

CITY OF BOULDER
Open Space Board of Trustees
Meeting Date - August 14, 2013

MATTER FROM CITY:

Council Chambers Audiovisual Upgrades

REQUESTING DEPARTMENT:

Public Works / Facilities and Asset Management

Joe Castro, Facilities and Fleet Manager

Glenn Magee, Facilities Design and Construction Manager

OBJECTIVE:

1. Provide the Open Space Board of Trustees a concept plan of the Council Chambers upgrade.
2. Get feedback from the Open Space Board of Trustees on the Council Chambers upgrade.

SUMMARY:

A project has been identified to increase the usability of the Municipal Building Council Chambers with a focus on replacing outdated audio-visual presentation equipment to enhance the user and public experience. The project will include the installation of appropriate audio-visual technologies as informed by a recent technologies assessment, and minor remodeling to provide improved connection between the public and City Council and boards and commissions. The project will also include the construction of one additional office for the City Attorney, one additional citywide internal meeting room, and changes to the lunch room area. The project will be managed by Facilities and Asset Management and designed and coordinated with the Information Technologies (IT) Department and Communications (Channel 8).

The potential of completing this project during the 2013 council recess was considered, but the scheduling cannot be achieved during that timeframe due to the complexities involving the systems modifications and extensive finishes work. This would put the project at risk of not being completed by the end of the recess, which would impact the usability of the Council Chambers during the summer. As such, the proposed plan is scheduled to be implemented after Nov. 15, 2013.

The proposed timeline and concept plan are attached. Design details will be further refined following feedback from the boards and commissions and from a check-in with City Council sometime in mid-August, 2013.

KEY ISSUES:

1. Will the proposed concept plan enhance connections with the public and the Open Space Board of Trustees?
2. Does the Open Space Board of Trustees propose any changes to the concept plan?

BACKGROUND:

Further details on the proposed changes can be found in the May 7, 2013, Information Packet to City Council, Item 2C.

For more information, contact Glenn Magee at mageeg@bouldercolorado.gov, 303-441-4202

ATTACHMENTS:

Attachment A: Project timeline

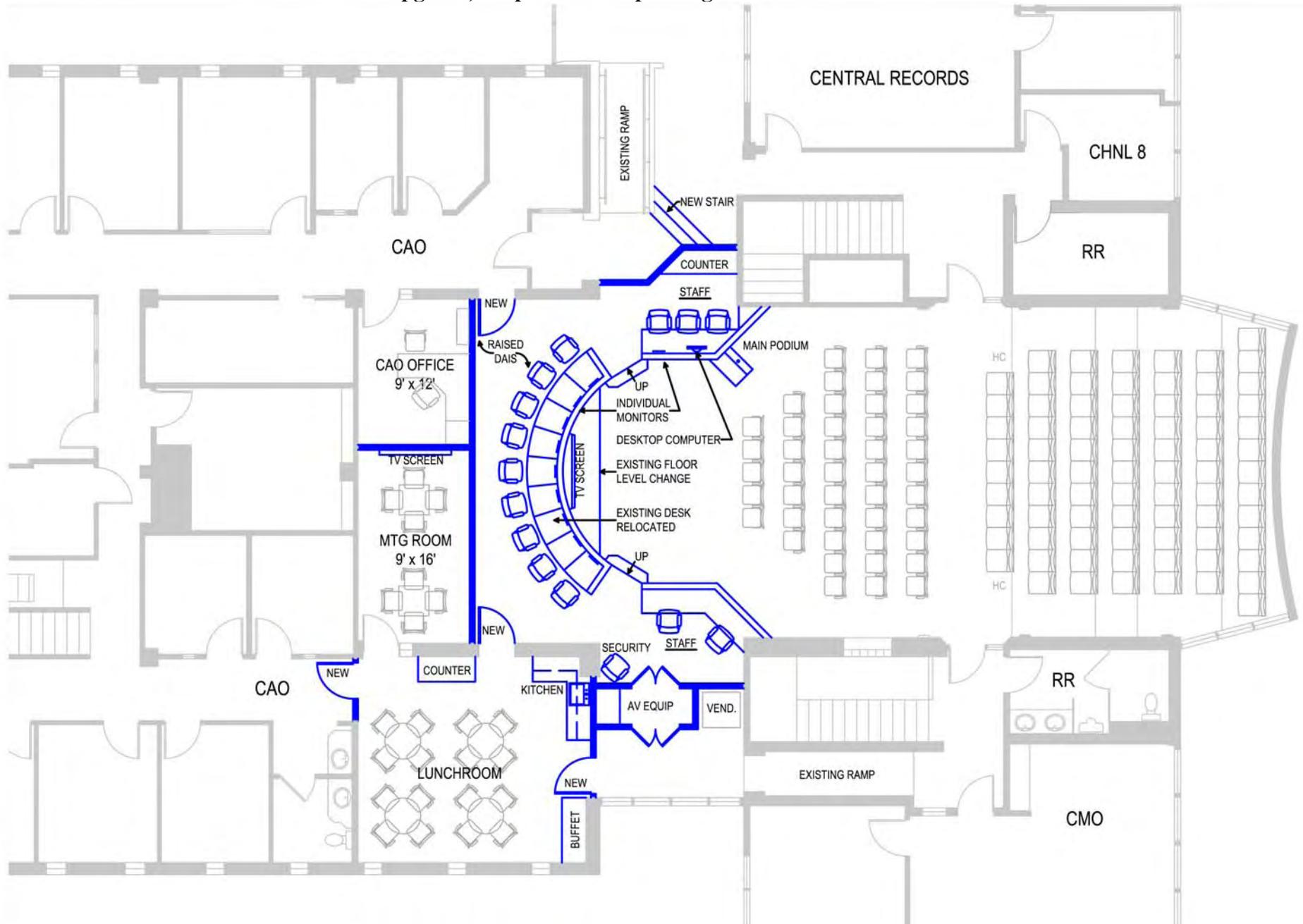
Attachment B: Proposed Concept Design Plan

ATTACHMENT A – Council Chambers Upgrade, Proposed Project Timeline

The project has the following anticipated schedule:

- Architecture and engineering concept design – May through mid-June 2013
- Concept design outreach to boards and commissions – mid June through August 2013
- Council presentation and follow up – third quarter 2013
- Completion of design and construction documents – July through August 2013
- Plan Review and final approvals – August 2013
- Equipment procurement – August through November 2013
- Construction start – Nov. 15, 2013
- Project completion – January 2014

ATTACHMENT B: Council Chambers Upgrade, Proposed Concept Design Plan



MEMORANDUM

TO: Open Space Board of Trustees

FROM: Michael D. Patton, Director
Mark D. Gershman, Environmental Planning Supervisor
Kacey K. French, Environmental Planner

DATE: August 14, 2013

SUBJECT: Open Space and Mountain Parks and Boulder County Parks and Open Space Joint Property Management: Superior Associates Property Management Plan

Executive Summary

The Superior Associates Property Management Plan (Attachment A) was completed in fulfillment of a requirement in the “Boulder County and City of Boulder Jointly Owned Open Space Management Intergovernmental Agreement.” The primary purpose of the plan is to document how Open Space and Mountain Parks (OSMP) will manage the jointly-owned property and to provide Boulder County Parks and Open Space (BCPOS) with a plan describing OSMP’s management.

There are two main components of the Superior Associates Property Management Plan. The first describes the existing conditions including, but not limited to, vegetation composition, wildlife habitat, recreation resources and visitor access, and water rights. The second component of the plan focuses on the policy and plan guidance which provides the answer to the question of how OSMP staff will manage the property. The plan and policy guidance is provided by:

- The Boulder City Charter
- Boulder Valley Comprehensive Plan
- Open Space Long Range Management Policies
- Grassland Ecosystem Management Plan (Grassland Plan)
- Visitor Master Plan (VMP)
- Marshall Mesa – Southern Grasslands Trail Study Area Plan (MM/SG TSA)

Background

The “Boulder County and City of Boulder Jointly Owned Open Space Management Intergovernmental Agreement” (Appendix A of Attachment A) states a plan describing the ecological, agricultural and recreational management of the properties shall be created by the respective lead agency, in this case, OSMP.

OSMP lands are managed on a landscape scale, taking into account a larger area than a single property. Therefore, OSMP plans are not typically property specific but rather structured to address larger areas (e.g. grasslands, forests or trail study areas). *In keeping with the organization and structure of OSMP’s current visitor and resource management plans, the*

Superior Associates Management Plan does not contain or propose any new recommendations or management actions, but instead summarizes and compiles the applicable recommendations and management strategies from existing plans.

The Grassland Plan and the MM/SG TSA Plan, provide much of the specific guidance and on-the-ground actions affecting the Superior Associates property (see pgs. 17 and 32 of Attachment A). Implementation of the Grassland Plan and MM/SG TSA Plan have resulted in the initiation and, in some cases, completion of multiple projects on the Superior Associates property.

- Per the Grassland Plan, amphibian and grassland bird surveys have been conducted.
- Burrowing owl and wetland protections have been implemented.
- Vegetation mapping and long-term monitoring efforts are underway.
- The restoration of Coal Creek, while prior to the Grassland Plan, addresses some of the management goals described in the Grassland Plan and included the fencing of the riparian corridor, restoring the original stream channel, wetland restoration, and the construction of fish passage structures.
- The construction of the Coalton Trail, per the MM/SG TSA, provides visitor access through the property, along the southern periphery.

Boulder County Parks and Open Space (BCPOS) was provided a copy of the Superior Associates Property Management Plan with the opportunity to comment. BCPOS staff reviewed and commented on the plan, stating it is consistent with the county's management goals and is acceptable. BCPOS staff was also involved throughout the Grassland Plan process and reviewed and supported the Grassland Plan.

ATTACHMENT

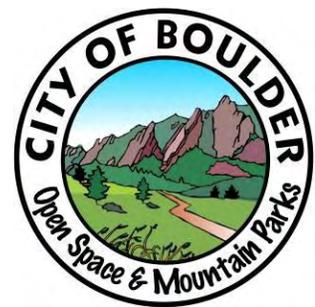
Attachment A: Superior Associates Property Management Plan

**SUPERIOR ASSOCIATES
PROPERTY MANAGEMENT PLAN**

**City of Boulder
Open Space and Mountain Parks**

July, 2013

Developed in Fulfillment of Commitments in the Boulder County/City of Boulder
Intergovernmental Agreement on the Management of Properties Held Jointly in Fee (2005)



OPEN SPACE AND MOUNTAIN PARKS MISSION & CHARTER

Open Space Mountain Parks Mission:

The Open Space and Mountain Parks Department preserves and protects the natural environment and land resources that characterize Boulder. We foster appreciation and use that sustain the natural values of the land for current and future generations.

ARTICLE XII. OPEN SPACE

Sec. 176. Open space purposes – Open space land.

Open space land shall be acquired, maintained, preserved, retained, and used only for the following purposes:

- (a) Preservation or restoration of natural areas characterized by or including terrain, geologic formations, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species;
- (b) Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;
- (c) Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;
- (d) Preservation of agricultural uses and land suitable for agricultural production;
- (e) Utilization of land for shaping the development of the city, limiting urban sprawl, and disciplining growth;
- (f) Utilization of non-urban land for spatial definition of urban areas;
- (g) Utilization of land to prevent encroachment on floodplains; and
- (h) Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.

Open space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land. (Added by Ord. No. 4996 (1986), 1, adopted by electorate on Nov. 4, 1986.)

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PURPOSE

The purpose of the Superior Associates Management Plan is to describe the ecological, agricultural, and recreation management of the jointly owned Superior Associates property¹. This plan is intended to fulfill the provision described in section III of the *Boulder County and City of Boulder Jointly Owned Open Space Management Intergovernmental Agreement (IGA)* (2005), Appendix A, which states a plan describing the management of the jointly owned property shall be created by the Lead Agency. The City of Boulder, Open Space and Mountain Parks (OSMP) is the Lead Agency for the Superior Associates property.

GENERAL DESCRIPTION

The Superior Associates property encompasses 955 acres, mostly grasslands. This property is adjacent to extensive grasslands managed by the City of Boulder, Boulder County and the federal government. It is part of the largest and intact block of grassland habitat in Boulder County, referred to by OSMP as the Southern Grasslands. It is traversed by Coal Creek.

LOCATION AND ACCESS

The Superior Associates property is located in unincorporated south central Boulder County, near the Jefferson County line (Figure 1). Please see Appendix B for the legal description of the property. Vehicular access to the property is gained by a road, Coal Creek Drive. A designated access is located off of State Highway 128 on adjacent OSMP property to the west. There is informal parking in Colorado Department of Transportation (CDOT) right-of-way.

ACQUISITION AND OWNERSHIP

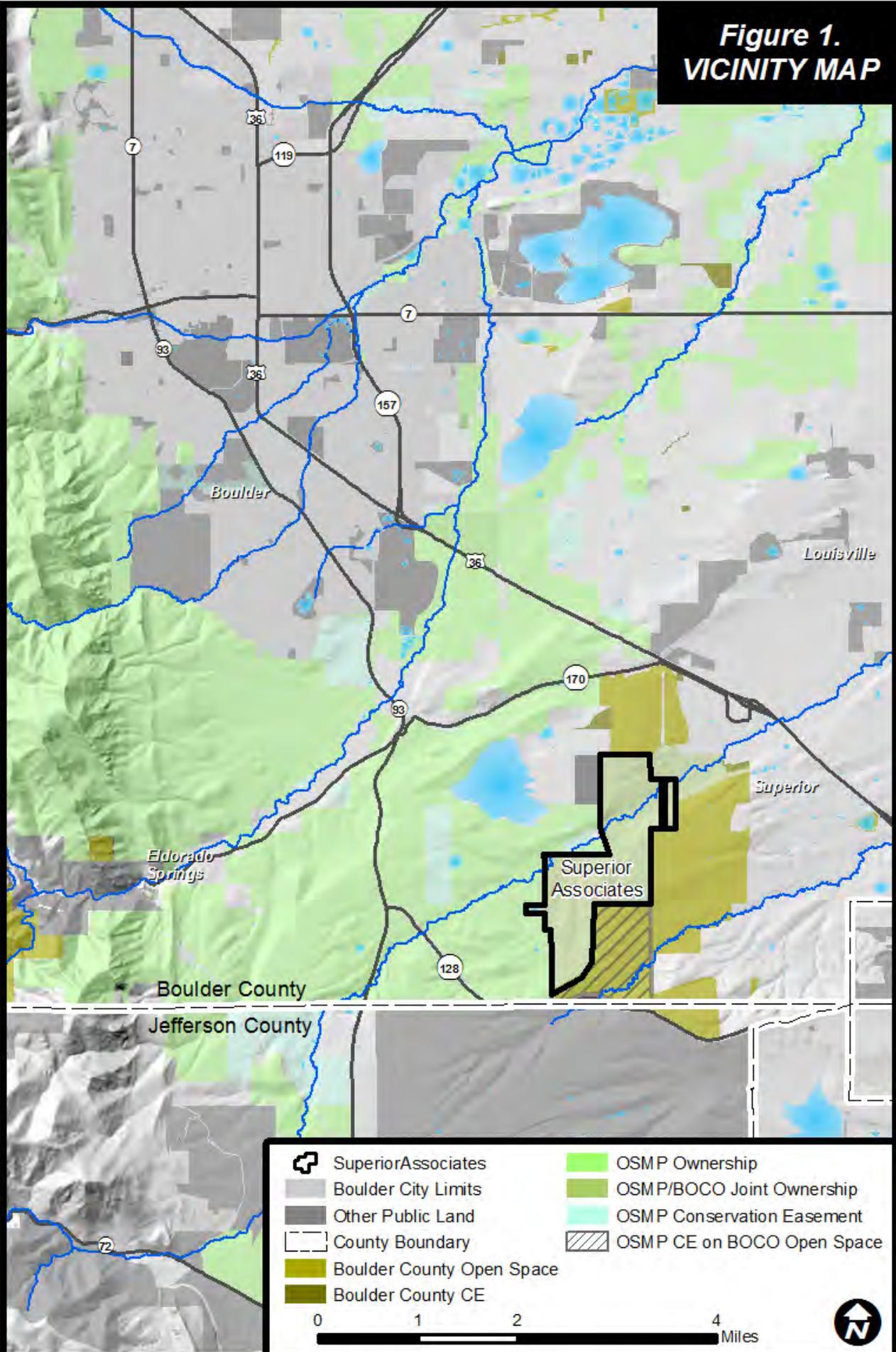
Approximately half, 418 acres, of the Superior Associates property was purchased in December 1993 along with the option to purchase the other 536.6 acres by Dec. 31, 1994. The total purchase price was \$10,239,900; this price equates to \$10,700 per acre. The purchase included all easements and rights-of-way, all surface and subsurface water rights, and all mineral rights, including sand and gravel, coal, oil and gas. The county purchased an undivided 50% interest in the Superior Associates property and granted a conservation easement to the City.

LAND USE

Livestock grazing occurs on the property, typically from May through November as part of a rotational grazing system. The carrying capacity for livestock varies with the level of black-tailed prairie dog populations. Livestock access

¹ The Superior Associated property is also referred to as the "Telleen" property. This plan will use the name Superior Associates to be consistent with the managing agency's naming conventions.

**Figure 1.
VICINITY MAP**



is restricted year round from the Coal Creek riparian area (approx. 134 acres). There are three separated (fenced) grazing fields on the Superior Associates property, two of which include neighboring properties (Figure 2).

LANDSCAPE CONTEXT

The Superior Associates property is surrounded by extensive grasslands managed by both the City of Boulder and Boulder County (Figure 2). The Rocky Flats National Wildlife Refuge (approx. 6,000 acres) is located adjacent to the southern grasslands as well as grasslands managed by Jefferson County. The property is zoned Agricultural.

NEIGHBORING PROPERTIES

The properties adjacent to the Superior Associates Property include (Figure 3):

- The Kelsall, Varra, Mesa Sand and Gravel, and Rothman parcels to the west owned by the City of Boulder, Open Space and Mountain Parks (OSMP).
- The Rothman parcel to the west on which the City of Boulder OSMP owns a conservation easement.
- The DePoorter parcel to the west on which the City of Boulder OSMP and Boulder County Parks and Open Space (POS) jointly own a conservation easement.
- A parcel to the west of the northern portion of the property owned by the National Oceanic and Atmospheric Administration
- Private property and the Cohig parcel owned by Boulder County POS to the north.
- The Erin Arsenault to the east jointly owned by City of Boulder OSMP and Boulder County POS (managed by Boulder County POS).
- The Mayhoffer and Scriffiny parcels to the east owned by Boulder County POS.
- The Lindsay parcel to the south owned by Boulder County POS and on which the City of Boulder OSMP owns a conservation easement.

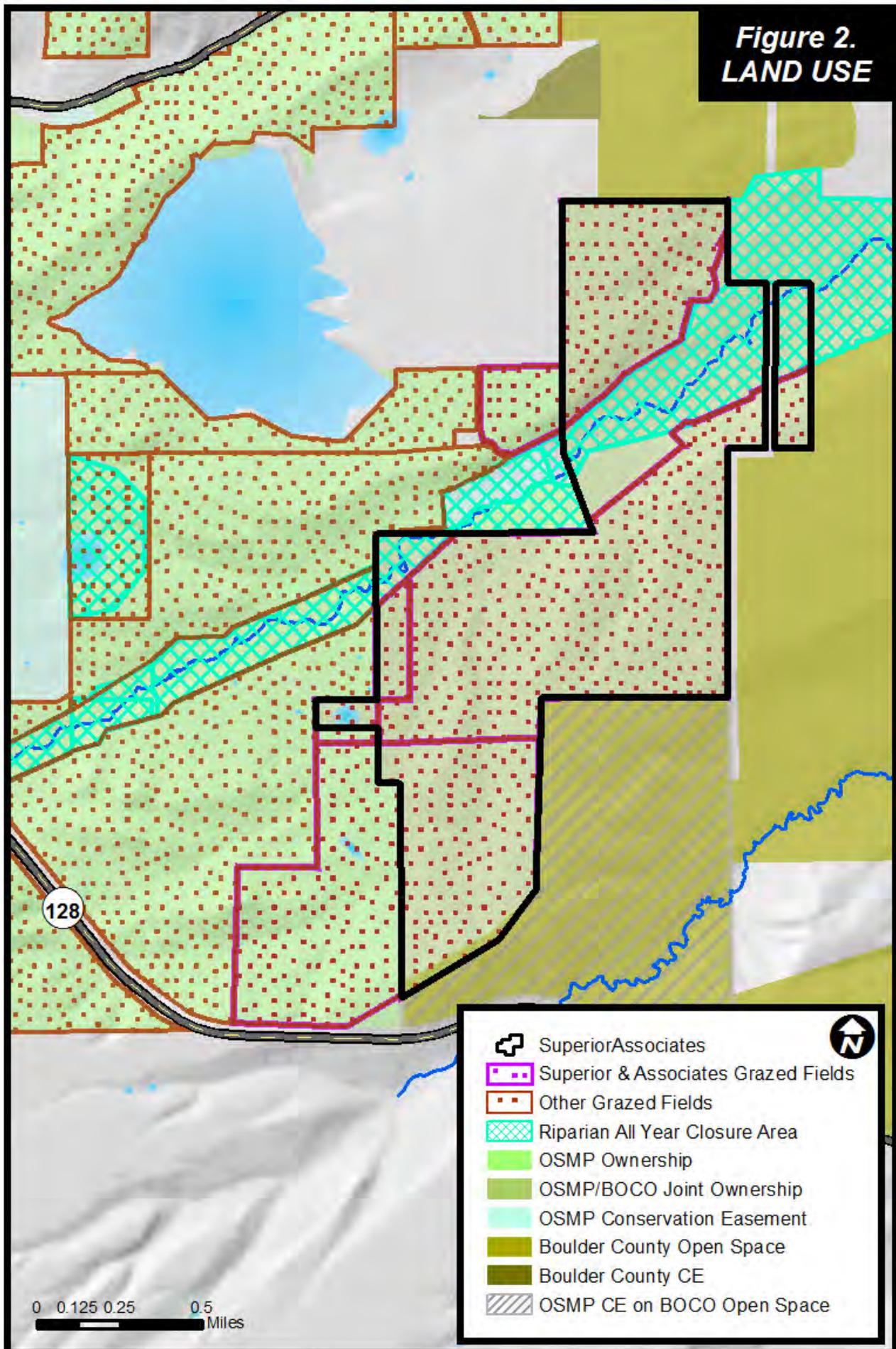
TOPOGRAPHY

The Superior Associates property is generally flat with gentle slopes, it ranges from flat mesa tops to steep hillsides.

