder Valley Comprehensive Plan (BVCP) Land Use Map will be impacted. The amount of acreage needed will be further refined during the preliminary design process. CU Boulder's application states that the University must retain in perpetuity its development rights to a minimum of 129 acres and that any diminishment of that area either (i) be proportionally replaced with land currently designated Open Space – Other (OS- O) under the BVCP, (ii) the city shall compensate the university in cash for the fair market value of the applicable area, or (iii) provide land agreeable to the University in another location.

City staff proposes that we jointly explore the following options to address this issue. Please

indicate if any of these options are unacceptable to the university. Options acceptable to both city and university staff will be analyzed further and presented to city boards and City Council for direction in a preferred approach and community engagement.

- Option 1: Receive an opinion of value for possible city purchase of land before it is annexed into the city.

***CU Response:*** *We do not see a purchase of an additional 30-36 acres of land as a viable option for the city due to City Council's agreement on February 5 that the price of \$65 million plus for the deeper version of Variant I 500 that staff presented was too expensive. We currently estimate the value for developable land in South Boulder as between \$1 and \$2 million per acre, resulting in a total price ranging between \$30 and \$72 million. Including the cost of the additional land would again put the cost of Variant I 500 at \$65 million plus.*

- Option 2: Explore land available off site for CU to use for development purposes. Please summarize the university's criteria for selecting off-site locations. Council members have expressed interest in exploring the Planning Reserve in north Boulder as a potential off-site location. Indicate if the Planning Reserve may or may not meet the university's selection criteria.

***CU Response:*** *In our estimation, there is no reasonably proximate, developable and comparable land available which can be offered by the city in exchange. The suggested property in Planning Reserve III north of the city is not proximate, not comparable, not developable and not currently annexable under the BVCP.*

- Option 3: Determine necessary changes to the university's development program to allow for university needs to be met within a smaller Development Tract (i.e. the 93 – 99 acres of "Public" land not impacted by the flood mitigation project). For example, the city and university could explore additional density within the smaller Development Tract in ways that meets the university's needs and still addresses applicable guiding principles (e.g. viewshed protection, etc.).

***CU Response:*** *As stated in our application and in prior communications, the university requires a full 129 acres for development out of our 308 acres. The university currently has no concept plan for development, nor do we believe it is feasible or possible to increase density without amending the existing Boulder Valley Comprehensive Plan.*

City staff does not currently support using a portion of the OS-O area for housing, as that concept is not consistent with the Boulder Valley Comprehensive Plan. The other options, including but not limited to those noted above, should be pursued prior to examining the suitability of housing in the OS-O area.

**Key Issue #2: Identify options for addressing CU's stated interest in 30+ acres of land for university sports fields and potential re-location of tennis courts, if required due to the flood mitigation project.** Early analysis indicates that functional ball fields will not be feasible within the detention area of the Variant 1, 500-year design in the PK-U/O land use area because the depth of the additional excavation would limit the ability to properly drain the fields. CU Boulder's annexation application states that:

*CU Response: Upon completion of the construction of the flood mitigation dam and related retention areas, CU Boulder must have no less than 30 appropriately graded acres available for construction of recreational/athletics fields (the " **Rec Fields** ") in the area of the Property designated as PK-U/O under the BVCP. The Rec Fields must be situated on the Property in a manner that provides reasonable ingress and egress (including ADA accessibility) for site visitors, teams, service vehicles, as well as proximate space for related facilities such as concessions, restrooms, and storage. If the Rec Fields cannot be located in the flood detention area, the University may construct the Rec Fields on 30 appropriately graded acres within the OS-O-designated land, contiguous to the CU Development Tract.*

City staff proposes that we jointly explore the following options to address this issue. Please indicate if any of these options are unacceptable to the university. Options acceptable to both city and university staff will be analyzed further and presented to city boards and City Council for direction in a preferred approach and community engagement.

- Option 1: Determine suitability of the existing tennis courts remaining in the detention area and of using a portion of the flood mitigation detention area in the PK-U/O and PUB land use areas for recreational field turf. Further analysis of the anticipated depth and frequency of inundation where the current tennis courts are located is needed to determine whether the city would allow the existing tennis courts and associated parking to remain in the detention area. If following additional design of the project it is determined that it is feasible to include sports field turf in a portion of the detention area without impacting the functionality or cost of the flood mitigation project, then the city would work with CU Boulder staff to evaluate opportunities for recreational field turf placement. The City typically prohibits buildings for human occupancy, such as offices, restrooms, and concessions in flood detention areas. Parking would likely also be restricted in the detention area, but further analysis of the anticipated depth and frequency of inundation would be needed to make this determination. CU Boulder would be responsible for all costs of construction and recreational field cleanup following a storm event.