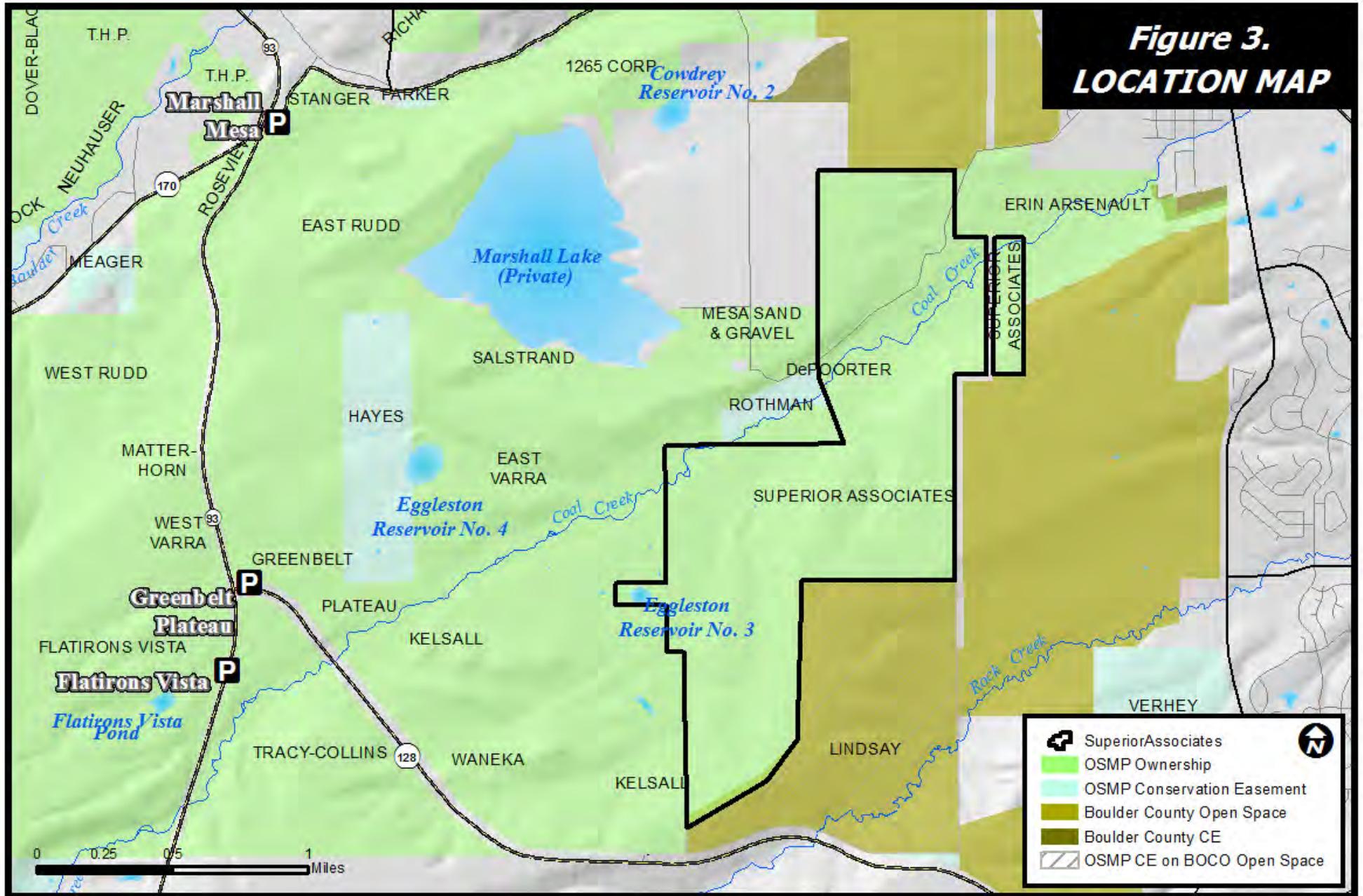
GEOLOGY

The property is predominantly underlain by Laramie Formation dating from the Upper Cretaceous and is in many places covered over by more recent deposits of Verdos Alluvium from the Pleistocene. The lower 100+ feet of the Laramie Formation is comprised of light to medium gray quartzose sandstone and arkosic sandstone divisible into benches separated by clay, fire clay, shale, or coal seams. The upper 600+ feet is predominantly claystone, shale, sandy shale and lenticular beds of sandstone and lignite. Beds of Fox Hills Sandstone deposited in coastal river deltas during the Upper Cretaceous are found along Coal Creek. Although, the Laramie Formation was a historically important source of low-grade subbituminous industrial coal during the settlement period, and also of low quality (brick and tile) refractory clay, there are no known clay pits or mine entrances on the property or mine tunnels underlying the property.

**Figure 2.
LAND USE**



**Figure 3.
LOCATION MAP**



SOILS

The majority of the property is underlain by clay loams and cobbly clay loams (Figure 4). Terrace escarpments are mapped along the edges of the Coal Creek's ancient terraces. A small area of cobbly sandy loam soil was mapped along Coal Creek's current channel.

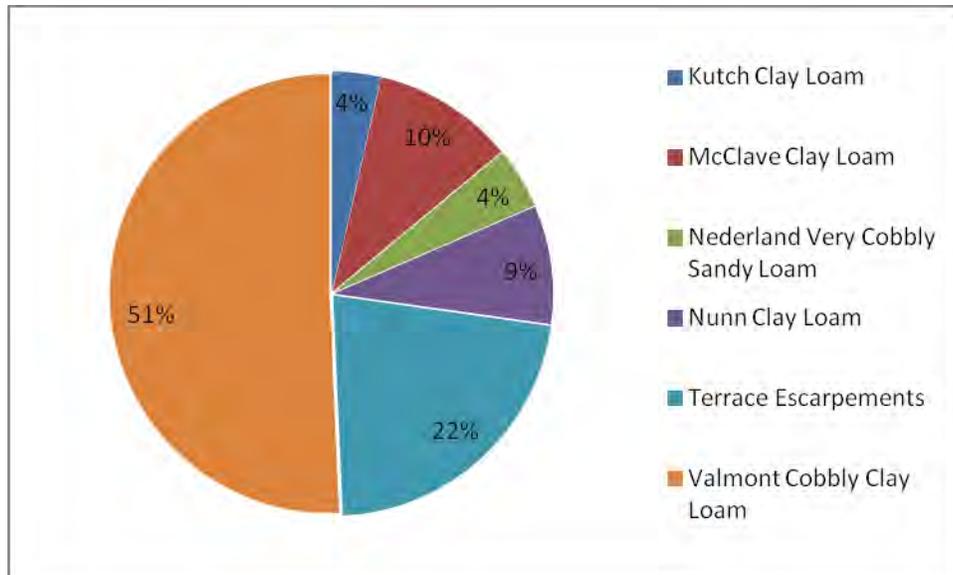


Figure 4: Soils Composition

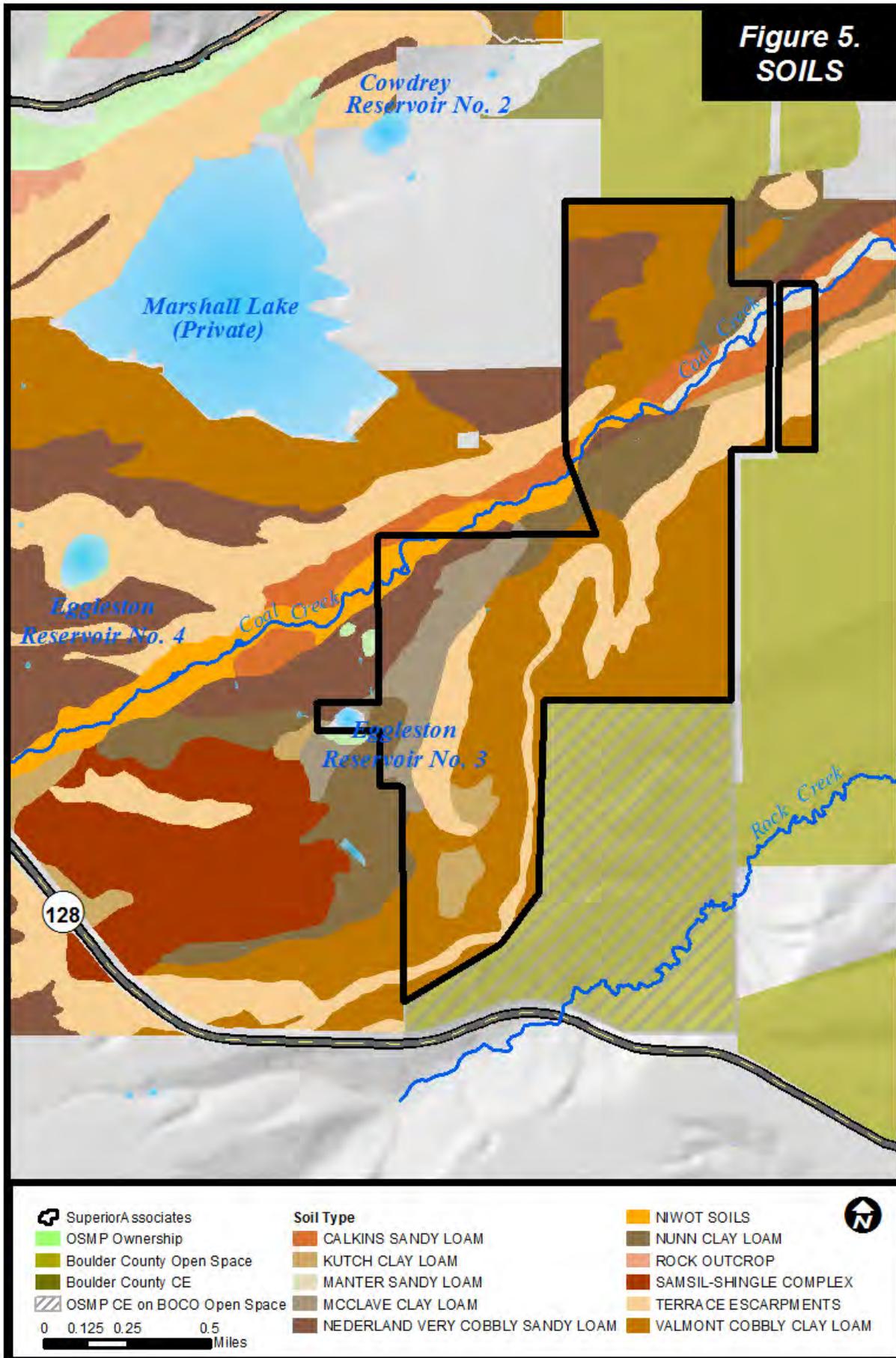
HYDROLOGY

Coal Creek traverses the property (Figure 6). There are several unnamed intermittent streams which are tributary to Coal Creek that flow after rainfall and during snowmelt. Community Ditch and EGGLESTON #1 Ditch also traverse the property. There is an ephemeral pond on the EGGLESTON #1 Ditch route. Another ephemeral stock pond is filled with water when Community Ditch is flowing. Both ponds were constructed to provide water for livestock, but now also serve as wildlife habitat. The EGGLESTON #3 Filler Ditch crosses onto the Superior Associates property and feeds into the EGGLESTON Reservoir #3. The W.C. Hake Ditch is also located on the property.

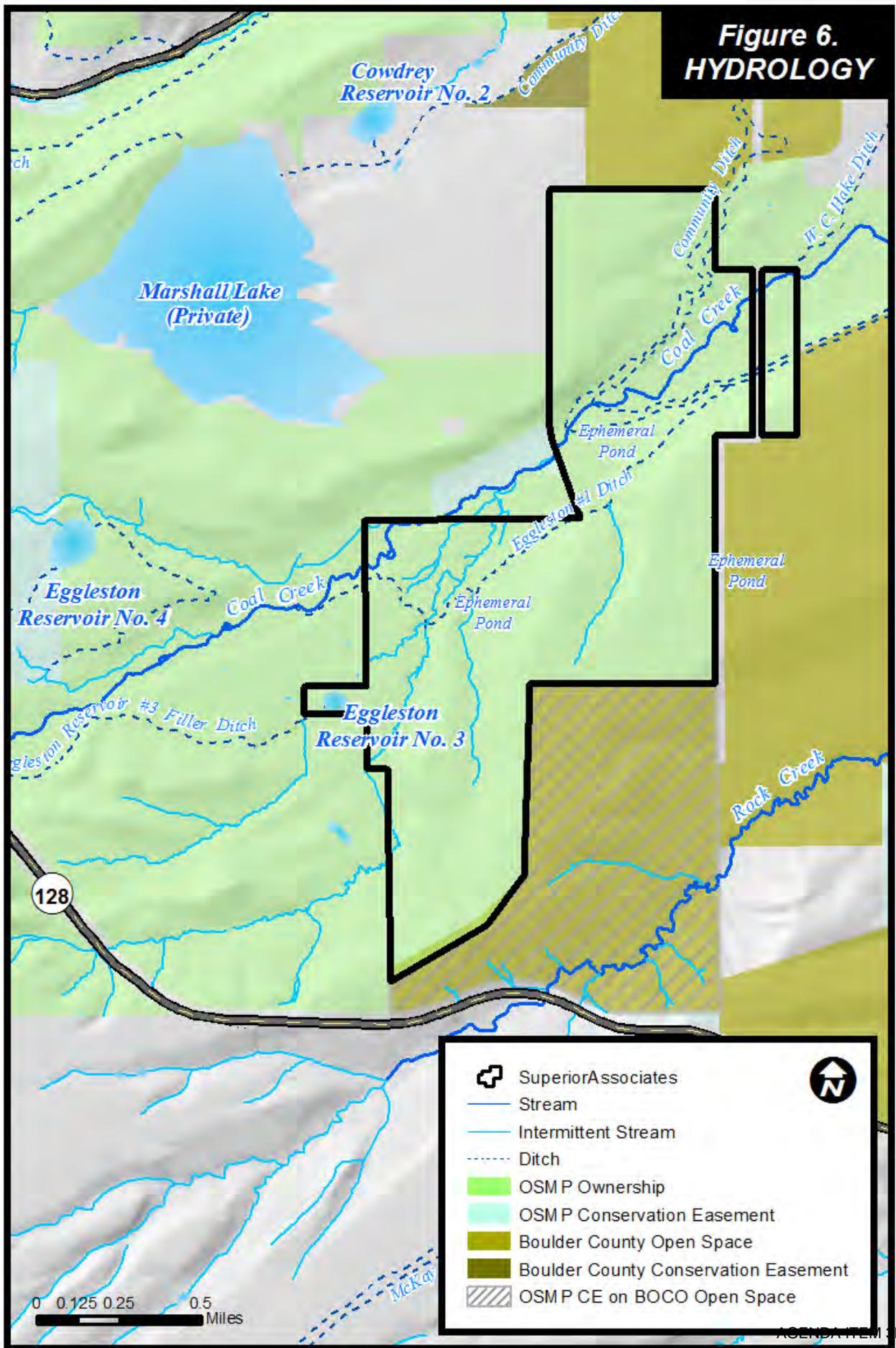
WATER RIGHTS AND IRRIGATION IMPROVEMENTS

OSMP owns 100% of EGGLESTON # 1 Ditch. Diversion from the headgate is limited to 6.58 cfs and is designated as irrigation for 90 acres of land. All 90 acres of irrigation occurs on the Superior Associates property (Figure 15). OSMP owns 100% of the EGGLESTON #3 Filler Ditch and reservoir. Ditch is limited to 9 cfs for storage and 7.5 acres of irrigation. EGGLESTON #3 Reservoir has a surface area of 2.58 acres and a decreed storage capacity of 23 acre-feet. The EGGLESTON #2 Ditch has been abandoned and all water transferred out of the ditch and redistributed to the other EGGLESTON Ditches (#1, #3, and #4). OSMP owns 44% of the W.C. Hake Ditch.

**Figure 5.
SOILS**



**Figure 6.
HYDROLOGY**



VEGETATION

The dominant cover type on the Superior Associates property is mixed grass prairie. The mixed grass communities combine with xeric tallgrass prairie, riparian corridors, streams and small bodies of water to form a biologically rich foothills grassland mosaic (Figure 7).

Mixed grass prairie communities on the hillslopes and valley bottoms are dominated by western wheatgrass, blue grama, buffalograss and green needlegrass. Mesa tops and upper slopes support stands of needle and thread grass and small patches of New Mexico feathergrass. Some of the plant communities that make up the mixed grass prairie mosaic are relatively rare, including the Green Needlegrass Herbaceous Alliance, and the Needle-and-Thread/Blue Gramma Alliance. Sub-shrubs such as fringed sage are prevalent (Figure 8).

The xeric tallgrass prairie predominately located in the northern area of the Superior Associates property is dominated by big bluestem. Shrubs such as ill scented sumac and yucca are prevalent (Figure 8). This portion of the Superior Associates property is part of one of the largest areas of tallgrass remaining in Colorado. Tallgrass prairie is considered rare and imperiled globally, and is one of the most endangered vegetation types in the world (Hoekstra et al.2005).

Riparian areas are characterized as transitional between permanently saturated wetlands and upland terrestrial areas. The Coal Creek riparian area is one of the largest riparian areas in the region and one of the only untrailed plains streams in the Front Range. Smaller riparian areas are also distributed along numerous intermittent creeks and drainages where flood flows are uncommon but elevated ground water levels support riparian vegetation. There are about 42 acres of riparian areas on the Superior Associates property or about four percent of the property. This is a relatively large proportion of riparian land cover; riparian areas make up about two percent of land cover in the arid west.

The riparian areas are dominated by woody vegetation, either trees or shrubs. The Narrowleaf Cottonwood/Bluestem Willow Woodland plant association, prevalent on the Superior Associates property, is found only along the foothills streams of the Colorado Front Range and in the Rio Grande Valley of New Mexico. Also found in the riparian area are the Woods' Rose Temporarily Flooded Shrubland Alliance, Sand Dropseed Herbaceous Alliance, Black Hawthorn, Fleshy Hawthorn Temporarily Flooded Shrubland Alliance, and the Smooth Brome Semi-Natural Herbaceous Alliance.

Invasive plants that are of the greatest management concern are diffuse knapweed, sulphur cinquefoil, dalmation toadflax, cutleaf teasel, Scotch thistle and Canada thistle.

WILDLIFE

This large unfragmented block provides habitat for a diverse fauna including numerous grassland nesting birds, the American badger, and elk. The mixed grass mosaic supports uncommon species such as the grasshopper sparrow, short-horned lizard and several rare grassland-dependent butterfly species.

Five raptor species of concern, bald eagle, golden eagle, ferruginous hawk, northern harrier, and prairie falcon have been observed hunting on or near the property. A pair of burrowing owls consistently nests on the property.

Coal Creek provides habitat for aquatic organisms including a variety of native fishes, amphibians, and invertebrates. Coal Creek supports an abundance of native fish species including longnose dace, fathead minnow, creek chub, central

stoneroller, johnny darter, and white sucker. The northern leopard frog, a Colorado Species of Special Concern, is still found in Coal Creek despite recent population declines throughout the western portion of its range.

Riparian shrublands on the Superior Associates property support very high breeding bird densities. In particular, shrub-nesting bird species, including grey catbirds, yellow-breasted chats, blue grosbeaks, Virginia's warblers, lazuli bunting and blue-gray gnatcatcher. The riparian area also supports nesting bald eagles, one of six nesting pairs in Boulder County. Coal Creek also provides potential habitat for the federally threatened Preble's meadow jumping mouse.

Black-tailed prairie dogs have far-reaching impacts on the grasslands they inhabit and their presence provides prey and landscape structure necessary for the presence of associated species. Because of these far-reaching effects, prairie dogs are often considered "keystone" species (Kotliar et al. 1999, Hoogland 2006). Burrowing owls, American badgers, ferruginous hawks, and golden eagles are animal species associated with intact prairie dog colonies. In 2008, approximately 155 acres of the Superior Associates property was inhabited by prairie dogs. Since then, an active epizootic of sylvatic plague dramatically reduced the number of occupied acres. In 2012, approximately six acres were inhabited by prairie dogs.

RECREATION RESOURCES AND VISITOR ACCESS

A portion of the Coalton Trail follows the southern Superior Associates property boundary (Figure 7). The Coalton Trail connects into additional trails on City of Boulder OSMP and Boulder County POS lands. The Coalton Trail comprises a portion of an approximately 14 mile loop trail network. The Coalton Trail, and larger trail network of which it is a part allows opportunities for hiking, biking, and horseback riding. Dogs, if leashed, are allowed².

The Greenbelt Plateau Trailhead, managed by OSMP, and the Coalton Trailhead, managed by Boulder County POS, are nearest to the portion of the Coalton Trail on the Superior Associates property. The nearest designated public access point to the property is located off of State Highway 128 on adjacent OSMP property to the west. There is informal parking in Colorado Department of Transportation (CDOT) right-of-way. (Figure 9)

A permit is required for off-trail travel on the property. There is no charge for the permit and it is available on line or at the OSMP administrative offices.

Public access is prohibited from the Coal Creek riparian area (approx. 134 acres) year round. A seasonal protection for bald eagles near Coal Creek affects 535 acres of the property from November 1 through July 31. A seasonal protection for burrowing owls affects a 172 acre area from March 15 through October 31. Public access is prohibited in the seasonal wildlife closures. (Figure 9)

² Leash requirements vary from trail to trail along the loop trail network and adjoining trails.

**Figure 7.
ECOLOGICAL
SYSTEMS**

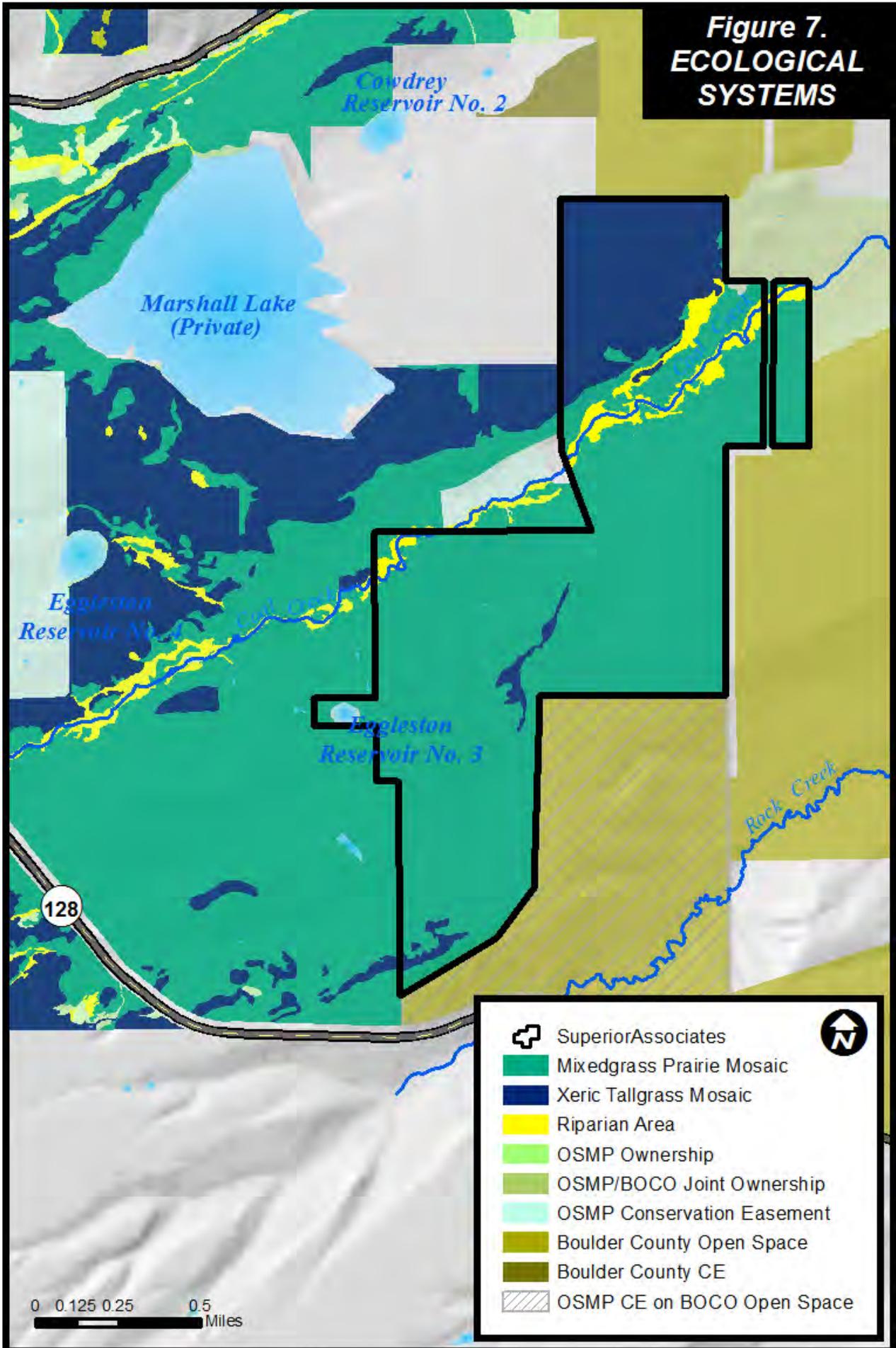
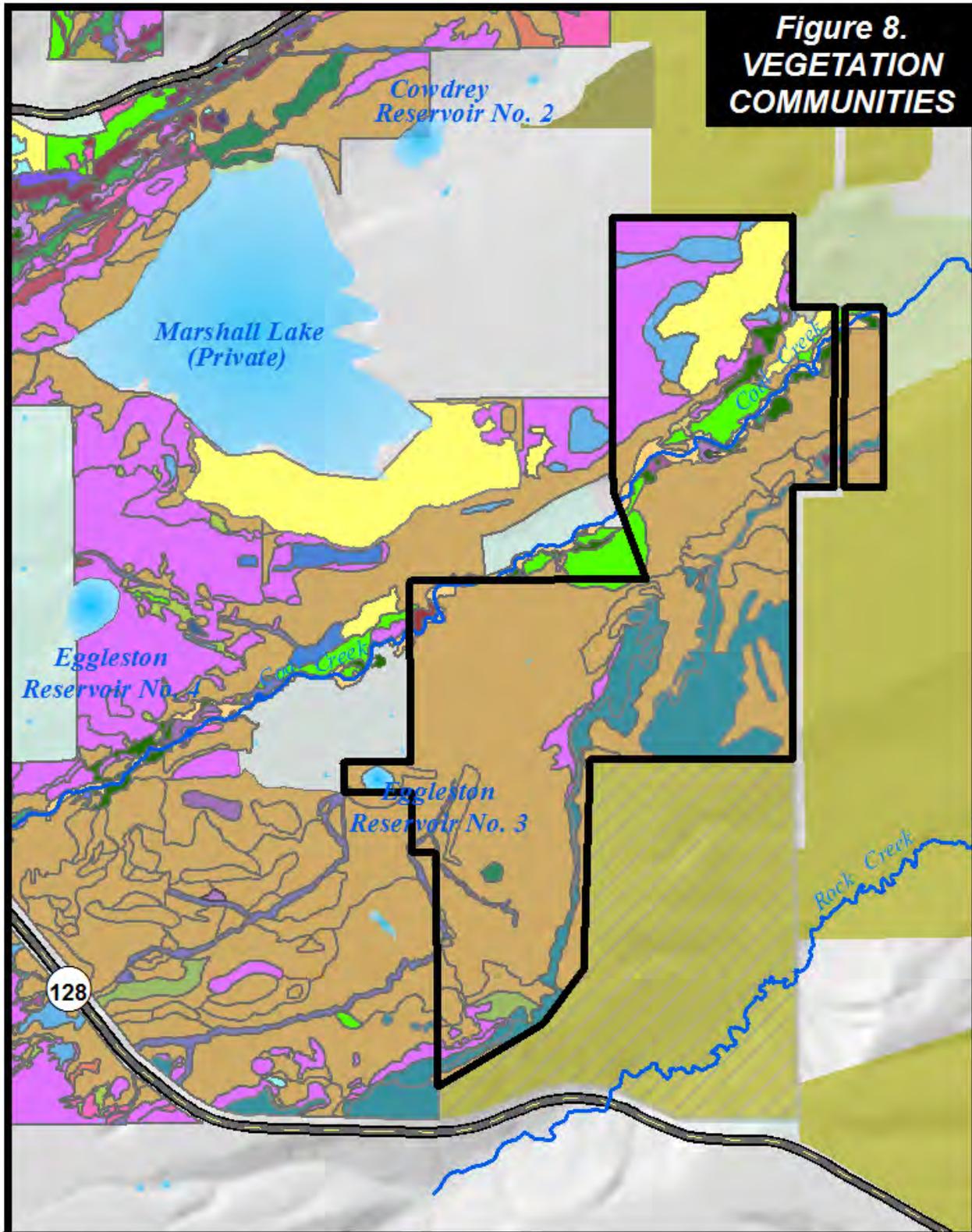


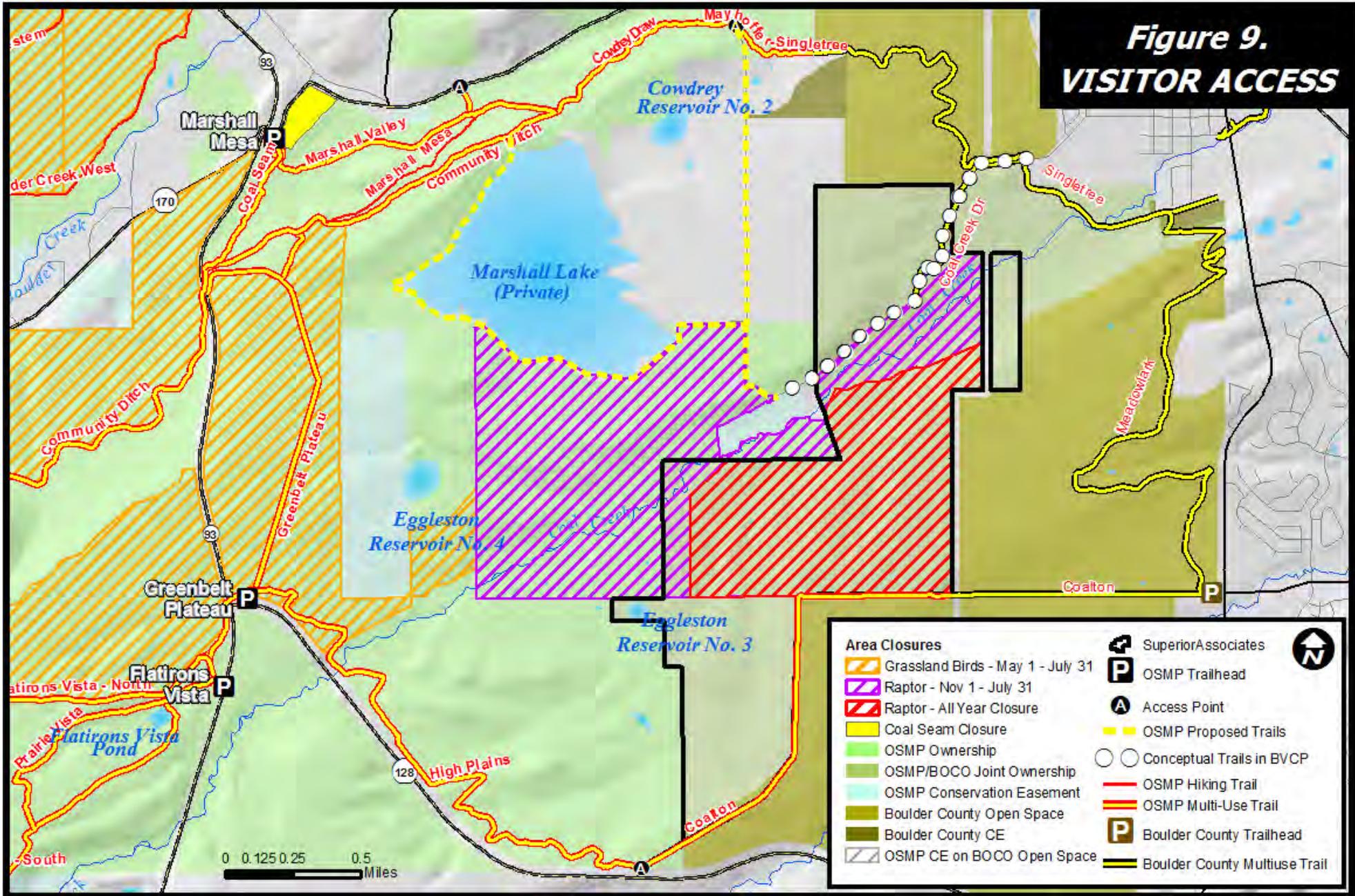
Figure 8.
VEGETATION
COMMUNITIES



USNVC Alliance	New Mexico Needlegrass	SuperiorAssociates
Black Hawthorn, Fleshy Hawthorn	Sand Dropseed	Boulder County Open Space
Annual Dominated Upland Disturbance	Smooth Brome Semi-Natural	Boulder County CE
Black Tailed Prairie Dog Grassland Complex	Soapweed Yucca Shrub Savannah	OSMP CE on BOCO OS
Green Needlegrass	Three-leaved Sumac	
Narrowleaf Cottonwood	Western Wheatgrass	
Needle and Thread - Blue Grama	Western Wheatgrass	

0 0.125 0.25 0.5 Miles

**Figure 9.
VISITOR ACCESS**



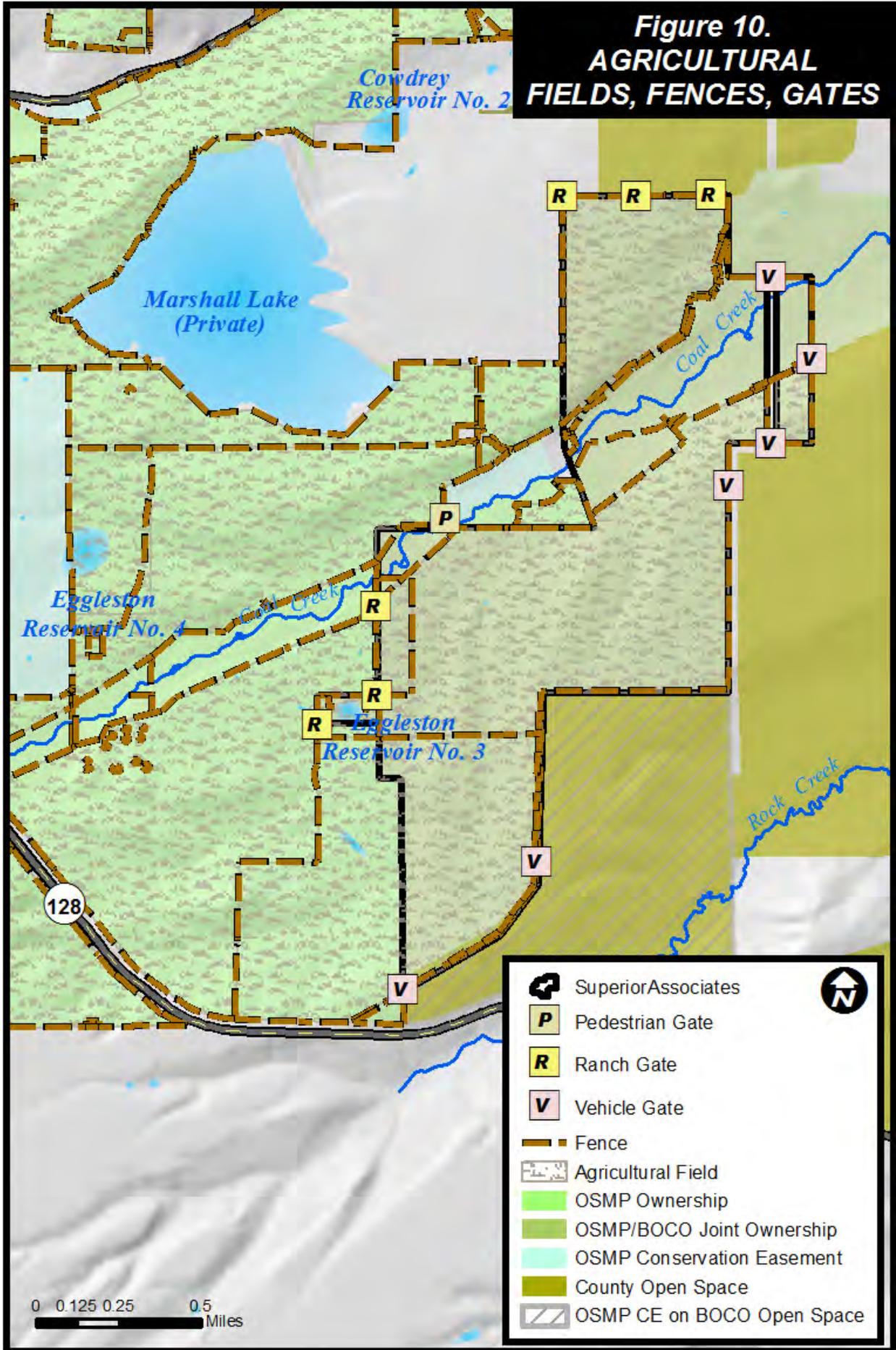
CULTURAL RESOURCES

No professional cultural resource surveys have been conducted by OSMP staff. However, the parcel is surrounded by land on which evidence of historic mining and homesteading occurred.

IMPROVEMENTS

The improvements on the property are limited to water delivery infrastructure and the fences and gates used to delineate property and pasture boundaries and to manage livestock. (Figure 10)

**Figure 10.
AGRICULTURAL
FIELDS, FENCES, GATES**



POLICY AND PLAN GUIDANCE

Guidance for managing the Superior Associates property is provided in several existing plans and policy documents that clarify how the City of Boulder will manage open space properties and provide services, including sustainable natural resource conservation and passive recreation. These planning documents include:

- Boulder City Charter
- Boulder Valley Comprehensive Plan
- Open Space Long Range Management Policies (LRMP)(OS, 1995)
- Grassland Ecosystem Management Plan (OSMP, 2009)
- Visitor Master Plan (VMP) (OSMP, 2005)
- Marshall Mesa – Southern Grasslands Trail Study Area Plan (TSA) (OSMP, 2005)

The Boulder City Charter, Boulder Valley Comprehensive Plan, and Open Space LRMP provide broader policy guidance while the Grassland Ecosystem Management Plan, Visitor Master Plan (VMP), and Marshall Mesa-Southern Grasslands TSA provide more specific policies and guidance for specific –on-the-ground management actions.

Figure 9 illustrates the relationship of the OSMP adopted plans and policy documents. The figure shows a hierarchy of plans from general to more specific.

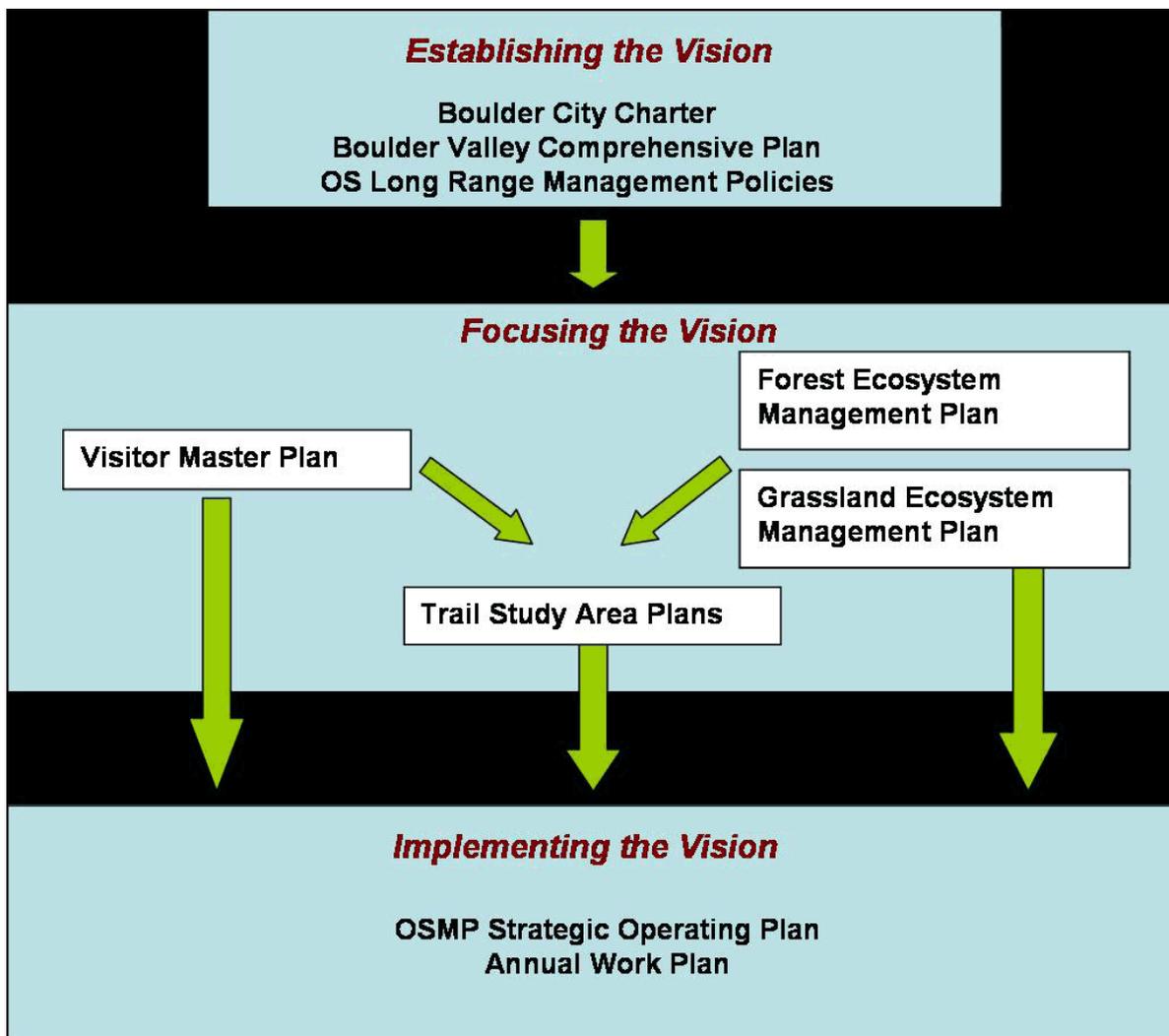


Figure 11: Relationship of OSMP Adopted Plans

BOULDER CITY CHARTER

Section 176 of *Boulder's City Charter* was established by public election. It lists the purposes for which open space land can be acquired, maintained and used. The full text of this section of the charter can be found on the inside cover of the plan.

BOULDER VALLEY COMPREHENSIVE PLAN

The City of Boulder and Boulder County have agreed upon a set of land use and management goals and policies to implement a shared community vision for the Boulder Valley. These goals and policies comprise the *Boulder Valley Comprehensive Plan* (BVCP). The BVCP states a clear intention for the City to preserve the agricultural and natural values of the lands and waters of the Boulder Valley through the acquisition and management of open space. The property is located in Area III of the BVCP as a Rural Preservation Area.

OPEN SPACE LONG RANGE MANAGEMENT POLICIES

The *Open Space Long Range Management Policies* (LRMP) were approved by City Council in 1995 and provide specific direction about program goals, decision-making processes, and management techniques. Chapters IV and V of the LRMP address natural resource management and agricultural management respectively. Chapters IX and X of the LRMP address the management of passive recreation and visitor facilities.

GRASSLAND ECOSYSTEM MANAGEMENT PLAN

The Grassland Ecosystem Management Plan (Grassland Plan) focuses on the conservation of OSMP lands dominated by mixed grass and xeric tallgrass prairie. The Grassland Plan provides a framework for on-the-ground management actions, public policies and land and water acquisition priorities to conserve the ecological values of Boulder's grasslands and ensure on-going agricultural production. The Grassland Plan was accepted by City Council in 2010. The following section summarizes or contains excerpts of the Grassland Plan that are relevant to the management of the property.

Grassland Plan Targets

The Grassland Plan identifies "conservation targets", aspects of biological diversity that serve as the basis for setting objectives, taking action and measuring success. Five of the eight grassland targets are found on the Superior Associates property:

- Mixedgrass Prairie Mosaic
- Xeric Tallgrass Prairie
- Agricultural Operations
- Black-tailed Prairie Dogs and Associates
- Riparian Areas

Each of the conservation targets includes habitat for many species of plants and animals as well as a variety of plant associations. Some are of conservation concern, meaning that a species is threatened or endangered according to state or federal law, that they are considered rare or imperiled by the Colorado Natural Heritage Program, or that they have been found to be rare or in need of special conservation action at the local level. Appendix B of the Grassland Plan lists the species of conservation concern found in the targets along with their conservation status ranking. The species of concern are "nested" beneath the conservation target(s) with which they are associated. Nested targets should be conserved if the conservation targets with which they are associated are conserved.

In order to assess the viability of the conservation targets, a number of key attributes for each conservation target were identified. Key attributes are aspects of the target, which if altered, could result in the improvement, degradation or

loss of the target. Indicators were also developed to track the status of the key attributes and targets over time. The key attributes and indicators for the targets on the Superior Associates property are listed in Appendix C.