*CU Response: As to the tennis courts, CU Boulder requires the ability to build locker room facilities and public restrooms at the tennis courts. Since the city is stating those facilities would not be allowed, Variant I 500 is not acceptable to the university.*

- Option 2: Determine suitability and acceptability of using a portion of land designated as OS-O in the BVCP for recreation and other uses consistent with the BVCP CU South Guiding Principles. On September 20, 2018, Council stated a preference for implementing the July 11, 2018 OSBT recommendations that the University protect and/or convey the OS-O designated land to the City. However, if not conveyed to the City, if any portion of OS-O is found suitable and allowed for this recreational purpose, OSMP staff and Open Space Board of Trustees request consultation and input on decisions regarding any material changes to OS-O, which could include requirements that the area be permanently restricted to such recreational uses (i.e. no further development permitted such as housing).

*CU Response: Again, the University would agree to construct the Rec Fields on 30 appropriately graded acres within the OS-O-designated land, contiguous to the CU Development Tract.*

- Option 3: Explore other potential off-site locations within Boulder in coordination with City Parks and Recreation. Please summarize the university's criteria for selecting off-site locations. Council members have expressed interest in exploring the Planning Reserve in north Boulder as a potential off-site location. Indicate if the Planning Reserve may or may not meet the university's selection criteria.

*CU Response: As stated above, the Planning Reserve is unacceptable to the university. CU Boulder will consider off site locations for recreational fields that are reasonably proximate and comparable in our sole judgement.*

**Key Issue #3: Establish a Payment In-lieu of Taxes Agreement.** The city proposes that CU Boulder make an annual Payment In-lieu of Taxes (PILOT) after it is annexed into the city. Such an agreement will be negotiated prior to annexation. PILOT agreements are intended to help offset losses in property taxes due to non-taxable land within the city. This agreement would include city services not currently provided by the university (e.g. Fire and Rescue).

*CU Response: The university will not agree to make a payment in-lieu of taxes to the city.*

**Key Issue #4: Determine land available for city Open Space conveyance.** On September 20, 2018, Council stated a preference for implementing the July 11, 2018 OSBT recommendations that the University: (i) convey 44 acres of OS-O land east and south of the existing CU levee to the city, (ii) convey 40 acres of OS-O land west and north of the existing CU levee and (iii) convey or protect the remaining 35 acres of OS-O land. Conveyance of the OS-O land would include features and material thereon (e.g. the existing CU levee) as real

property appurtenances.

**CU Response:** *The university, as stated in our application, is open to discussing sale of a portion of the OS-O designated land to the city for Open Space.*

**Key Issue #5: Conduct a transportation analysis to determine necessary public improvements, access/circulation and performance standards.** The city and university both agree that performance-based transportation standards will be developed (e.g. trip budget). It is city staff's understanding that a transportation analysis will be conducted prior to annexation to inform these standards, though the application states that they will be developed at the time of university's Concept Design (i.e. post annexation). Clarification and further discussions are needed around the issue of when these standards will be developed.

City staff views multi-modal connections through the site and to the RTD Park-N-Ride as critical factors in mitigating transportation-related impacts of future development. As such, city staff will recommend to City Council that, as part of the university's development program, CU Boulder:

- Construct a 12' wide multi-use path with 2' wide shoulders on each side of the path along the west boundary of the site on an alignment consistent with what's in the Transportation Master Plan (TMP) from SH-93 to Table Mesa Drive;
- Construct an east / west 12' wide multi-use path with 2' wide shoulders on each side of the path on the north side of South Loop Drive between Table Mesa Drive and the US-36 Bikeway path on an alignment consistent with the TMP;
- Enhance the existing bike and pedestrian connection on Table Mesa Drive / S. Boulder Rd from the RTD Park-and-Ride Lot to South Loop Drive. This work would involve the construction of a 12' wide multi-use path and the construction of a buffered bike lane on the east side of Table Mesa Road; and
- Obtain the CDOT Access Permit for the new access point (curb-cut) from SH-93. CU Boulder shall pay for the construction of the new intersection and traffic control (stop sign and/or traffic signal) as required by CDOT.

**CU Response:** *We are open to discussing these requests with the city when more detail can be provided, in the context of the entire agreement and with resolution of the major issues above.*

**Key Issue #6: Collaborate on a public safety facility.** City staff proposes that the city and university jointly explore a public safety facility to collocate CU Boulder Police and City of Boulder Fire & Rescue personnel and vehicles. A joint facility could benefit both organizations greatly by achieving an extremely short response call time to future



CU South residents and visitors and meet a city goal of relocating Fire Station #4. Please indicate if this concept is acceptable to the university. Should CU Boulder be amenable to this concept, city staff proposes a meeting between the appropriate staff to begin discussing this concept further.

***CU Response:*** CU Boulder is open to exploring this concept.