Table 1 summarizes the viability assessment for each of the targets on the Superior Associates property and identifies a range of acceptable conditions. The assessment is organized by size, condition, and landscape context. For more details on the assessment please refer to Chapter III and Appendix D of the Grassland Plan.

Table 1: Summary Viability Assessment and Acceptable Conditions

Conservation Target	Size	Condition	Landscape Context	Overall Viability Rank
Mixedgrass Prairie Mosaic	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> at least one habitat block over 2,000 acres 	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> stable populations (extent) of Bell's twinpod weed species dominance <3% <p><u>Improve to Good</u></p> <ul style="list-style-type: none"> occurrence of sensitive butterflies >10% occurrence of grassland dependent butterflies >50% weed species prevalence <9% 75% of sampled sites with: <ul style="list-style-type: none"> native species relative cover >88% native species richness >33 conservative species richness >17 bare ground <10% derived PIF score ≥3.9 	<p><u>Improve to Good</u></p> <ul style="list-style-type: none"> >50% of target experiencing 5-30 fire return interval >60% of large (>247 acre) habitat blocks with singing male grasshopper sparrows 	Fair
Xeric Tallgrass Prairie	<p><u>Maintain at Fair</u></p> <ul style="list-style-type: none"> at least one block of habitat over 1,000 acres 	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> weed species dominance <3% no decrease in extent: <ul style="list-style-type: none"> grassyslope sedge dwarf leadplant or prairie violet 75% of sampled sites with: <ul style="list-style-type: none"> butterfly host plant cover ≥8% <p><u>Improve to Good</u></p> <ul style="list-style-type: none"> occurrence of sensitive butterflies >10% occurrence of grassland dependent butterflies >50% weed species prevalence <9% 75% of sampled sites with: <ul style="list-style-type: none"> native species relative cover >90% native species richness ≥22 conservative species richness >12 bare ground <26% 	<p><u>Improve to Good</u></p> <p>>50% of target experiencing 5-30 fire return interval</p>	Fair

Conservation Target	Size	Condition	Landscape Context	Overall Viability Rank
		derived PIF score ≥ 3.9		
Agriculture	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> >12,000 acres in agricultural production >80% of irrigable land leased for agriculture 	<p><u>Maintain Good</u></p> <ul style="list-style-type: none"> stable levels of organic soil matter >60% of grazed land in “good” condition rating from integrated range quality technique <p><u>Improve to Good</u></p> <ul style="list-style-type: none"> >75% of Class B Bobolink Management Areas mowed after bobolink fledging (July 15, unless otherwise determined) while maintaining 100% of Class A Bobolink Management Areas mowed after bobolink fledging (July 15, unless otherwise determined) 	Key Attributes or Indicators Not Identified	Good
Black-tailed Prairie Dogs and Associates	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> 800-3,137 acres occupied by prairie dogs 	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> >2 prairie dog colonies with successful nesting by burrowing owls <p><u>Improve to Good</u></p> <ul style="list-style-type: none"> >50% of colonies with territorial horned larks generalist predators at 50% of colonies in grassland preserves and sensitive predators at 25% of colonies 	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> >70% of land occupied by prairie dogs in protected status <p><u>Improve to Good</u></p> <ul style="list-style-type: none"> all grassland preserves with prairie dog occupancy from 10-26% 	Good
Riparian Areas and Creeks	Key Attributes or Indicators Not Identified	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> no increase in aquatic nuisance species <p><u>Improve to Good</u></p> <ul style="list-style-type: none"> >50% of suitable habitat with native frogs and no non-native frogs weed species dominance <3% weed species prevalence <9% >50% of recruitments sites with cottonwood seedling 75% of sampled sites: <ul style="list-style-type: none"> fish IBI score >44 macroinvertebrate IBI score >50 exceed state water quality 	<p><u>Maintain at Good</u></p> <ul style="list-style-type: none"> 2 or more successful bald eagle nests 75% of sampled sites: <ul style="list-style-type: none"> within 656 ft (200 m) of nearest wetland or riparian area <p><u>Improve to Good</u></p> <ul style="list-style-type: none"> 75% of sampled sites: <ul style="list-style-type: none"> with buffer width > 165 ft (50 m) undesigned trail density in northern leopard frog 	Poor

Conservation Target	Size	Condition	Landscape Context	Overall Viability Rank
		standards for dissolved oxygen <ul style="list-style-type: none"> ○ have total phosphorus concentrations less than 0.07 mg/L ○ instream habitat metric >10 ○ native plant relative cover ≥67% ○ derived PIF score ≥20 	habitat block < 13.4 m/ha (10 m/ha) <ul style="list-style-type: none"> • no impediments to fish passage • improvement to instream flow • 1 or more overbank flooding events 	

Best Opportunity Analysis

A best opportunity analysis was completed in the Grassland Plan to determine where the best opportunities exist to conserve each of the targets. These Best Opportunity Areas (BOA) will be used to prioritize where conservation action is implemented. There are multiple BOAs on the Superior Associates property.

Upland Grassland Complex

The Mixedgrass Prairie Mosaic and Xeric Tallgrass Prairie were combined for the best opportunity analysis, referred to as the Upland Grassland Complex. Figure 12 illustrates the best opportunities for conservation and restoration of the Upland Grassland Complex. The conservation areas were selected because they:

- Represent concentrations of best quality vegetation areas,
- Are large, contiguous grassland habitat blocks including multiple conservation targets and nested target habitat,
- Have good restoration potential and landscape context

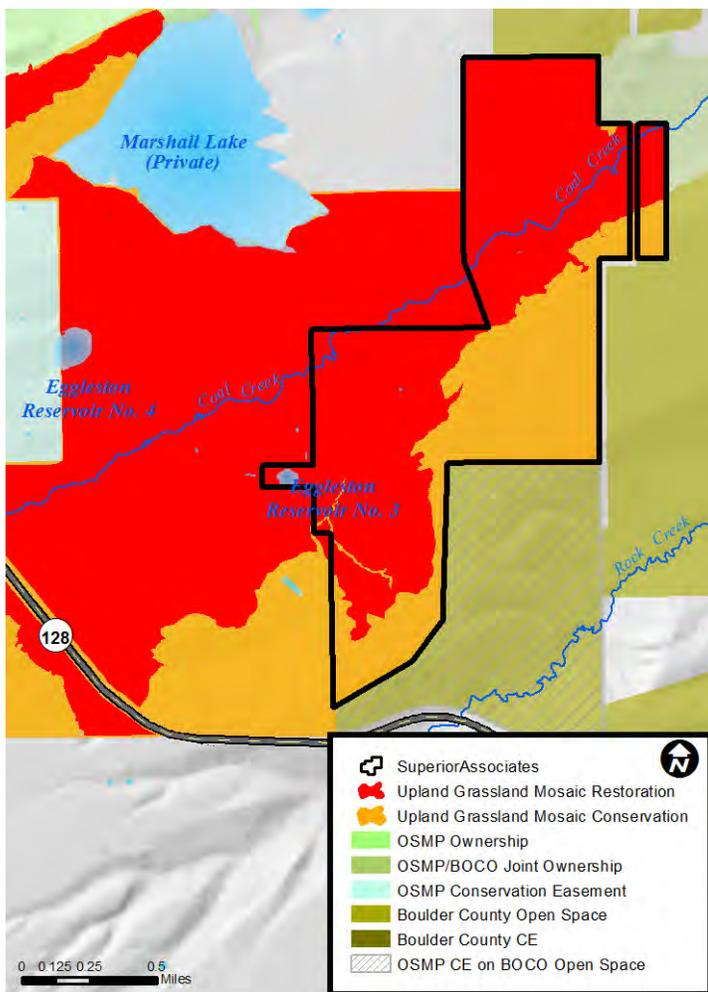


Figure 12: Upland Grassland Complex BOA

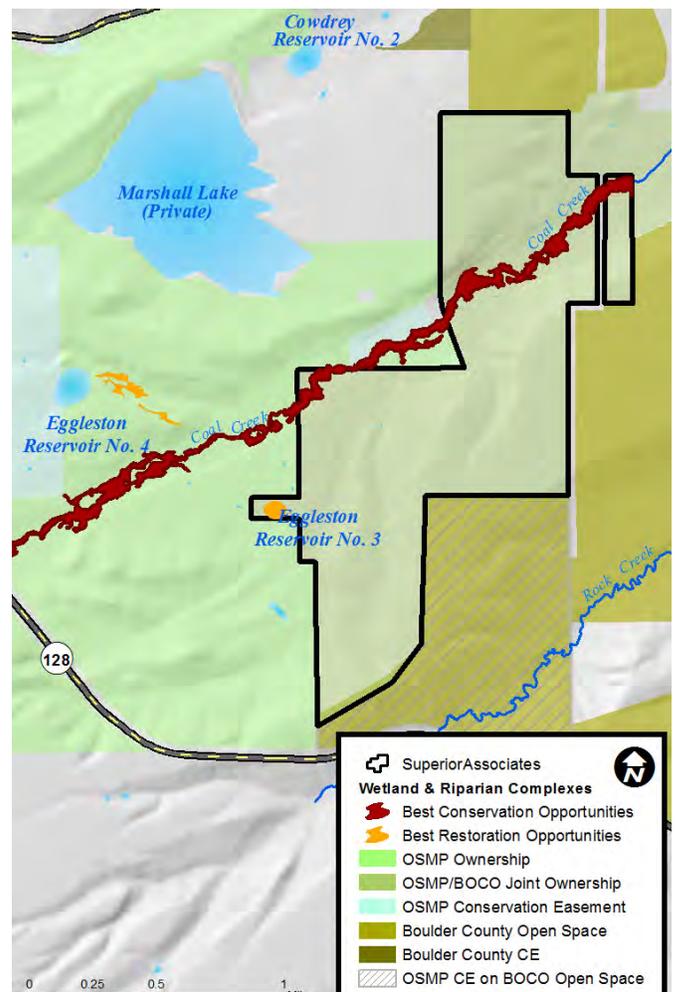


Figure 13: Riparian BOA for Conservation and Restoration

Wetlands and Riparian Areas

Figure 13 shows the approximate location of wetland and riparian best opportunity conservation and restoration areas on the Superior Associates property. Coal Creek, which traverses the Superior Associates property, was identified as a BOA for conservation because:

- Restoration work done in the past has been successful (birds responding positively),
- Weeds remain an issue but are being managed,
- Hydrology supports northern leopard frogs and discourages bullfrogs,
- It is a significantly sized riparian corridor with continuity (unfragmented), and

- It is one of the only intermittent streams with significant riparian habitat

Agricultural Operations

Federal, state and local agencies developed agricultural land designations to prioritize lands for agricultural preservation (sometimes referred to as “prime farmland”). These are generally irrigated lands with adequate water supply. Figure 14 shows the significant agricultural lands on the Superior Associates property.

OSMP staff’s analysis identified irrigated lands as the best opportunity for agriculture. Managing irrigated lands for agriculture lowers management costs and protects the value of the water rights by helping to ensure the water will be used. Figure 15 shows the BOAs for Agricultural Operations (i.e. irrigated lands) on the Superior Associates property.

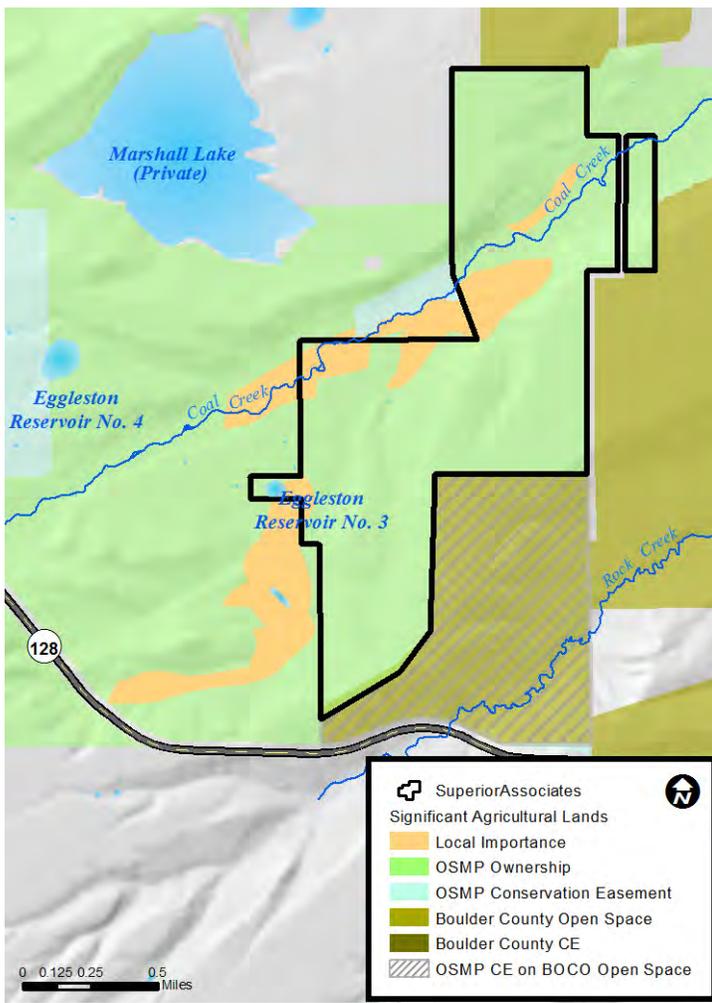


Figure 14: Significant Agricultural Lands

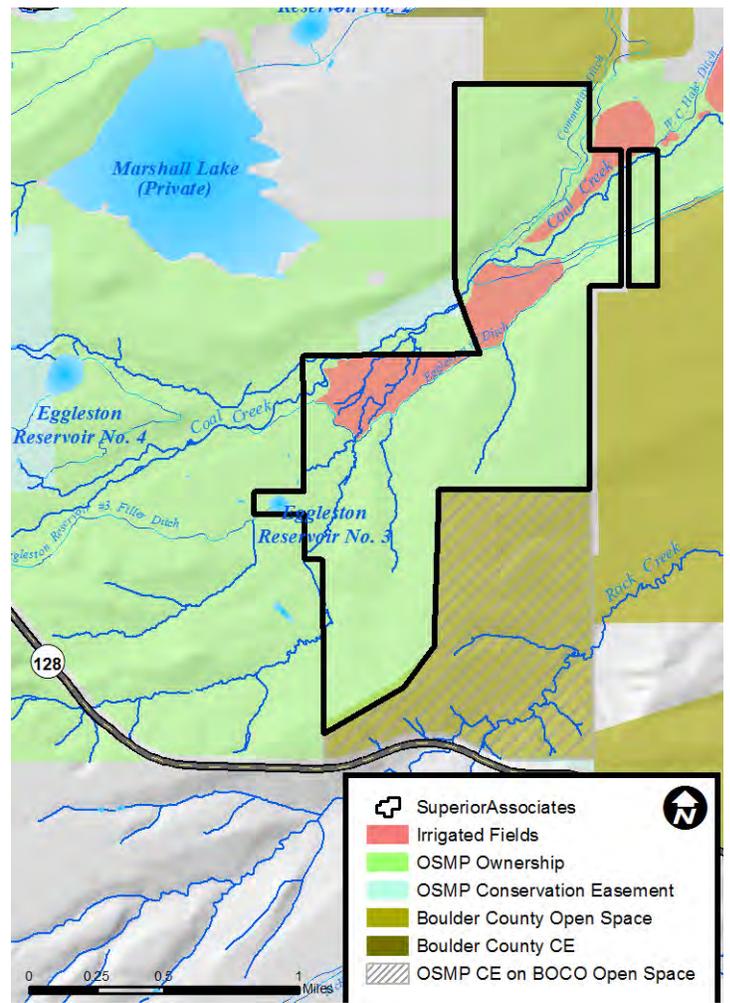


Figure 15: Agricultural Operations BOA / Irrigated Fields

Black Tailed-Prairie Dog and Associates

The best opportunity analysis for conserving the black-tailed prairie dog and its associates considers the habitat needs of the prairie dog and the needs of associated species. The best opportunity to conserve prairie dogs and their associates also integrates compatibility with other Grassland Plan targets and adjacent land use.

OSMP developed a black-tailed prairie dog Habitat Suitability Model using information about vegetation type, slope, soil texture and soil depth. The model predicts where the most suitable black-tailed prairie dog habitat occurs. Figure 16 shows the distribution of habitat suitability ratings on the Superior Associates property. A detailed description of the habitat suitability model is included in Appendix H of the Grassland Plan.

The Superior Associates property was designated as a Grassland Preserve (Figure 17). Grassland Preserves are considered the best opportunity to conserve prairie dogs and their associated species. In most cases, prairie dogs will be allowed to persist without removal in Grassland Preserves. However, removal will be allowed for the purposes of maintaining existing irrigation facilities such as headgates, ditches, lateral ditches, reservoirs, and irrigated fields.

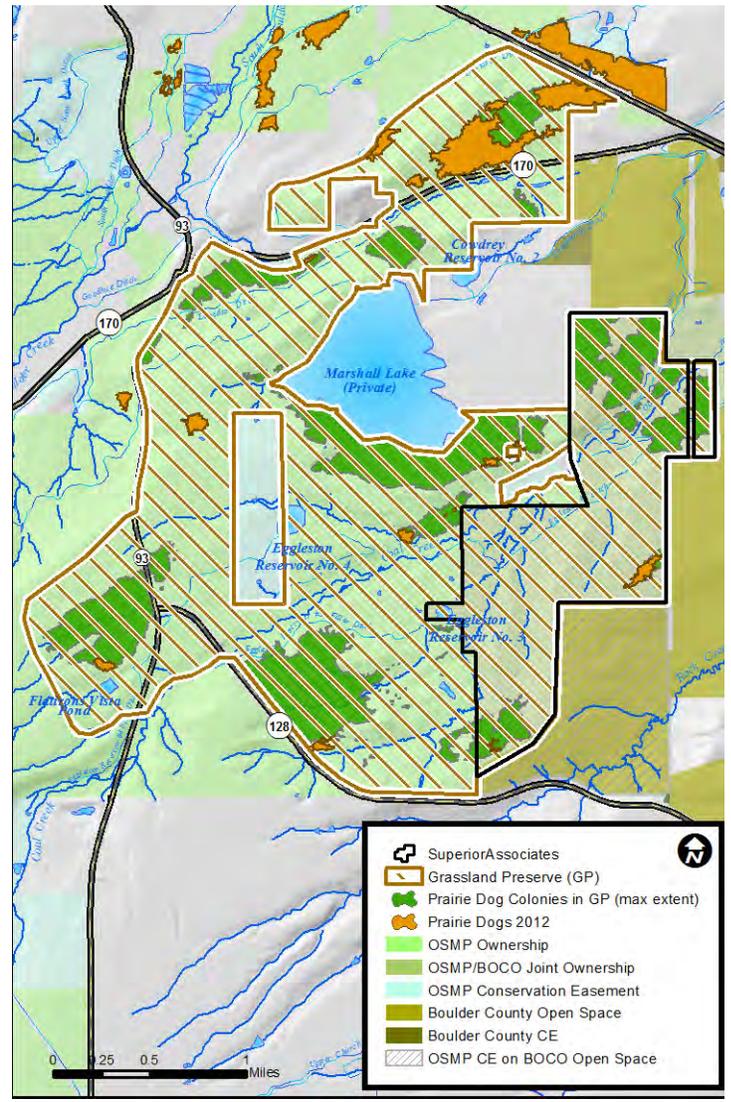
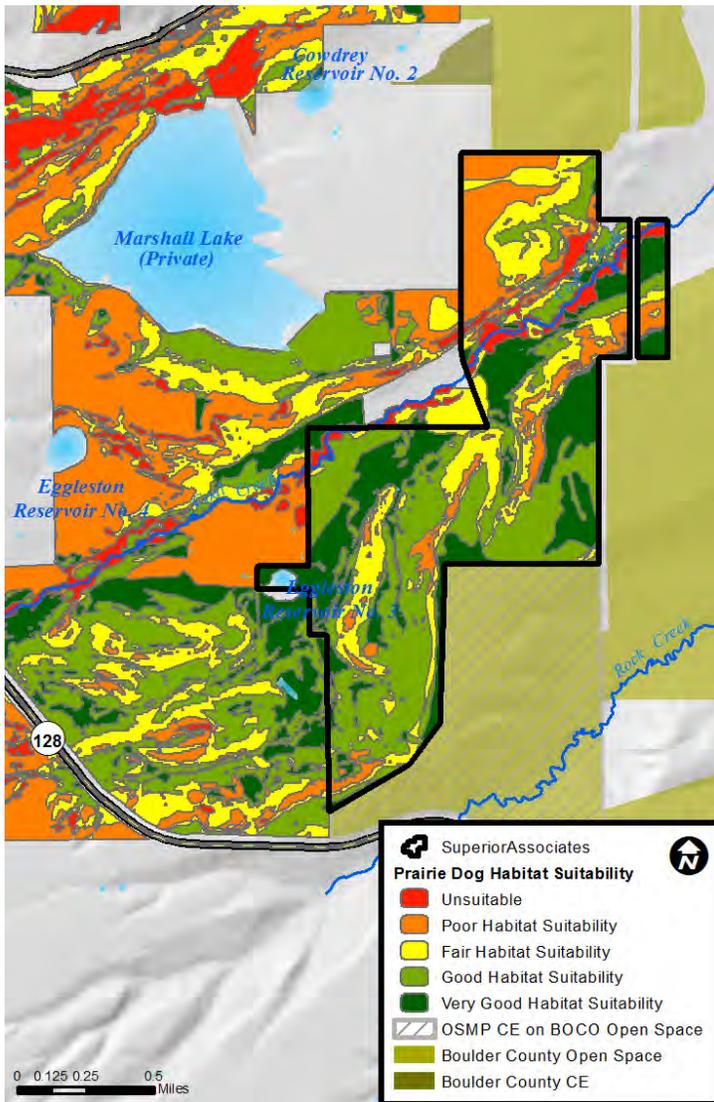


Figure 16: Black Tailed Prairie Dog Habitat Suitability

Figure 17: Grassland Preserve/BOA to Conserve Prairie Dogs
AGENDA ITEM 3B

Conservation Issues

Each of the targets has been degraded to some extent and face a variety of conservation issues. Table 2 summarizes the conservation issues affecting the targets found on the Superior Associates property. Each conservation issue is ranked according to its scope and the severity of its effect upon each target. Chapter IV and Appendix F of the Grassland Plan provides details of the conservation issue assessment rankings.

Table2: Conservation Issues and Rankings for the Grassland Plan Targets found on Superior Associates

Conservation Issue	Mixed Grass Prairie Mosaic	Xeric Tallgrass Prairie	Agricultural Operations	Black-Tailed Prairie Dog and Associates	Riparian Areas
Incompatible Trails/Recreation	High	High	Low	Very High	High
Incompatible Surrounding Land Use	High	High		Very High	Very High
Incompatible Dog Management by Guardians	High	High		Very High	Medium
Invasive Plant Species	High	High	Low	Medium	High
Invasive Animal Species					High
Incompatible Water Management/Use					Very High
Inappropriate Fire Management	High	High	Low		
Incompatible Agricultural Practices	Medium	Low	Low	High	Medium
Incompatible Prairie Dog Activity (Grazing/Burrowing)	High	Medium	Medium		
Sylvatic Plague				High	
Deferred Maintenance of Irrigation Infrastructure			Medium		
Great Horned Owls					Medium
Conservation Issue Status for Targets	Very High	High	Medium	Very High	Very High

Conservation Strategies

The Grassland Plan identified 13 objectives for addressing the conservation issues. Like objectives were packaged, creating Grassland Conservation Initiatives. The following section presents the Grassland Plan initiatives along with the associated conservation objectives.

Initiative 1: Large Block Habitat Effectiveness

The focus of this initiative is to improve the conservation value of large habitat blocks so they are more likely to sustain the Grassland Plan targets.

Conservation Objective 1.1

By 2019, establish prairie dog, prairie dog commensal and prairie dog predator populations and population distribution within the range of acceptable variation.

Conservation Objective 1.2

By 2019, increase the bird conservation scores to at least 3.9 for the Mixedgrass Prairie Mosaic and Xeric Tallgrass Prairie.

Conservation Objective 1.3

By 2019, increase the frequency of singing male grasshopper sparrow to 60% within habitat block over 247 acres (100 ha) in the Mixed Grass Prairie Mosaic.

Initiative 2: Ecological Restoration

This initiative focuses on improving ecological processes and conditions to acceptable levels as defined by the viability indicator ratings for the eight Grassland Plan targets. These improvements will benefit both ecological viability and agricultural sustainability.

Conservation Objective 2.1

By 2019, reduce non-native plant species in Best Opportunity Areas of the Xeric Tallgrass, and Mixedgrass Prairie Mosaic targets to achieve at least a “Good” rating for prevalence.

Conservation Objective 2.2

By 2019, achieve “Good” rating for all vegetation composition and structure indicators in Best Opportunity Areas.

Conservation Objective 2.3

By 2019, increase fire frequency so that 50% of Upland Grassland Complex Best Opportunity Areas will have burned within the acceptable fire return interval.

Initiative 3: Aquatic Systems Management

This initiative focuses on wetlands, riparian areas, creeks and ponds.

Conservation Objective 3.1

By 2019, evaluate and restore riparian hydrology in Best Opportunity Areas.

Conservation Objective 3.2

By 2019, evaluate and restore wetland, riparian, and aquatic habitat in Best Opportunity Areas.

Conservation Objective 3.3

By 2015, increase by three the number of bullfrog-free ponds on OSMP managed lands supporting northern leopard frogs.

Conservation Objective 3.4

Prevent an increase in the extent and diversity of aquatic nuisance species in the Grassland Planning Area.

Conservation Objective 3.5

By 2019, reduce the undesignated trail density in northern leopard frog habitat blocks to at most 13.4 ft/ac (10m/ha).

Initiative 4: Agro-Ecosystems

This initiative focuses on sustaining agricultural uses while integrating agricultural and ecological conservation objectives.

Conservation Objective 4.1

Continue agricultural operations on OSMP lands to address the Charter purposes of OSMP.

Conservation Objective 4.2

Establish or continue agricultural management practices that support habitat for Ute ladies'-tresses orchid, bobolinks and other species of conservation concern.

Thirty-five strategies were identified in the Grassland Plan to achieve the objectives. Twenty-five of the 35 strategies are relevant to the management of the Superior Associates property (Table 3). More detail about the strategies is included in Appendix L of the Grassland Plan.

Table 3: Grassland Plan Strategies Relevant to the Management of Superior Associates

Strategy #	Strategy
1	Develop a safe and effective prescribed fire program for the Grassland Planning Area
2	Enhance prescribed grazing program through improvements to fencing, livestock watering facilities, stocking rate and seasonal use adjustments, and the establishment of one or more grass banks
3	Manage agricultural activities to minimize soil erosion and protect soil fertility
4	Minimize the adverse effects of trail development in areas of special conservation value or sensitivity within the Grassland Planning Area, as part of TSA planning
7	Identify high-value grassland bird nesting areas and consider enacting seasonal protection measures through the TSA planning process, and, when necessary, prior to TSA planning
8	Manage selected ponds as northern leopard frog breeding habitat (Eggelston # 3 Reservoir)
11	Develop a protocol to coordinate relocation of prairie dogs onto OSMP lands that is compatible with both the Urban Wildlife Management Plan and the Grassland Plan
12	Establish specific indicators and acceptable ranges of variation to fill information gaps
13	Treat non-native plant species in the grassland planning area using appropriate integrated pest management techniques
14	Establish, maintain, remove and exclude prairie dog colonies in accordance with prairie dog management designations
15	Construct, repair, enhance and maintain irrigation delivery system

Strategy #	Strategy
16	Establish instream flows in South Boulder Creek and Coal Creek
17	Collaborate with neighboring land management agencies to establish compatible land management practices
19	Promote conservation of the Grassland Plan targets by increasing awareness of grassland values and conservation issues
22	Construct or maintain hunting perches near reservoirs and prairie dog colonies to encourage use by raptors
23	Construct and maintain alternate nesting structures for sensitive raptors in best opportunity sites
24	Consider closing, restoring and discouraging the (re) establishment of undesignated trails in areas of special conservation value or sensitivity as part of the TSA planning process, and if necessary, prior to TSA planning
25	Consider establishing on-leash requirements in areas of special conservation value or sensitivity as part of the TSA planning process, and, if necessary, prior to TSA planning
26	Consider providing additional no-dog opportunities to protect areas of conservation value and sensitivity as a part of TSA planning
28	Identify and obtain water rights needed to support irrigated agriculture
29	Establish and support the survival of plains cottonwoods and diverse and abundant shrub communities in riparian areas
30	Remove trees from grasslands at 75% of best opportunity sites
31	Treat wetlands dominated by non-native or invasive species using appropriate integrated pest management techniques
32	Participate in native fish recovery efforts with the Colorado Division of Wildlife
33	Evaluate the suitability of alternative agricultural practices for OSMP lands

Monitoring

The Grassland Plan established the following monitoring objectives to track the conservation targets:

- Evaluate the effectiveness of the strategies in achieving OSMP’s conservation objectives.
- Track the current status of the conservation issues.

- Track the current status of the conservation targets viability.

Appendix D contains a list of the indicators selected to fulfill the monitoring objectives noted above. (OSMP staff will need to establish additional indicators to fill in information gaps.) In addition to listing the indicators, Appendix D summarizes how and when the monitoring will occur, and establishes a priority for the monitoring. Staff gave a “Very High” ranking to the indicators associated with grassland vegetation composition and structure, grassland nesting birds, establishment prairie dog protection and native frog presence. “High” ranked monitoring indicators include those associated with rare plant species, sensitive birds, prairie dog associates, agricultural production and condition, aquatic faunal communities and habitat, non-native plant species and fire return interval.

OSMP will also coordinate with monitoring and data collection activities of other agencies and community groups.

VISITOR MASTER PLAN

The Visitor Master Plan (VMP), adopted by City Council in 2005, developed a framework that provides the goals and policies to deliver recreational facilities and services in a manner consistent with the conservation of natural and cultural resources.

The VMP organized OSMP lands into one of four management area designations. The management area designations provide the framework for determining the level of resource protection, what recreational opportunities are allowed and where, and the level of trail and facility development. The Superior Associates property was designated as a Habitat Conservation Area (HCA) and is part of the Southern Grasslands HCA. In HCAs the emphasis is on protecting high quality habitats while providing a more remote visitor experience.

The VMP identified 5 goals for HCAs:

- Maintain, enhance, and/or restore naturally functioning ecological systems.
- Maintain, enhance, and restore habitat for species of concern identified in the Boulder County and the Boulder Valley Comprehensive Plans.
- Provide public access and passive recreational opportunities that foster appreciation and understanding of ecological systems and have minimal impacts on native plant communities and wildlife habitats or other resources.
- Eliminate all undesignated trails, unless they are made part of the designated trails system or provide specialized access to appropriate low-use conditions.
- Where sustainable infrastructure exists, continue to allow public access to appropriate destinations.

The VMP also identified management strategies for each management area designation. The management strategies for HCAs are summarized in Table 4.

Table 4: VMP Management Strategies for HCA’s

Management Strategies for Habitat Conservation Areas	
Management Issue	Strategy
On-Trail Visitor Use	Require on-trail use except: (1) in a limited number of designated off-trail activity areas; or (2) if an off-trail permit is obtained for OSMP-sponsored activities or other limited and approved public use.

Management Strategies for Habitat Conservation Areas	
Management Issue	Strategy
	Consider/provide designated on-trail access to selected destinations.
Trail Functions, New Trails, and Interconnected Trail System	Minimize new trails and trail density; locate new trails to minimize impacts on habitat quality. Consider designating/building trails that: <ul style="list-style-type: none"> • Do not impinge upon ecological systems • Provide appropriate access • Include appropriate linkages and connections
Trail Design for Level of Use	Design and construct trails and other facilities to sustain a low level of visitor use.
Undesignated Trails	High priority for management of undesignated trails. Minimize new undesignated trails. Management action for existing undesignated trails include: <ul style="list-style-type: none"> • Evaluate best management actions • Designate • Re-route • Close and reclaim
Access to Areas Normally Closed to Visitors	Provide guided educational hikes in areas normally closed to visitor or require permits for off-trail use.
Dog Management	Dogs are required to be on-trail, with some exceptions allowing on-corridor voice-and-sight control. Dog management is predominantly on-leash. Dogs on-leash, dogs prohibited, dogs on-corridor voice-and-sight control, or seasonal dog requirements may be implemented.
Nighttime Use	Trailhead parking prohibited 11 p.m. to 5 a.m. and a nighttime curfew encouraged one hour after dusk to one hour before dawn.
Emphasis for Education and Enforcement Activities	Target educational and enforcement services to support on-trail visitor use and foster appreciation and protection of natural resources.
Visitor Services and Facilities Matched to Level of Use	Provide a low level of visitor services and facilities, except those supporting basic protection and maintenance services.

The VMP also provides guidance on implementation, and organizes recommended policies and management strategies into initiatives. Included in the initiatives are recreation opportunities, trails and facilities, resource protection and user conflict reduction.

The policies associated with the *Recreation Opportunities Initiative* are:

Support for High-Quality Passive Recreation and Education. Foster visitor enjoyment, connection with the land, and shared stewardship.

Diverse Recreational Opportunities. Continue to provide a wide range of passive recreation and outdoor education opportunities that are appropriate in a natural area setting and compatible with protection of natural, agricultural, and cultural resources.

Services for People with Disabilities. Provide service and facilities that expand opportunities for people with disabilities to enjoy passive recreational and educational activities.

The policies and strategies associated with the *Trails and Facilities Initiative* are:

Support for Visitor Trails and Facilities. Provide trails and facilities that support a quality visitor experience and protection of resources.

Travel Opportunities. Provide opportunities for visitor travel to major recreational destinations on safe, enjoyable, and physically and environmentally sustainable trails that offer a variety of experiences and challenge levels.

On-Trail Travel. Encourage visitors to travel on trail by: 1) providing designated trails to major destinations and links between trails that give visitors opportunities for longer-distance trail experiences and 2) providing education, signs, and maps.

Multi-Use Trails. Provide trails where visitors are permitted to travel using various options (e.g. on foot, on bike, on horseback, with dog, etc.), when travel options are compatible and environmentally sustainable.

Loop Trails. Provide options for visitors to travel on loop trails, where practical, feasible, and environmentally sustainable.

Physical Accessibility. Design trails and other visitor facilities to be accessible for people with disabilities when and where appropriate.

Trailheads. Provide safe and convenient trailheads, with periodic refurbishment or redesign as visitor needs change.

Alternative Modes. Provide facilities and services to visitors to encourage their use of alternate transportation modes (e.g. bike racks, co-location of trailheads and transit stops, etc.)

Infrastructure Priorities. Give priority to visitor infrastructure improvements that provide for visitor safety, maintain existing trails and facilities, improve physical and environmental sustainability, and protect resources. Build new trails and facilities, as needed and as financial resources allow.

Sustainable Maintenance. Implement a trail and facility maintenance program that is cost effective in meeting sustainability standards over the long term.

Facility Location and Design. Locate and design trails and facilities that are physically and environmentally sustainable, with the following requirements: Under normally scheduled maintenance and normal wear and tear, the trail or facility remains in an acceptable condition that provides intended access, safety, and visitor enjoyment and minimizes negative impacts on the environment such as accelerated drainage, erosion, spread of weeds, and others.

Integration. Integrate the goals of engendering stewardship, aesthetics, and resource protection into trail and facility design.

Funding for Infrastructure. Increase the overall level of funding for maintenance and construction of trails and other facilities over time, in order to “catch up” in deferred maintenance and enhance the visitor experience with improved infrastructure.

The policies associated with the *Resource Protection Initiative* are:

Resource Protection. While supporting high-quality visitor opportunities, take actions to prevent resource degradation and support restoration of native populations and ecological systems. The minimum objective of management actions is to “do no harm.” Where recreational activities may, will, or could harm the environment, OSMP shall avoid, minimize, and mitigate impacts. Restricting visitor activities will be a last resort.

Sustainability. Support management actions that ensure long term, sustainable passive recreational experiences and natural values. To be sustainable in the long-term, visitor use must not:

- Degrade the integrity and diversity of natural, agricultural, and cultural resources

- Detract from the quality of recreational experience

- Overwhelm the capacity of facilities to provide acceptable levels of service

Management strategies will be directed at ensuring that future passive recreational experiences and the condition of the natural environment are of the same quality or better than they are today.

Managed Access. Strengthen management of visitor access to maintain acceptable, and reduce unacceptable, conditions related to the visitor experience, visitor infrastructure, and resource protection. Implement a system of “managed access” that maintains the quality of both the visitor experience and resources.

Protection of Sensitive Areas. Direct visitor use to appropriate areas and away from sensitive areas. Some uses or levels of visitor use may need to be limited or not allowed, in order to protect natural, agricultural, and cultural resources.

Designation of Activity Areas. Designate appropriate areas for specific passive recreational activities and identify areas where specific activities are not appropriate and will be prohibited, in order to protect the quality of visitor experience and preserve and protect resources.

Resource Conservation Design. Integrate resource conservation goals into guidelines for facility design, construction, and maintenance of trails, trailheads, and other visitor facilities.

Special Use and Commercial Use. Implement administrative oversight of special use activities and commercial operations through discretionary permit processes.

Review of New Activities. Evaluate whether or not “new” recreational activities are “passive” and appropriate on OSMP lands.

Prerequisites for New Properties. Complete site management plans and provide appropriate infrastructure for newly acquired properties before opening them for public access.

Competitive Events. Prohibit competitive events on Open Space and Mountain Parks lands because of unacceptable visitor and resource impacts.

The policies associated with the *User Conflict Reduction Initiative* are:

Conflict Reduction among Visitor Activities. Provide education and outreach services, publicize and enforce regulations, and construct infrastructure improvements that reduce conflict among visitors.

Targeted Areas for Conflict Reduction. Target efforts aimed at reducing visitor conflicts to areas with concentrated visitor use or congregation of specific activities that may lead to conflict.

MARSHALL MESA-SOUTHERN GRASSLANDS TRAIL STUDY AREA PLAN

The VMP identifies area-specific plans, such as Trail Study Area (TSA) Plans, as a way to provide specific on-the-ground actions to implement the policies and strategies identified in the VMP to improve the visitor experience and provide a sustainable trail system while protecting natural and cultural resources. TSA planning focuses on the existing designated trail systems, undesignated trails, and activities on the trails. The Marshall Mesa-Southern Grasslands TSA Plan, which encompasses the Superior Associates property, was accepted by the City Council in 2005.

The following recommendations from the Marshall Mesa–Southern Grasslands TSA are applicable to the management of the Superior Associates property:

Eliminate and reclaim undesignated trails and actively prevent the creation of new undesignated trails in the Southern Grasslands HCA.

Evaluate and implement strategies to minimize undesignated trails created by cattle. Cattle grazing in many parts of the TSA create undesignated trails, many of which are damaging to the natural resources. The existence of these cattle-created undesignated trails creates the situation where visitors sometimes travel on these undesignated trails, which can further embed these trails and cause additional resource damage. OSMP is committed to explore ways of minimizing cattle trails and allowing revegetation of them, as a way of reducing resource impacts and visitor use of cattle trails. Some of these strategies involve rotation of grazing in ways that allow grasses to rebound sufficiently to the trampling impacts of cattle so that undesignated trails can be minimized.

Defer consideration of a possible new trailhead at S.H. 128/Coalton Road intersection. Building new trails, trail connections and loops in the TSA and County open space lands to the east will likely increase the overall level of recreational activities in the larger area. With this anticipated increase in visitor use, the need for additional trailheads

can also be anticipated. However, it is premature to consider whether or not to build specific new trailheads. Emerging visitor use levels and patterns need to become clear before these or other new trailheads are built. How many trailheads and where they should be located will not be known until sometime in the future.

Build a new Marshall Lake trail with an on-trail requirement and prohibition on dogs. Construction of the Marshall Lake Trail is contingent on three factors. 1) Approval and construction of a new bridge crossing over Community Ditch. A ditch crossing permit from the ditch company, Farmer's Reservoir and Irrigation Company (FRICO) will need to be negotiated. 2) OSMP will seek partners to establish more complete baseline information on how bald eagles use the Marshall Lake area to confirm the Fish and Wildlife Service assessment of no significant impacts and to aid in fine tuning the trail location and management decisions to protect the eagles. This baseline information will be used to fine tune the Marshall Lake Trail location and ways of managing activity on this trail in order to minimize impacts on bald eagles. 3) Demonstrated success in managing recreation activity the Southern Grassland HCA. OSMP will monitor the level of compliance with the on-trail requirement for the Coalton to Greenbelt Trail and the degree of success in closing undesignated trails. If OSMP is not successful in managing visitor activity in the HCA then OSMP will reevaluate trail construction plans for the Marshall Lake Trail.

Further investigate the possibility of extending the Coal Creek Trail on or alongside Coal Creek Drive west to S. 66th Street. A detailed site feasibility and environmental assessment is needed. If constructed (along with a connecting trail in the S. 66th right-of-way), a new mid-distance trail loop would be created with the Singletree Trail. If the proposed trail from Marshall Mesa south of Marshall Lake to S. 66th/Coal Creek Trail were also built, a double, stacked figure-eight trail loop would result.

Construct a trail connection along S. 66th in the road right-of-way. This trail link is needed if the new Marshall Lake Trail is built by OSMP, in order to connect the Marshall Lake Trail and the Cowdrey Draw Trail near Marshall Road (S.H. 170). This trail connection would form the last link in a new medium-distance trail loop. The S. 66th trail connection would also form the last link of the above mentioned mid distance loop. The trail would need to be built in the road right-of-way because of private land on both sides of the road. The trail would need to be located on the east side of S. 66th, because of the tight space and drainage ditch on the west side of the road. This trail connection would be coordinated between OSMP and the Boulder County Transportation Department.

Maintain restricted public access for the Coal Creek Riparian Restoration Area.

- No trails are planned in the Coal Creek Restoration Area because of its ecological importance and the significant public and private investment in its ecological restoration.
- Resource conservation and ecological restoration are the top priorities for the Coal Creek Riparian Restoration Area. Key to successfully meeting the long-term conservation and restoration goals are not building a trail and allowing only limited public access through the HCA off-trail permit program.
- This untrailed riparian corridor provides a unique and rare (along the Front Range on public land) habitat for many wildlife species who cannot tolerate human presence and disturbance. This habitat supports nesting bald eagles and other species of special concern, including federally-listed Preble's meadow jumping mouse, leopard frogs, and 35 bird species of special concern. The seasonal wildlife closure to protect bald eagles nesting on Coal Creek would prevent visitor use of a trail in the Coal Creek Riparian Restoration Area eight or nine months of the year.
- Keeping this riparian restoration area untrailed will protect recovering habitat for 142 species of birds, reptiles, small mammals, and native fish and will maintain an important continuous wildlife movement corridor.
- Not constructing a trail will maintain the legal agreement that OSMP has with the Terra Foundation that precludes public access and crossing of the creek in the area restored with Terra Foundation funds.

Allow limited, permitted guided hikes into the Coal Creek Riparian Restoration Area. These hikes are required to comply with the conditions of the HCA off-trail permit program. Permits will limit the number of visits and impose conditions to minimize the impacts of the activity. These hikes could be conducted by OSMP or other entities conducting educational activities. Educational and bird watching activities would be accommodated on a small scale via guided hikes. Guided hikes will educate the public on the ecological value of the Coal Creek Riparian Restoration Area.

Construct a new Coalton to Greenbelt Trail with on trail and on leash requirements.

Specific monitoring actions proposed for the Southern Grasslands HCA include:

- Dog Management
The TSA proposes that dogs be leashed on the Coalton to Greenbelt Trail. The quality of the visitor experience and the health of the natural systems are influenced by compliance with dog management regulations. Dog and dog guardian behaviors will be measured through direct observation.
- On-Trail Use
The Visitor Master Plan calls for on-trail use in HCAs. In this TSA, the recommended trails in the Southern Grasslands HCA include the Coalton to Greenbelt Trail and Marshall Lake Trail. Maintaining the ecological integrity of the HCA relies upon compliance with the on-trail requirement. The degree to which visitors are staying on trail will be assessed through direct observation.
- Trail Condition
OSMP has developed trail construction and maintenance standards that support trail condition monitoring. Annual or periodic monitoring of trail condition can be used to direct maintenance activities and identify segments of trail that are physically unsustainable. Indicators of trail condition include tread width, incision, and side slope.
- Undesignated Trail Development
Closely related to on-trail use (above) and reclamation (below) is the development of new undesignated or social trails. Periodic observation by OSMP staff will establish the location and extent of undesignated trail development.
- Reclamation of Native Vegetation
The success of closure and reclamation of undesignated trails will be assessed by measuring changes in vegetative cover and composition.
- Establishment and Spread of Weeds
The new trails, trailheads, and other visitor facilities will be constructed according to practices designed to minimize the establishment and spread of weeds. The effectiveness of these practices is not well established. Monitoring will help OSMP staff set standards, make needed corrections, and determine when disturbed areas are successfully restored. The composition and cover of weeds will be a measure of weed establishment and spread.
- Effects upon Wildlife
Changes in trails and access patterns have the potential to affect the abundance, diversity, and behaviors (e.g., predator use of an area) of wildlife in the TSA. Baseline data are available from some areas of the TSA, but more will be needed where trail modifications are proposed. These data will be compared with data collected after changes are made (new trails, undesignated trails closed, etc.). A variety of techniques will be used to measure wildlife abundance, distribution and behavior.

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Hoekstra, J.M. Boucher, T.H. Ricketts, and Carter Roberts. 2005. Confronting a biome crisis: global disparities of habitat loss and protection. *Ecology Letter* 8:23-29.

Hoogland, J.L. 1995. *The Black-tailed Prairie Dog: Social Life of a burrowing Mammal*. The University of Chicago Press, Chicago, Illinois.

Kotliar N.B., B.W. Baker, A.D. Whicker, and G. Plumb. 1999. A critical review of assumptions about the prairie dog as a keystone species. *Environmental Management* 24:177-192.

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED

PUBLISHED BY TITLE ONLY this 20 day of September 2005.

By: Mark P. Pappas
Mayor

Attest:

Allison D. Lewis
City Clerk on behalf of the
Director of Finance and Record

ATTACHMENT A

**BOULDER COUNTY AND CITY OF BOULDER JOINTLY OWNED OPEN SPACE
MANAGEMENT INTERGOVERNMENTAL AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) by and between the City of Boulder, a Colorado home-rule municipal corporation (the “City”) and the County of Boulder, a body corporate and politic of the State of Colorado (the “County”) (collectively the “Parties”) is made and entered into on this ___ day of _____, 2005.

WITNESSETH

WHEREAS, pursuant to Sections 29-1-203 and 30-11-410, C.R.S. as amended, local governments may cooperate or contract with one another to provide any function or service lawfully authorized to each of the cooperating or contracting units when such agreements are authorized by each Party to the agreement with the approval of the governing body and are encouraged to cooperate to promulgate regulations regarding the use and provision of regulatory enforcement for land within their respective ownerships and jurisdictions; and

WHEREAS, the Parties jointly own certain open space properties identified in Exhibit A attached hereto and incorporated herein by reference (“the Properties”) and as legally described in Exhibit B attached hereto and incorporated herein by reference, and agree that it is in the best interest of the Parties and the citizens of the City and the County to further clarify their responsibilities with respect to management of the Properties; and

WHEREAS, the Parties intend to improve management of jointly owned open space by identifying a lead agency (“Lead Agency”) for each of the Properties and to provide that the Lead Agency’s rules, regulations, policies and plans shall control for those Properties to which it has been entrusted with management authority. The Lead Agency shall be either the City of Boulder’s Open Space and Mountain Parks Department (“OSMP”) or Boulder County’s Parks and Open Space Department (“BCPOS”); and

WHEREAS, the Parties wish to affirm their existing and successful management relationship on jointly owned properties; and

WHEREAS, to the extent of any conflict, this Agreement shall replace the conditions of all previous agreements between the Parties relating to the identification of a lead land management entity and the handling of property management and management expenses or revenues, as well as regulatory or policy jurisdiction, such as purchase agreements, management plans and/or conservation easements for the following properties:

Beech
Beech Aircraft (aka Beech)
Foothill Business Park (aka Beech)
Superior Associates (aka Telleen)
Arsenault (aka Mayhoffer/Singletree)
Cito Company
Imel
Suitts (aka Suitts North)
Turunjian

IBM (aka IBM-Monarch); and

WHEREAS, the Parties have previously agreed to convert their separate interests in the Beech and Suitts properties into undivided fee ownership with mutual conservation easements.

NOW THEREFORE, in consideration of the above recitals and the mutual covenants and commitments herein, the Parties agree as follows:

I. PROPERTIES

The Properties shown on Exhibit A shall be managed in accordance with the terms and conditions of this Agreement. The Lead Agency for each of the Properties shall be as indicated on Exhibit A and set forth below:

City of Boulder Open Space and Mountain Parks Management Approximate Acreage

Beech.....	1,267
Superior Associates (Telleen).....	955
Total Approximate Acreage (City Lead)	2,222

Boulder County Parks and Open Space Management Approximate Acreage

Arsenault (Mayhoffer/Singletree).....	169
Cito Company	148
Imel	576
Suitts	142
Turunjian.....	58
IBM – Monarch.....	186
Total Approximate Acreage (County Lead).....	1,279

Total Approximate Acreage Joint Fee Ownership Properties3,501

II. PROPERTY USE

Use of the Properties shall be consistent with the purpose of existing acquisition agreements and in accordance with an approved management plan for each of the Properties.

III. PROPERTY MANAGEMENT

A. Rules, Regulations, Policies, and Plans

The rules, regulations, policies, and plans of the Lead Agency, as the Lead Agency is identified in Exhibit A, shall apply to each open space property jointly owned by the Parties. Notwithstanding the designation of a Lead Agency, the Parties shall retain their respective rights and responsibilities of land use review as otherwise provided by law. To the greatest extent possible, the Lead Agency management plan shall be consistent with existing conservation easements. In addition, neither Party shall accept any

grant or other approval that encumbers or obligates the property unless it first obtains the written consent of the other Party.

B. Property Management Plan

A plan describing the ecological, agricultural and recreational management of the Properties shall be created and approved by appropriate staff for each of the Properties by the respective Lead Agency no later than January 1, 2008. The Party that is not the Lead Agency for any individual Property shall be provided with notice as to any draft management plan and the opportunity to comment upon the draft before such plan is finalized. A Lead Agency Party may amend a management plan, provided that it shall first allow an opportunity for comment and consultation to the other party.

C. Management Costs

Property management expenses, including but not limited to maintenance and capital improvement costs, if any, shall be the responsibility of the Lead Agency. The Lead Agency will be entitled to the fees and revenues generated from all activities on Properties under its management, including but not limited to agricultural leases.

Meetings between the Parties may be held from time to time to discuss property improvements and funding needs. The cost of major property improvements shall be shared to the degree and in the amount agreed to in separate written agreements between the Parties.

In the event of any flood, fire or wind damage, or other catastrophic event on any Property, expenses or costs of restoration of the Property will be evaluated on a situation by situation basis and the Parties will meet to explore efficiencies and determine the appropriate, timely and mutually acceptable resolution.

D. Enforcement

Patrol and enforcement of rules, regulations, policies and plans shall be the responsibility of the Lead Agency or its assigns.

IV. NOTICE

Any notice sent from one Party to another pursuant to this Agreement shall be in writing and addressed as follows:

To the County: Director of Parks and Open Space Department
 Boulder County
 P.O. Box 471
 Boulder, CO 80306-0471

With a Copy to: Boulder County Attorney
 P.O. Box 471
 Boulder, CO 80306-0471

To the City: Boulder City Manager
P.O. Box 791
Boulder, CO 80306-0791

With a copy to: Boulder City Attorney
P.O. Box 791
Boulder, CO 80306-0791

V. LIABILITY

Subject to the provisions of the Colorado Governmental Immunity Act, each Party assumes liability for injury to persons and damage to property arising out of its occupancy and maintenance of the sites. Nothing contained in this Agreement shall constitute any waiver by the City or the County of the provisions of the Colorado Governmental Immunity Act or any other immunity or defense provided by statute or common law.

The City and the County certify that they are self-insured for property and general liability coverage, including errors and omissions to the limits set forth in the Colorado Governmental Immunity Act.

Each Party agrees to notify the other of any defects or potential defects, dangerous conditions or potential dangerous conditions, claims or potential claims from damage or injury that come to its attention in connection with its usage. Within fifteen (15) days after any litigation commenced against either Party that contains allegations against the other, the Parties will meet to explore efficiencies and determine the course of action in providing a defense, including, but not limited to, the potential for a joint defense.

The Lead Agency shall be solely responsible for any costs or liabilities arising out of environmental conditions (such as hazardous waste contamination) that have been created or exacerbated by the conduct of the Lead Agency.

VI. AMENDMENTS

This Agreement contains the entire agreement of the Parties and any amendment may take place only upon the approval adopted by the governing body of each of the Parties after notice and hearing as required by law, other than those management plan amendments delegated to staff in Section III. B.

VII. SEVERABILITY

If any portion of this Agreement is held by a court of competent jurisdiction to be unenforceable as to any Party, the entire Agreement shall be terminated, it being the understanding and intent of the Parties that every portion of the Agreement is essential to and not severable from the remainder.

VIII. BENEFICIARIES

The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of the Agreement and no other person or entity is so intended or may bring any action, including a derivative action, to enforce the Agreement.

IX. GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Colorado, and venue shall lie in the County of Boulder. To the extent that any local law or ordinance of either Party conflicts with the provisions of a Lead Agency management plan, the local law or ordinance shall not be applied and an exemption in such local law or ordinance shall be in effect. To the extent of any conflict, Lead Agency management plans authorized by this Agreement shall supersede the terms of any conservation agreement applicable to the Properties that are the subject of this Agreement, provided however that there shall be no waiver or estoppel of either Party’s ability to enforce any conservation agreement upon termination of this Agreement, and any period of limitations shall be tolled during the term of this Agreement.

X. WAIVER OF BREACH

A waiver by any Party or the breach of any term or provision of this Agreement shall not operate to be construed as a waiver of any subsequent breach by either Party.

XI. AGREEMENTS

Nothing in this Agreement shall affect any other agreements between the City and the County now in effect but shall replace, void, and supersede any and all existing or former joint maintenance language, management delegation, management expenses, and lease revenues contained in the specific purchase agreements and conservation easements listed in Paragraph I of this Agreement.

XII. TERM AND EFFECTIVE DATE.

This Agreement shall become effective upon the date set forth above after signature of an authorized representative of the governing bodies of each of the Parties. The term of this Agreement shall be ten years from its effective date. The Agreement may be renewed or terminated only upon the mutual written agreement of the Parties.

WHEREFORE, the Parties have entered into the foregoing Agreement to be effective on the date first above written.

(remainder of this page intentionally left blank)

CITY OF BOULDER

By: _____
Mayor

ATTEST:

City Clerk on behalf of
the Director of Finance and Record

Approved as to Form:

Ariel Pierre Calonne
City Attorney

Date: _____

COUNTY OF BOULDER
Board of County Commissioners

By: _____
Chair

ATTEST:

Clerk to the Board

Approved as to Form:

H. Lawrence Hoyt
County Attorney

Date: _____

APPENDIX B: LEGAL DESCRIPTION

All in Township 1S, Range 70W, 6th P.M.

The SE ¼ of Section 23 (160 acres);

The SW ¼ of the SW ¼ of Section 24, except part conveyed to Public Service Co. of Colorado (35.58 acres)

The NW ¼ of the NW ¼ of Section 25, except part conveyed to Public Service Co. of Colorado (35.65 acres)

The NE of Section 26, LESS the SE ¼ thereof, and LESS the following:

Beginning at the intersection of the W. line of said NE ¼ and the Centerline of Coal Creek Drive;
Thence S.00°15'22"W., along said W. line, 1689.23', more or less, to the SW Corner of said NE ¼;
Thence N.89°39'38"E., along the S. line of said NE ¼ 713.07'; Thence N.20°18'W., 1461.12';
Thence N.00°15'22"E., 464.64', more or less, to the Centerline of Coal Creek Drive;
Thence S.53°13'12"W., more or less, along the Centerline, 250.54', to the Pt. of Beginning (105.58 acres).

The W. 331.13' of the SW ¼ of Section 26 (20.20 acres);

The E. ¼ of the E. ½ of the SE ¼ of Section 27 (20.09 acres);

The E. 20 rods and the N.26 2/3 rods of the W. 60 rods of the NE ¼ of Section 34 (20.16 acres);

The W. 331.13' of the NW ¼ of Section 35 (20.38 acres).

Parcel A:

The SE ¼ of the NE ¼ of Section 26;

The S ½ of section 26, except that portion of said S ½ conveyed to the City of Boulder in deed recorded December 30, 1993 on Film 1922 at reception No. 01378732

The NW ¼ of the NW ¼, and the SW ¼ of the NW ¼ of Section 35;

Except that portion conveyed to the City of Boulder in deed recorded December 30, 1993 on Film 1922 at reception No. 01378732

That part of the E ½ of the NW ¼ of Section 35 lying W of the County Road;

That part of the SW ¼ of the SW ¼ of Section 35 lying N and W of the County Road,
AND,

That part of the NW ¼ of the SW ¼ and the NE ¼ of the SW ¼ of section 35 lying N and W of the County Road;

Parcel B:

SE ¼ of section 23, SW ¼ of the SW ¼ of section 24, except part conveyed to the Public Service Company of Colorado

NW ¼ of the NW ¼ of Section 25, except part conveyed to the Public Service Company of Colorado

NE ¼ Section of section 26, Less the SE ¼, thereof and less the following described:

Beginning at a point on the w line of the NE $\frac{1}{4}$ of Section 26, at its intersection with the centerline of Coal Creek Drive; thence S.00°15'22"W, along the south line of said NE $\frac{1}{4}$, 713.07 ft; thence N 20°18' W. 1461.12 ft; thence N.00°15'22" E., 464.64 feet, to the centerline of Coal Creek Drive; thence S.53°13'12"W., along said centerline, 250.54 ft. to the point of beginning.

The W 331.31 ft. of the SW $\frac{1}{4}$ of Section 26;

E $\frac{1}{4}$ of the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 27,

E 20 rods and the north 26 $\frac{2}{3}$ rods of the West 60 rods of the NE $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of section 34;

The W 331.31 ft. of the NW $\frac{1}{4}$ of section 34; the W 331.31 ft. of the NW $\frac{1}{4}$ of section 35,

APPENDIX C: KEY ATTRIBUTES AND INDICATORS FOR THE GRASSLAND PLAN TARGETS FOUND ON SUPERIOR ASSOCIATES

Target	Key Attributes ○ Indicators
Mixedgrass Prairie Mosaic	<p>Animal Species Composition</p> <ul style="list-style-type: none"> ○ Percent occurrence of sensitive butterflies and skipper species ○ Percent occurrence of grassland dependent butterflies and skipper species ○ Percent target with acceptable bird conservation score <p>Block/Complex Size</p> <ul style="list-style-type: none"> ○ Size/distribution of blocks <p>Fire Regime</p> <ul style="list-style-type: none"> ○ Percent of target area experiencing an appropriate fire return interval <p>Habitat Effectiveness</p> <ul style="list-style-type: none"> ○ Proportion of habitat blocks over 100 ha with singing male grasshopper sparrows <p>Vegetation Composition</p> <ul style="list-style-type: none"> ○ Percent of target dominated by non-native species ○ Percent of target with prevalence of non-native species ○ Native species relative cover ○ Native species richness ○ Size of Bell’s twinpod populations ○ Richness of selected conservative plant species <p>Vegetation Structure</p> <ul style="list-style-type: none"> ○ Absolute cover bare ground
Xeric Tallgrass Prairie	<p>Animal Species Composition</p> <ul style="list-style-type: none"> ○ Percent occurrence of grassland dependent & sensitive lepidopteron (2) ○ Percent target with acceptable bird conservation score ○ Relative cover of host plants for skipper/butterfly species of concern <p>Block/Complex Size</p> <ul style="list-style-type: none"> ○ Size/distribution of blocks <p>Fire Regime</p> <ul style="list-style-type: none"> ○ Percent of target area experiencing an appropriate fire return interval <p>Vegetation Composition</p> <ul style="list-style-type: none"> ○ Percent of target dominated by non-native species ○ Percent of target with prevalence of non-native species ○ Native species relative cover ○ Native species richness ○ Size of grassyslope sedge populations ○ Size of dwarf leadplant populations ○ Size of prairie violet population ○ Richness of selected conservative plant species <p>Vegetation Structure</p> <ul style="list-style-type: none"> ○ Absolute cover bare ground
Agricultural Operations	Agricultural Production

Target	Key Attributes ○ Indicators
	<ul style="list-style-type: none"> ○ Acres in agricultural production ○ Irrigable land leased for agriculture <p>Animal Species Composition</p> <ul style="list-style-type: none"> ○ Management of class A and class B bobolink nesting habitat <p>Physical and Chemical Soil Regimes</p> <ul style="list-style-type: none"> ○ Percent soil organic matter <p>Vegetation Structure</p> <ul style="list-style-type: none"> ○ Absolute cover bare ground
Black-tailed Prairie Dog & Associates	<p>Animal Species Composition</p> <ul style="list-style-type: none"> ○ Number of colonies with successful burrowing owl nests ○ Predator community composition / abundance ○ Percent of colonies with territorial horned larks <p>Block/Complex Size</p> <ul style="list-style-type: none"> ○ Acres occupied by prairie dogs <p>Prairie Dog Occupancy</p> <ul style="list-style-type: none"> ○ Percent of total occupied land in protected status ○ Percent of grassland preserves with occupancy between 10 and 26%
Riparian Areas	<p>Animal Species Composition</p> <ul style="list-style-type: none"> ○ Bird conservation score ○ Fish index of biotic integrity ○ Macroinvertebrate index of biotic integrity ○ Native frog presence ○ Submerged aquatic nuisance species richness (0.5) (see Vegetation Comp.) <p>Connectivity</p> <ul style="list-style-type: none"> ○ Buffer width ○ Distance to nearest wetland/riparian area ○ Undesignated trail density in northern leopard frog habitat blocks ○ Impediments to fish passage (#) <p>Habitat Effectiveness</p> <ul style="list-style-type: none"> ○ Number of active bald eagle nest sites <p>Habitat Structure</p> <ul style="list-style-type: none"> ○ Physical instream and riparian metric <p>Hydrologic Regime</p> <ul style="list-style-type: none"> ○ Instream flow ○ Number of over-bank flooding events <p>Vegetation Composition</p> <ul style="list-style-type: none"> ○ Management of Ute ladies-tresses orchid habitat ○ Percent of target dominated by non-native species ○ Percent of target with prevalence of non-native species ○ Native species relative cover ○ Presence of populations of Ute ladies-tresses orchid <p>Vegetation Structure</p> <ul style="list-style-type: none"> ○ Cottonwood regeneration <p>Water Quality</p>

Target	Key Attributes ○ Indicators
	○ Total phosphorus ○ Dissolved oxygen

APPENDIX D: MONITORING INDICATORS (GRASSLAND PLAN)

Indicators	Priority	Methods	Frequency and Timing	Who monitors
Absolute cover bare ground	Very High	Point intercept method along 50 m transects plus complete species list from 100 m ²	Sampling season: July 15-August 31 Frequency: Annually for two years then three to five years break repeating pattern	staff, contractors
Native frog presence in suitable habitat	Very High	Visual encounter surveys augmented with aural breeding surveys	Aural sampling season: depends on species but generally late March through July Visual encounter sampling season: July through mid-September Frequency: Annual for both	staff, volunteers
Native species relative cover	Very High	Point intercept method along 50 m transects plus complete species list from 100 m ²	Sampling season: July 15-August 31 Frequency: Annually for two years then three to five years break repeating pattern	staff, contractors
Native species richness	Very High	Point intercept method along 50 m transects plus complete species list from 100 m ²	Sampling season: July 15-August 31 Frequency: Annually for two years then three to five years break repeating pattern	staff, contractors
Percent of occupied land in Grassland Preserves, Multiple Objective Areas or Prairie Dog Conservation Areas.	Very High	GPS mapping of prairie dog colonies	Sampling season: August-November Frequency: Annual	staff, volunteers
Percent of target with acceptable bird conservation score	Very High	Distance sampling of line transects	Sampling season: May 15-July 15 Frequency: TBD	staff
Proportion of habitat blocks over 100 ha with singing male grasshopper sparrows	Very High	Distance sampling line transects	Sampling season: May 15-July 15 Frequency: TBD	staff
Relative cover of host plants for skipper/butterfly species of concern (big bluestem and little bluestem)	Very High	Point intercept method along 50 m transects plus complete species list from 100 m ²	Sampling season: July 15-August 31 Frequency: Annually for two years then three to five years break repeating pattern	staff, contractors

Indicators	Priority	Methods	Frequency and Timing	Who monitors
Richness of selected conservative plant species	Very High	Point intercept method along 50 m transects plus complete species list from 100 m ²	Sampling season: July 15- August 31 Frequency: Annually for two years then three to five years break repeating pattern	staff, contractors
Acres in agricultural production	High	Database analysis	Annual report	staff
Average derived PIF score of sampled sites within selected drainages	High	Fixed distance point counts	Sampling season: May- July Frequency: Every other year or every third year	staff, volunteers
Grassland preserves with occupancy of prairie dogs between 10 and 26%	High	GPS mapping of prairie dog colonies	Sampling: August- November Frequency: Annual	staff, volunteers
Fish index of biotic integrity (IBI)	High	Methods developed during recent EMAP project	Sampling: TBD Frequency: Once every five years	staff, CDOW
Impediments to fish passage	High	GIS analysis	Annual report	staff
Macroinvertebrate index of biotic integrity (IBI)	High	Methods developed during recent EMAP project	Sampling: Mid-summer Frequency: Once every five years	staff, CDOW, contractors
Number of active bald eagle nest sites in the Grassland Planning Area	High	Visual observation	Sampling season: Nov. 1 through July 31 Frequency: Annual	staff, volunteers
Number of prairie dog colonies with successful nesting attempts by burrowing owls	High	Visual observation	Sampling season: March - October Frequency: Annual	staff, possibly volunteers
Percent of target area experiencing a 5-30 year fire return	High	GPS mapping and GIS analysis	Mapping will occur after fires. Analysis will occur on an annual basis.	staff
Percent of target area experiencing a 5-10 year fire return	High	GPS mapping and GIS analysis	Mapping will occur after fires. Analysis will occur on an annual basis.	staff

Indicators	Priority	Methods	Frequency and Timing	Who monitors
Percent of target dominated by exotic species (Rapid Assessment Mapping)	High	RAM	Sampling season: late June-early August Frequency: Once every five-ten years	staff
Percent of target with prevalence of exotic species (Rapid Assessment Mapping)	High	RAM	Sampling season: late June-early August Frequency: Once every five-ten years	staff
Physical instream and riparian habitat metric	High	Methods outlined in Barbour et al. 1999	Sampling season: June-October (growing season) Frequency: Once every five years.	staff
Predator community composition/abundance	High	Visual observation	Sampling season: TBD Frequency: Annual	staff, volunteers
Undesignated trail density within 200meters of northern leopard frog habitat blocks	High	GIS analysis	Sampling season: NA Frequency: Once every five years - on the same cycle as undesignated trail mapping	staff
Size distribution of large blocks	High	GIS analysis	Sampling season: NA Frequency: Once every five years	staff
Size of grassyslope sedge populations	High	CNHP/OSMP rare plant census methods	Season: June Frequency: once every five years (minimum)	staff, volunteers
Visual obstruction vegetation height-density (Robel pole measure)	High	Modified Robel pole or similar methodology	TBD	staff, contractors
Buffer width (vegetated area within 100 m of a creek)	Medium	Visual estimation or measurement	TBD	staff
Buffer width (vegetated area within 100 m of the wetland)	Medium	Visual estimation or measurement	TBD	staff
Cottonwood regeneration	Medium	Plots	TBD	staff

Indicators	Priority	Methods	Frequency and Timing	Who monitors
Distance to nearest wetland or riparian area	Medium	GIS analysis	TBD	staff
Irrigable land leased for agriculture	Medium	GIS and database analysis	Every other year	staff
Percent occurrence of CNHP-tracked grassland dependent butterflies and skipper species	Medium	TBD	Sampling season: May-August based on flight times which differ by species Frequency: Two consecutive years followed by three-seven years off repeating pattern	staff, contractors
Percent occurrence of grassland dependent butterflies and skipper species	Medium	TBD	Sampling season: May-August based on flight times which differ by species Frequency: Two consecutive years followed by three-seven years off repeating pattern	staff, contractors
Percent of colonies with territorial horned larks	Medium	Visual observation	Sampling season: May-July Frequency: Annual	staff, possibly volunteers
Species richness of sensitive breeding birds	Medium	Point counts	Sampling season: May-July Frequency: TBD	staff, volunteers
Submerged aquatic nuisance species richness	Medium	Visual surveys	Sampling season: July-August Frequency: TBD	staff
Dissolved oxygen (lotic--flowing water habitats)	Low	Dissolved oxygen meter	TBD	staff
Instream flows	Low	TBD	TBD	staff
Number of over-bank flooding events during late May through June measured every 5-10 years	Low	TBD	When it occurs	staff
Percent of wetlands in each class with idealized/prescribed/pr oper hydrologic regime.	Low	TBD	TBD	staff

Indicators	Priority	Methods	Frequency and Timing	Who monitors
Secchi disk depth (for ponds)	Low	Secchi disk sampling	TBD	staff
Total phosphorus (for ponds)	Low	Grab and/or composite samples	TBD	staff
Total phosphorus (lotic--flowing water habitats)	Low	Grab and/or composite samples	TBD	staff

Date: August 8, 2013
To: Open Space Board of Trustees
From: Allyn Feinberg, Chair, OSBT
Subject: USA Pro Cycling Challenge Bicycle Race (USAPCC)

In 2012, the OSBT considered the issues related to holding a stage of the 2012 USAPCC on Open Space, with a finish at the top of Flagstaff Mountain. For various reasons, the prohibition of competitive events on Open Space was not seriously evaluated until well after commitments had been made to the race organizers. OSBT did not hold a public hearing and consider the issue until its June 2012 meeting, by which time it was too late to make any changes.

Many Open Space supporters, and some members of the OSBT felt that the Open Space Charter had been violated, and that if no action was taken to give this situation a fair hearing and evaluation, that there would be no way to deny future requests for events that would violate the Charter, but that were embraced by the City Manager and City Council as fun, exciting and financially beneficial to the city. I assembled the following document in 2012 in response to the arguments the City Attorney made to allow the City Council to approve the 2012 USAPCC, but did not use this document as the decision had already been made.

The City Attorney's arguments were made with the intention of allowing the race to take place on Open Space, and involved a number of interpretations of the Charter and the supporting ordinances in the Boulder Revised Code. Most of the interpretations were new and were not in accord with several decades of practical implementation of the provisions of the Open Space Charter and Code, therefore placing the City Attorney and the argument for the race in an adversarial relationship with OSMP and OSBT. It is important that these conflicts be resolved. Leaving the situation as it is clouds the intent of the Open Space Charter and protections that citizens have counted on over the history of the program. If, as appears likely, there is an application to the city to host a stage of a future race, it is important to clarify this prior to a decision.

I am asking the OSBT to reflect on the counter arguments to the City Attorney's, and clarify our view of the appropriate interpretation. It is possible that an independent outside counsel will be needed to provide OSBT with analysis and an opinion. If there is still a difference of opinion among the OSBT, the City Council, the City Attorney and the City Manager, a court should make the decision. If the court finds for the arguments that allow the race to be held on Open Space, OSMP and OSBT should consider divesting OSMP of Summit Road, the parking area and the Sunrise Amphitheater so it can more flexibly be used for events such as a bike race without the conflict with the Open Space Charter.

Getting to a point of clarity on this has implications for the long term survival of the Open Space program, in my opinion. There will only be more pressure to use Open Space for non-Open Space purposes as time passes, more people access Open Space and available land is more constrained. Thank you for considering this information.

OSBT CONSIDERATION OF USA PRO CYCLING CHALLENGE BICYCLE RACE

In 2012, Boulder hosted a stage of the USA Pro Cycling Challenge (USAPCC) bicycle race. The race organizers proposed that the stage end at the top of Flagstaff Mountain and the City Manager agreed. The race finish was on Open Space, which by City Charter, allows only passive recreational bicycling in approved locations, and the Boulder Revised Code does not allow competitive events at all. While the City Manager (CM) was informed of this situation in January of 2012, race planning for the Flagstaff summit finish continued without involving the OSBT or the public.

OSBT finally discussed the situation at its meeting in May, 2012 and again in June. At the June 5, 2012 City Council meeting (prior to the June OSBT meeting), the City Attorney (CA) presented a memo making assertions that circumvented the clear meaning, intent and community understanding of the Open Space Charter and Boulder Revised Code provisions. These assertions became the basis for the council approving the USAPCC taking place on Open Space, which passed at their June 5th meeting. The OSBT supported the Council's position at its June 13th meeting in a 3 to 2 vote, with the underlying assumption being that it was too late to change the location of the finish without disrupting the organization of the race, and potentially opening the city up to liability. The intention of those that had serious reservations about the basis for circumventing the charter and city code was to re-examine this situation prior to any future race, and to clarify, in court if necessary, the appropriate interpretation of the Charter and city code with regard to holding a professional competitive event on Open Space.

The OSBT members are not municipal attorneys, nor should that training be necessary in order to do our job; we are appointed to represent the citizens of Boulder in protecting open space and upholding the Charter, as we all swore to do in our oath of office. The 2012 bike race situation devolved into the CA generating legal arguments that are adversarial to the Open Space Charter and program in order to support the decisions made by the CM too early in the process. This did not allow the OSBT to fulfill its responsibilities under the Charter to consider issues specific to Open Space with consultation with the public, and to provide recommendations to the Council. The actions by the CM, the arguments in support made by the CA, and the actions of the Council are potentially damaging to the Open Space program by opening the door to circumvention of the Open Space Charter for other prohibited uses and events.

Action by the OSBT

Before another stage of the USAPCC is held on Open Space, the disagreements regarding the ownership of the road and the requirements of the Charter must be resolved. Based on the arguments that the CA has made to support holding a competitive event on Open Space, key questions to be resolved include:

- (1) whether Flagstaff Summit Drive is Open Space, because as part of Open Space, Charter Section 176 restricts allowed uses to passive recreation, which this race is not; and
- (2) whether the permits required to hold the race are "exclusive" or "non-exclusive", since if they are "exclusive", they are governed by Charter Section 177, which requires an affirmative vote of the OSBT.

Assertions and Responses

The CA provided an analysis of the situation for the City Council in a memo for the June 5, 2012 meeting (see Attachment C, p. 13). These assertions argue for finishing the race up Summit Drive

and allowing restricted access and commercial uses on Open Space. However, there are stronger arguments against holding the race on Summit Drive, which is Open Space, and for upholding the requirements of the Charter and Boulder Revised Code with respect to what other uses the race organizers might want. The following are the assertions made in support of the CA's analysis and counter argument to these assertions.

CA Assertion: The CA's memo states, "The City Attorney's office has concluded that the Boulder stage of the race can be permitted and will not violate any provisions of the city's Charter. Further, no laws or rules need to be waived".

Response: Both conclusions are incorrect.

The race and ancillary support events will take place on Open Space (specifically Summit Road, the summit parking lot and the Sunrise Amphitheater). Competitive races are not a use allowed by **Charter Section 176**, and more specifically codified in **Section 8-8-10 Competitive Events Prohibited** (see Attachment D, p. 17). Because of this, none of the required permits for commercial uses on open space would be allowed for such an event because they are not allowed by the Charter or the Code.

No other users will have access to Summit Road and portions of the summit parking lot and Sunrise Amphitheater during this event. A VIP area in the summit parking lot will be cordoned off for the exclusive use of race customers who have paid for that use, and no other vendors will be allowed to do business in that area. All these permits required of the USAPCC in 2012 were inaccurately characterized as non-exclusive to avoid the violation of the existing laws and rules, in particular Section 8-8-9.

CA Assertion: Staff does not believe that any competitive activity will be conducted on "Open Space Lands" as that term is defined in the Charter

(Charter Sec. 170 (see Attachment A, p. 9): "As used in this charter, 'open space land' shall mean any interest in real property purchased or leased with sales and use tax pledged to the open space fund pursuant to the vote of the electorate on Nov. 7, 1967, or proceeds thereof, any interest in real property dedicated to the city for open space purposes and any interest in real property that is ever placed under the direction, supervision, or control of the open space department unless disposed of as expressly provided in Sec. 177").

Response: Clearly, the Flagstaff Summit Road, summit parking lot and Sunrise Amphitheater, all proposed to be used for competitive race purposes or as necessary for the support of the race, are "open space lands" as described in **Charter Sec. 170**. They were transferred to Open Space by the Parks and Recreation Department in 2000/2001 without reservation. They have been managed and maintained by the Open Space and Mountain Parks Department and OSBT, and supported by funds from the Open Space Fund since then. No exception was made for Summit Drive. All this land was obtained by the City at the end of the 19th Century from the Federal government.

CA Assertion: Commercial activities can occur on Open Space pursuant to a permit under the provisions of Section 8-8-9, "Permits for Commercial Uses on Open Space and Mountain Parks Land.

Response: **Section 8-8-9(c)** (see Attachment B, p. 11) specifically forbids issuance of "exclusive permits", and clearly defines what "exclusive" means. The USAPCC required exclusive use of both Summit Drive and some of the surrounding land. Therefore, the only way permits can be issued is to exempt this race from the requirements of the Commercial Uses.

CA Assertion: The CA has questioned whether or not Flagstaff Summit Road is owned by the city and concluded that there is no way to know with certainty. There are no relevant records related to the Flagstaff roads after about 1929 until current times (thought to have been lost in the courthouse fire); however, there is a map from the County Road Book, showing the main Flagstaff Road and a road leading north from Realization Point along the west side of the summit of Flagstaff mountain, along with notes from a journal entry that describe a road that is located as shown on the map from the County Road Book. It is asserted that this map represents Flagstaff Summit Road and it is consistent with the location of the road as it is today.

Response: Regarding the County Road Map representing the current Flagstaff Summit Road, this is inaccurate. The road shown and described in the journal notes extends in a northerly direction along the west side of the summit, while the road in today's location extends in an easterly direction, does not go near the summit of the mountain and ends significantly to the east of the summit. The road shown on the County Road Book Map is generally identical to the current Ute Trail, except in its relationship to the spring near the current summit day use area. (see Attachment F, p. 25)

Regarding the ownership of the summit road, there is substantial evidence that it is owned by the city:

- Land now known as Flagstaff Mountain was provided to the city under a U.S. Patent for parks and cemetery purposes in the 1890's, and became a city park;
- The county built a road up Flagstaff in stages over time in a location similar to its current one – (Daily Camera article notes the dedication was held in Oct of 1926; see Attachment E, p. 21)
- While the actual records may be missing, there is a record preserved in the historical files of the Daily Camera, in which the road to the summit is described as belonging to the city in several articles related to road improvements:
 - Newspaper articles from Daily Camera report that the city and county agreed in 1947 that the main road was the County's and that Chapman Drive and the summit road belonged to the city (see Attachment E, p. 22).
 - This was reconfirmed in a quote by County Commissioner Joe Smith, as reported in a Daily Camera article from 1964 (see Attachment E, p. 23).
- There is no doubt that extensive improvements to the summit road were paid for and completed by the Parks and Recreation Department in 1970, with maintenance of the road, including closing the road in the winter, by either Parks and Recreation or Open Space and Mountain Parks since then (and no one, including the CA, has argued to the contrary);
- The road was placed into the Open Space program through the transfer of Mountain Parks from the Parks and Recreation program in 2000/2001. All records related to the transfer to Open Space and Mountain Parks, including personal notes, meeting minutes, motions, ordinances, etc., show no exception of the road from the land transferred to OSMP; refer to testimony by the 2000/2001 Vice Chair of the Parks and Recreation Advisory Board, a member of the OSBT and the Director of OSMP;
- At the time of the transfer, the parks board requested an opinion from the then CA regarding whether any existing parks uses would violate the open space charter, and the CA's opinion was that they would not (see Attachment G, p. 27, 28);
- The Open Space Fund has been used to maintain summit road and related facilities during the time since the transfer;

The preponderance of evidence is that whatever interest the County may have had in the road in the past, it has abandoned that interest, and the road belongs to the city. It is land dedicated to OSMP through the transfer.

CA Assertions: The road is not Open Space land as the term is used in the Charter, because: It was not purchased or leased with the open space tax and it was not dedicated to the city for Open Space purposes.

Response: This assertion is incorrect. Following the logic of this, none of the Mountain Parks transfer is Open Space since it was not “purchased with open space tax”, but transferred to Open Space at the direction of the City Council. This process meets the requirements in the Charter, being real property dedicated to the city for open space purposes and placed under the direction, supervision or control of the Open Space Department, as has clearly been the case for a dozen years to this point (Refer to **Charter Section 170** regarding real property: Attachment A, p. 9).

CA Assertions: The road is not Open Space land as the term is used in the Charter, because: A road is held by the city as a public trust. Roads are not interests in real property placed under the control of a department. Considering a road to be Open Space would place normal road usage into conflict with permitted Open Space uses. The memo goes on to list the uses allowed on open space and says that use by cars is not passive recreational use, therefore the only consistent interpretation of the Charter is that it does not contemplate inclusion of a road as open space.

Response: This conclusion is inaccurate. **Charter Section 176** also states that “Open Space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, agricultural or wild life habitat use of the land”. This clearly includes roads, parking lots, toilet facilities, etc. that are improvements necessary to provide for passive recreational use of Open Space. The fact is that there are many roads that are part of Open Space and the Charter contemplates that.

There is a related assertion by the CA that a department cannot place restrictions on roads that are used by the public, which is clearly not the case. There are roads that are managed and maintained, restricted by fee booths, closed during winter months, etc. by various departments of the city, including Open Space. This has been the accepted situation for roads of the city of Boulder for years, until the current situation when a need was found to circumvent the restrictions of the Open Space program in order to allow the race to take place on Open Space.

In addition, there is no public right to use the road, as is clear from the annual closures; there is no right in Colorado whereby citizens can gain adverse possession of such public land; and Colorado does not have a codified public trust doctrine that would apply to this situation. All this was resolved in a case involving Chapman Drive some years ago.

CA Assertions: The road is not Open Space land as the term is used in the Charter, because: This above reasoning is consistent with the view of the Colorado Court of Appeals in Douglas County v. the City of Aurora, an annexation dispute between Douglas County and the City of Aurora. (see Attachment D, p. 17) Douglas County v City of Aurora 62P3d 10491053ColoApp2002

Response: This case is not applicable; this is also the opinion of two attorneys practicing municipal law and who are familiar with the Boulder City Charter and Code. The case is related to State annexation law regarding how to calculate the 1/6th contiguity requirement for annexations. The Douglas County decision that a road is not Open Space for purposes of calculating contiguity is

unrelated to whether a home rule city, such as Boulder, can consider a road as part of its Open Space holdings. There are many roads that are held by the city as part of the land in the Open Space program that have been subject to the program's restrictions.

CA Assertion: The Charter prohibits issuance of exclusive permits for Open Space lands.

Response: This is not true. The Charter contemplates exclusive permits and requires that the OSBT and the council agree on the issuance of exclusive permits since they are governed by **Charter Section 177, Disposal of Open Space**. (see Attachment A, p. 9)

CA Assertion: The race and its ancillary support activities are not exclusive; therefore only non-exclusive permits need to be issued, which the CM is authorized to issue. The activity on the road is allowed since roads are not "Open Space lands".

Fact: This is inaccurate; the road is "Open Space land" (see the various arguments above) and therefore subject to the restriction of **Section 8-8-10 Competitive Events Prohibited**. An emergency ordinance has been passed by council to exempt this event, and this event only, from the restrictions of **Section 8-8-10**, which makes any permit for this event an "exclusive permit", governed by **Charter Section 177**, as all these permits are "exclusive" to this race.

CA Assertion: Based on Council's previous interpretation of the Charter and provisions in the Code, the term "exclusive permit or license" does not apply to a right to occupy a portion of an area for a limited time.

Response: There is no substantiation for this assertion. The language in **Charter Section 177** does not support this restricted applicability. The CA further asserts that the fact that OSMP charges a fee for parking is an argument for allowing the charge of a fee for a "limited exclusive use of Open Space". Charging a parking fee does not limit or make exclusive the use of Open Space. Every visitor to Open Space has exactly the same access as any other. What is limited is the visitor's ability to be accompanied by his/her automobile.

The CA further asserts that the drafters of the Charter did not intend to include short-term use of small areas, since it expressly excludes agricultural leases from **Charter Section 177**. The exception of agricultural leases of a term of five years or less from disposal of OSMP land through an exclusive license or permit reflects the use of such leases as a key and ongoing management tool for agricultural use, which is an allowed purpose under the Charter. This does not have any relationship to the time period of any other exclusive license or permit. If the drafters of the Open Space Charter wished to define the length of time or the size of the area of an exclusive license or permit, they could have done so and did not.

CA Assertion: The council has adopted an ordinance that reflects an interpretation of the Charter that would allow a person to charge a fee for a limited exclusive use of Open Space. The special dining and viewing areas are activities within the scope of this definition.

Response: There is no such thing under the Charter or the Code as limited exclusive use. Commercial users that charge fees for the service they provide on Open Space must conform to the requirements of **Section. 8-8-9 Permits for Commercial Uses on Open Space**. The USAPCC does not and cannot conform to these requirements, and therefore these requirements must be waived in order for the race to take place on Open Space. To the extent that fees are charged for parking, they are not being charged for commercial uses, and therefore, do not fall under **Section. 8-8-9 Permits for Commercial Uses on Open Space and Mountain Parks**.

Response: Related to the assertion that the special dining and viewing areas are activities within the scope of the definition of Commercial Use in **Section 8-8-9**. This is clearly and unequivocally NOT the case. **Section 8-8-9(c)** specifically states:

“No person who has obtained a permit from the city manager under this section shall assert or attempt to assert an exclusive right to use a particular place, site or area, **nor shall any such person remove or exclude, or attempt to remove or exclude, any other person from a particular place, site or area.**” As proposed by the Race Organization, only certain people would have the right to be in the special dining and viewing areas and any others would be excluded. Therefore these activities would not be allowed under **Section 8-8-9**, because they are exclusive in the plain meaning of the word – “to exclude”.

CA Assertion: The ancillary support activities that will take place on non-road open space do not require exclusive permits, since a restricted area will be open to anyone who can pay \$500 until the capacity of that area is used up. The code authorizes the City Manager to issue permits for commercial events on Open Space.

Response: This assertion does not include the part of **Sec. 8-8-9(c)** that states:

“No person who has obtained a permit from the city manager under this section shall assert or attempt to assert an exclusive right to use a particular place, site or area, nor shall any such person remove or exclude, or attempt to remove or exclude, any other person from a particular place, site or area.” This is essentially the definition of non-exclusive use. (see Attachment B, p. 11)

This means under the non-exclusive permit allowed in this section, that no vendor can exclude another vendor, and no person can be excluded, otherwise it is an exclusive permit. But under the USAPCC, Citizens without \$500 will be excluded from the USAPCC restricted area. No other vendors can receive permits to provide service in this area, or even in areas not restricted to those who have paid \$500. Citizens have been, and will be prohibited from permits for use of facilities in this area for other functions during the race setup and event days, such as weddings in the amphitheater.

When OSMP issues non-exclusive permits under **Section 8-8-9 Permits for Commercial Uses on Open Space**, these permits do not exclude other users without permits. Holding a wedding in the Amphitheater does not restrict an Open Space user from accessing the amphitheater and enjoying a stranger’s wedding. If a photographer offers a photography class on Open Space, it doesn’t preclude another Open Space user from accessing the Open Space land being used by the photography class. Therefore all permits for the ancillary USAPCC activities are “exclusive permits”.

Conclusion

The City Attorney inaccurately characterizes the reality of the issues related to the 2012 Pro Cycle Challenge Bicycle Race. The facts support the following:

1. Flagstaff Summit Road is Open Space and the USAPCC is not an allowed use of Open Space; therefore a competitive race should not be held on Summit Road. City Council has passed an ordinance waiving **Section 8-8-10**, which forbids competitive events on Open Space; however, this portion of the code was a further clarification of the Charter purposes limiting recreational use to passive recreation. Waiving this ordinance does not change the prohibition of the Charter.
2. In general, ancillary race support activities on Open Space at the top of Flagstaff are not in conformance with the non-exclusivity requirements of Open Space Commercial Use permits. This makes the permits exclusive permits requiring the approval of the council and the OSBT under Charter Section 177.

3. Specifically, the race event has taken over the Open Space road, parking lot and amphitheater, excluding other vendors and excluding persons from the area. This means that the required permits are exclusive, not non-exclusive.

Recommendation

If the CM and the council consider hosting a subsequent stage of the USAPCC, the location of the finish should be changed, and the top of Flagstaff should not be considered because these uses violates the Open Space Charter and related Code ordinances.

Even if just the main road on Flagstaff is used, there will be significant costs to Open Space, and the Charter forbids Open Space funds from being used to cover these expenses.

Therefore, the CM and the Council should carefully weigh the costs and benefits of finishing the stage on Flagstaff, and perhaps should consider a finish on another hill without the Open Space issues.

ATTACHMENTS:

- A. City of Boulder Charter Sections 170, 176 and 177**
- B. Code Section 8-8-9 and 8-8-10**
- C. Portion of City Council agenda memo related to Open Space and Mountain Parks issues**
- D. Relevant portion of Douglas County v Aurora decision**
- E. Newspaper articles related to Flagstaff**
- F. Map and notes from County Road Book**
- G. Letters from City Attorney**

ATTACHMENT A
CITY OF BOULDER CHARTER SECTION 170, 176, 177

Sec. 170. Creation of a department of open space.

There shall be a department of open space, which shall be responsible for all open space land and other property associated therewith.

As used in this charter, "open space land" shall mean any interest in real property purchased or leased with the sales and use tax pledged to the open space fund pursuant to the vote of the electorate on November 7, 1967, or proceeds thereof, any interest in real property dedicated to the city for open space purposes, and any interest in real property that is ever placed under the direction, supervision, or control of the open space department, unless disposed of as expressly provided in [section 177](#) below. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 176. Open space purposes - Open space land.

Open space land shall be acquired, maintained, preserved, retained, and used only for the following purposes:

- (a) Preservation or restoration of natural areas characterized by or including terrain, geologic formations, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species;
- (b) Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;
- (c) Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;
- (d) Preservation of agricultural uses and land suitable for agricultural production;
- (e) Utilization of land for shaping the development of the city, limiting urban sprawl, and disciplining growth;
- (f) Utilization of non-urban land for spatial definition of urban areas;
- (g) Utilization of land to prevent encroachment on floodplains; and
- (h) Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.

Open space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Section 177. Disposal of Open Space Land

No open space land owned by the city may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the city council. Such approval may be given only after approval of such disposal by the affirmative vote of at least three members of the open space board of trustees after a public hearing held with notice published

at least ten days in advance in a newspaper of general circulation in the city, giving the location of the land in question and the intended disposal thereof. No open space land owned by the city shall be disposed of until sixty days following the date of city council approval of such disposal. If, within such sixty-day period, a petition meeting the requirements of [Section 45](#) above and signed by registered electors of the city to the number of at least five percent of the registered electors of the city as of the day the petition is filed with the city clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until the steps indicated in [Sections 46](#) and [47](#) above have been followed.

This section shall not apply to agricultural leases for crop or grazing purposes for a term of five years or less.

This section is to be construed liberally in favor of providing opportunities for the citizens of the city to refer measures proposing the disposal of any open space land. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

ATTACHMENT B
CODE SECTION 8-8-9 AND 8-8-10

8-8-9 Permits for Commercial Uses on Open Space and Mountain Parks Lands.

(a) No person shall organize, promote, or stage a commercial use event on any open space and mountain parks property without first obtaining a permit from the city manager under this section.

(b) No person who has obtained a permit from the city manager under this section shall organize, promote, or stage a commercial use event on any open space and mountain parks property without having the permit in their possession at all times during such event.

(c) No person who has obtained a permit from the city manager under this section shall assert or attempt to assert an exclusive right to use a particular place, site or area, nor shall any such person remove or exclude, or attempt to remove or exclude, any other person from a particular place, site or area.

(d) For the purposes of this section, "commercial use" shall mean either:

(1) Any activity for which a fee, charge, purchase of goods or services, or donation is required for the provision of a service or as a condition of attendance or participation, including, but not limited to, dog walking, outdoor guide services, environmental education, and clubs, camps or other organizations that merely use school facilities; or

(2) Photography, videography, or filmmaking for compensation or hire that involves human or animal subjects;

provided however that a bona fide educational group engaged in a curricular school activity, including noncompetitive athletic activities and before- or after-school activities, shall not be considered engaged in a commercial use.

(e) The city manager may issue single event commercial use permits or annual commercial use permits for groups of not more than sixteen persons without conducting a special review of the application. The city manager may also issue triennial commercial use permits to such annual permittees who have three consecutive years of successful compliance with all requirements of the annual permit.

(f) The city manager may issue single event commercial use permits or annual commercial use permits for groups of more than sixteen persons upon conducting a special review of the application. "Special review" shall mean a thorough examination of the proposed use, and imposition of conditions of approval, to assure mitigation of large group impacts. The city manager shall prescribe the requirements for special review through rule issued under [section 8-3-3](#), "City Manager May Issue Rules," B.R.C. 1981. The city manager may also issue triennial commercial use permits to such annual permittees who have three consecutive years of successful compliance with all requirements of the annual permit.

(g) The city manager may issue limited use permits for groups of not more than sixteen. "Limited use permit" shall mean an annual permit for which the commercial use events are restricted to not more than fifty visitor days (number of persons x number of days, including the leader) of designated trail use with groups of sixteen or fewer.

(h) An applicant for a permit shall file an application at least fourteen days before the requested event or

annual permit application period. If an application is denied, the applicant may request a statement of the reasons for the denial. The city manager shall require applicants to provide insurance naming the city as an additional insured in such amounts as may be required to cover the maximum possible municipal liability exposure under state law. The city manager may prescribe such additional requirements and restrictions as may be necessary to minimize and mitigate use impacts, and as may be necessary or desirable for the implementation and enforcement of this section.

(i) The city manager shall prescribe by rule issued under [section 8-3-3](#), "City Manager May Issue Rules," B.R.C. 1981, such additional requirements as may be deemed necessary for the implementation and enforcement of this section.

(j) The city manager may revoke a permit issued under this section at any time before or during the permit period for any reason, for no reason, or for breach of any of the conditions prescribed by subsection (f) of this section. Any permit issued pursuant to this section shall be deemed a revocable license that does not convey a property interest of any kind. If a permit is revoked before the event, any security deposit shall be promptly refunded to the permittee. If the manager revokes the permit, the event must cease immediately. No person shall continue an event after a permit has been revoked.

(k) No person shall fail to comply with each term and condition of a permit issued under this section.

(Ordinance Nos. 7458 (2006); 7479 (2006); 7503 (2006))

8-8-10 Competitive Events Prohibited.

No person shall organize, promote, conduct or participate in a competitive event upon open space and mountain parks properties except as authorized by the city manager in a written permit for the limited purpose of an annual world-class pro cycling race. For the purposes of this section, "competitive event" shall mean any event or activity in which four or more persons try to exceed the performance of each other or another person in a physical activity.

Ordinance Nos. 7458 (2006); 7851 (2012)

ATTACHMENT C
PORTION OF CITY COUNCIL AGENDA MEMO RELATED TO
OPEN SPACE AND MOUNTAIN PARKS ISSUES

ii. The Charter.

Some concerns have been raised about whether permitting such a race could potentially violate charter restrictions related to the use of Open Space lands. The Charter includes explicit provisions regulating the use of “Open Space Lands,” Charter §§ 170-77, B.R.C. 1981. These provisions are intended to preserve and protect the city’s Open Space land.

a. Public Roads and Open Space Lands

The Boulder stage of the USPCC will be run entirely on paved road surfaces that are regularly used by bicycles and motor vehicles. The area in which concern has been raised is the portion of the route along Flagstaff Road to Realization Point turning on to Summit Road and ending near the parking lot. The race itself will be confined to paved right of way. Spectators, who will line the road and probably spill into Open Space property adjacent to the roads, will likely use city Open Space trails to access the upper portions of Flagstaff and Summit roads. Hiking through Open Space and watching a race are the types of passive recreational activities consistent with uses permitted on Open Space under the Charter. *See* Charter § 176.

There have been some questions raised about whether the race is an appropriate use of Flagstaff Road and Summit Road. First, there was a question about who actually owns Flagstaff and Summit Roads.

County staff has confirmed that Flagstaff Road from the city limits to Realization Point is a county road, constructed in 1906. The status of Summit Road is less clear. Summit Road is a paved road extending approximately .75 mile from Flagstaff Road to the amphitheater parking lot. From the county records, it appears that Summit Road was approved as a county road by the Board of Commissioners in 1929. The County road book includes a note referring to a Commissioner’s Journal (Journal) entry dated August 26, 1929. The Journal entry reads as follows:

That Road No 217 be and is hereby amended by extension of same to the summit of Flagstaff mountain and said amended portion made a part thereof as follows to-wit:

Beginning at the west end of the Flagstaff road as originally laid out and platted in Road Book C page 17 and junction point with road No 133 at its present eastern terminus; Thence in a general north-easterly direction 1/2 mile more or less to the north base of its most elevated point of said Mtn. and 100 yards more or less west of the flagpole at the eastern rim of the Flagstaff mesa. Width 60 feet.

The Journal’s description of this extension is consistent with the location of Summit Road today. However, the representation of the extension drawn in the Road Book shows it on the wrong side of Flagstaff Mountain summit. The road book includes the following notation: “Extension of No. 217 to summit, Approximate only, No survey notes.” It appears, therefore, that Summit Road may have been constructed as a county road in 1929.

It is clear that the city has maintained the road for many years. A city can, however, maintain a county road without taking ownership of the road. Thus, it is impossible to say for certain at this point whether the road is a county or a city road.

What is certain, however, is that it is a road. Regardless of whether Summit Road is a city road or a county road, it is not Open Space land as the term is used in the Charter. The Charter defines “Open Space Land” as follows:

As used in this Charter, "open space land" shall mean any interest in real property purchased or leased with the sales and use tax pledged to the open space fund pursuant to the vote of the electorate on November 7, 1967, or proceeds thereof, any interest in real property dedicated to the city for Open Space purposes, and any interest in real property that is ever placed under the direction, supervision, or control of the Open Space Department, unless disposed of as expressly provided in section 177 below.

Charter § 170.

Summit Road does not fit under this definition. It was not purchased or leased with the open space tax and it was not dedicated to the city for Open Space purposes. Under Colorado law, a road also does not fit under the last clause, that is, “any interest in real property that is ever placed under the direction, supervision or control of the Open Space Department. . . .” A road is held by a city as a public trust. Roads are not interests in real property placed under the control of a department.

Considering a road to be Open Space would place normal road usage into conflict with permitted Open Space uses. Charter section 176(c), provides that Open Space land should be preserved “for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing.” A paved road used by cars is not used for “passive recreational use.” If Summit Road is considered Open Space then the city should probably ban cars from driving on it. The only consistent interpretation of the Charter is that it does not contemplate inclusion of a road as Open Space.

This reasoning is consistent with the view of the Colorado Court of Appeals. In an annexation dispute between Douglas County and the City of Aurora, the court addressed the question whether the county’s designation of two county roads as “open space” affected the contiguity requirement under the Annexation statute, which excludes roads, but not open space from the contiguity calculation. The court concluded as follows:

The property designated by the county has been improved through grading and surfacing and serves as public roadways. Because it is not essentially unimproved, the property is not open space.

Douglas County v. City of Aurora, 62 P.3d 1049, 1053 (Colo. App. 2002). For all of these reasons, the City Attorney’s Office has concluded that allowing the USPCC on Summit Road does not violate the Charter.

The Charter also prohibits issuance of exclusive permits for Open Space lands. Staff recommends that Council direct the city manager to issue only non-exclusive permits for the use of the facilities, area. Since the race viewing area will be open to the public, an exclusive permit for the area is not needed.

The road will necessarily be closed. As noted above, the road is not “Open Apace land” so the exclusive permit provision does not apply. As a city road, closure is expressly permitted for bicycles. § 2-2-11, B.R.C. 1981 (“Traffic Engineering”).

b. Non-exclusive Use of Open Space Lands

The separate area for ticketed persons presents a different question. The charter provides that exclusive licenses or permits are considered disposals, requiring adherence to the disposal procedures in Charter § 177. As proposed, the ancillary events do not require exclusive licenses or permits. The race is planning to have a dining area and special viewing area for individuals who purchase tickets at \$500 per person. The event is open to any person that can pay the admission price until the event reaches capacity. The City Attorney's Office does not believe that this creates an exclusive permit or license as that term is used in the Charter, based on Council's previous interpretation of the Charter through ordinances. Based on provisions in the Code, the term exclusive permit or license does not apply to a right to occupy a portion of an area for a limited time.

The Code authorizes the city manager to issue permits for commercial events on Open Space. § 8-8-9, B.R.C. 1981 ("Permits for Commercial Uses on Open Space and Mountain Parks Lands"). Commercial use is defined as follows:

Any activity for which a fee, charge, purchase of goods or services, or donation is required for the provision of a service or as a condition of attendance or participation, including, but not limited to, dog walking, outdoor guide services, environmental education, and clubs, camps or other organizations that merely use school facilities.

Thus, Council has adopted an ordinance that reflects an interpretation of the Charter, which would allow a person to charge a fee for a limited exclusive use of Open Space. **The special dining and viewing areas are activities within the scope of this definition.**

An analogous provision relates to parking. A parking permit is a license to use a small portion of a parking lot to the exclusion of others who do not have a permit. The code requires that the city manager limit parking in certain Open Space areas to individuals with a permit:

The city manager shall, upon payment of the fee specified in section 4-20-54, "Parks and Open Space Parking Permit Fee," B.R.C. 1981, issue a parks or open space parking permit. This permit is valid only for the period specified, which shall be for a day or a calendar year, and for the vehicle for which issued. The manager may provide for issuance of such permits at such places and times as the manager finds expedient, and may provide for unattended issuance in which the applicant places the fee in an envelope, writes the license plate number of the vehicle and the current date on the envelope, and deposits the envelope and fee as written instructions direct, and retains and displays the specified portion of the envelope as a permit. No permit is valid without prepayment of the specified fee and display of the permit in a place within the vehicle where its number and any other information required to be placed upon it is clearly visible to a peace officer from outside the vehicle, and is in the location specified by the manager in the permit instructions.

§ 4-24-3, B.R.C., 1981 ("Permit Issuance"). Open Space issues parking permits for the very parking lot that will be used for race viewing.

The context of the Charter also suggests that the drafters did not intend to include short-term use of small areas. The Charter expressly excludes agricultural leases from the prohibition, suggesting that it was just such a long-term exclusive use that the drafters intended to prohibit. Moreover, the Charter provides that issuance of an exclusive permit is a disposition of property implicating the process under Charter § 177. Again, this provision suggests that exclusive was meant to include permits or licenses that are longer in time and greater in scope than allowing a race to charge for admission to a grandstand. Thus, the temporary use of a limited area for a public event with a few areas restricted to those who pay

a fee is a use consistent with the Charter.

G. Permits

Staff recommends that the city manager issue permits for any race activity regulated by the Code. This will allow the city manager to provide any additional protections by including permit conditions if necessary. Any permits relating to Open Space must be reviewed by the OSBT prior to issuance. Charter § 175(g). OSBT is charged with making a recommendation on the grant or denial of any non-exclusive permit or license. Staff intends to draft the proposed permits and schedule review by OSBT. The city manager will consider OSBT's recommendations before issuing any permit.

Staff also recommends that the city manager be encouraged to waive any fees associated with the permits to be issued. Although it will take time to calculate the exact fee amount, staff estimates that the total permit fee would be less than \$10,000. Considering the magnitude of the event and possible related community benefits, this is a relatively small amount. The LOC has not requested a waiver and would be willing to raise the money to pay the permit fees if Council determined that this is necessary.

ATTACHMENT D
RELEVANT PORTION OF DOUGLAS COUNTY V AURORA DECISION

Following is the portion of the Court of Appeals decision related to roads and Open Space. (See the case citation for the full decision)

Colorado Court of Appeals, Div. II.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY v. CITY OF AURORA

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, Plaintiff-Appellee and Cross-Appellant, v. CITY OF AURORA, a Colorado municipal corporation; and Gartrell Investment Company, L.L.C., a Colorado limited liability company, Defendants-Appellants and Cross-Appellees.

No. 01CA1380.

-- September 26, 2002

J. Mark Hannen, County Attorney, Kurt G. Stiegelmeier, Assistant County Attorney, Castle Rock, CO; Hayes, Phillips & Maloney, P.C., John E. Hayes, Denver, CO, for Plaintiff-Appellee and Cross-Appellant. Charles H. Richardson, City Attorney, Robert Rogers, Assistant City Attorney, Robert G. Werking, Assistant City Attorney, Aurora, CO, for Defendant-Appellant and Cross-Appellee City of Aurora. Otten, Johnson, Robinson, Neff & Ragonetti, P.C., Thomas J. Ragonetti, J. Thomas Macdonald, Munsey L. Ayers, Jr., Denver, CO, for Defendant-Appellant and Cross-Appellee Gartrell Investment Company, L.L.C. Gorsuch Kirgis, L.L.P., Gerald E. Dahl, Denver, CO; Colorado Municipal League, Carolynne C. White, Denver, CO, for Amicus Curiae Colorado Municipal League. Hall & Evans, L.L.C., Josh A. Marks, Denver, CO, for Amicus Curiae Colorado Counties, Inc.

In this action for review of a land annexation, defendants, the City of Aurora and Gartrell Investment Company, L.L.C. (developer), appeal the judgment in favor of plaintiff, the Board of County Commissioners of Douglas County, voiding the city's annexation of developer's property. The county cross-appeals the court's interpretation and application of an annexation provision. We affirm in part and reverse in part.

Developer filed petitions seeking annexation of three parcels of its land located immediately adjacent to the city's boundary. The county and others objected to the annexation. After the city annexed the property, the county initiated this action seeking judicial review under § 31-12-116, C.R.S.2002. The county asserted that its designation as "open space" of two county roads between and adjacent to two of the parcels defeated contiguity requirements; that two "special districts" were not given

notice of the annexation hearing; that the city's annexation impact report was deficient; and that the annexation petition lacked necessary signatures.

The district court agreed with the first three assertions, held that the city had abused its discretion and exceeded its jurisdiction in annexing the three parcels, and voided the annexation. Rejecting the county's alternative assertion, the court determined that the petitions complied with the signature requirement. This appeal followed.

I.

Defendants contend the court erred in concluding that the county's designation of two roadways as "county-owned open space" precluded the annexation of two parcels. We agree.

The Municipal Annexation Act of 1965(Act), § 31-12-101, et seq., C.R.S.2002, governs annexation. Judicial review of annexation is a special statutory proceeding and is limited to determining whether the governing body that approved the annexation exceeded its jurisdiction or abused its discretion. Section 31-12-116(3), C.R.S.2002; see *Town of Superior v. Midcities Co.*, 933 P.2d 596 (Colo.1997); *TCD North, Inc. v. City Council*, 713 P.2d 1320 (Colo.App.1985).

On review, the court must accord great latitude to this legislative discretion and must indulge every reasonable presumption favoring the validity of the annexation. The court is generally limited to determining whether the Act's procedural mandates have been met, and it may not pass upon the wisdom of the annexation itself. See *Town of Superior v. Midcities Co.*, supra; *City of Englewood v. Daily*, 158 Colo. 356, 407 P.2d 325 (1965); *TCD North, Inc. v. City Council*, supra.

Because we are in the same position as the district court in reviewing annexation proceedings, our review is de novo. See *City of Colorado Springs v. Bd. of County Comm'rs*, 895 P.2d 1105 (Colo.App.1994).

The Act requires the governing body to find that at least one-sixth of the perimeter of the area proposed for annexation is contiguous with the boundaries of the annexing municipality. The contiguity provision then excludes certain lands from the determination, as follows:

Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed.

Section 31-12-104(1)(a), C.R.S.2002.

Here, there is no dispute that the county roads located between the city and the parcels are public rights-of-way within the meaning of the statute. As such, defendants may satisfy the contiguity requirement by ignoring the two county roads.

A.

The county asserts, however, that its designation of those roadways as “open space” in a resolution passed shortly before the annexation hearing prevents exclusion of the roads in determining contiguity. We disagree.

While the county is authorized to own, dispose of, and designate the uses of real property, it has no authority to define terms employed by the General Assembly in state statutes. See *Pennobscot, Inc. v. Bd. of County Comm'rs*, 642 P.2d 915 (Colo.1982); *Bd. of County Comm'rs v. Gartrell Inv. Co.*, 33 P.3d 1244 (Colo.App.2001). Rather, interpretation of the Act is a question of law for the court to decide, and our review is therefore *de novo*. See *United Airlines, Inc. v. Indus. Claim Appeals Office*, 993 P.2d 1152 (Colo.2000); *Minch v. Town of Mead*, 957 P.2d 1054 (Colo.App.1998). Accordingly, in determining whether the roadways at issue are open space for purposes of the Act's contiguity requirement, the county's designation is not binding.

In construing the provisions of the Act, we seek to give effect to the intent of the General Assembly. In doing so, we first look to the statutory language, giving words and phrases their commonly accepted and generally understood meaning. When the language of the statute is plain and its meaning is clear, we need not resort to interpretive rules of statutory construction, but must apply the statute as written. *Town of Superior v. Midcities Co.*, *supra*; see § 2-4-101, C.R.S.2002.

Here, “open space” is not specifically defined by the Act. However, that term is generally understood to mean: “Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open spaces.” *Black's Law Dictionary* 1091 (6th ed.1990).

This definition comports with the General Assembly's use of the term elsewhere. See, e.g., § 29-21-101, C.R.S.2002 (types of open space include floodplains, greenbelts, agricultural lands, and scenic areas); § 39-1-102, C.R.S.2002 (open space includes farmland and forestland). Accordingly, we apply it here.

The property designated by the county has been improved through grading and surfacing and serves as public roadways. Because it is not essentially unimproved, the property is not open space within the meaning of § 31-12-104(1)(a).

We reject the county's contention that the property only partly consists of roadway. The record reveals that, while not all the roadway is surfaced, its entire length is graded for vehicular use. Moreover, testimony at the annexation hearing likewise established

that the property consists of roadways that carry a substantial volume of vehicular traffic. The county's argument is also belied by the language of its own resolution declaring these roads to be open space, which explicitly and exclusively refers to the county roads by name as the designated open space property.

Because the county roads here are not open space, they do not affect contiguity under the terms of the Act. Hence, the court erred in voiding the annexation of the two parcels for failure to satisfy the contiguity requirement.

Under the circumstances of this case, we need not address whether a parcel of otherwise unimproved property that is traversed by an access road can be described as open space. Limiting our ruling to the facts of this case, we conclude only that a parcel consisting entirely of roadway is not “essentially unimproved” and therefore is not open space.

ATTACHMENT E
NEWSPAPER ARTICLES RELATED TO FLAGSTAFF

3-06-70
Flagstaff Summit Road Likely To Open For Weekend Use

The dirt road to the summit of Flagstaff Mountain will probably be open for weekend use after being closed this week for road improvement work, the City Parks Department announces. MAR 6 1970

Road work will continue next week, with some dynamite blasting; although the blasts are expected to be smaller than some previously in the work program. The summit road will be closed for the work next week.

6-16-70
Flagstaff Summit Road Paving Starts

Paving work on the road to the summit of Flagstaff Mountain was started Monday, Robert Key, City Parks and Recreation Department director, reported today.

Traffic will be halted and the road will be closed periodically throughout the two-week project, Key said.

3-17-70
Blast Monday Rocks Boulder

An explosion heard in Boulder Monday afternoon was apparently detonated by county road department and city parks department crews. MAR 17 1970

County road department blaster Ralph McAllister, of 4205 No. 26th, said the crew is widening the road to the top of Flagstaff Mountain.

"We're cutting through a high cliff," McAllister said, so we'll be blasting quite a bit."

McAllister said he always tries to blast in the morning to give the road crew time to clear the road before nightfall, but sometimes, he admitted, "we're a little late."

The blast Monday, a 15th floor resident of Williams Village told the Daily Camera, made the building vibrate.

Ron Donahue, city parks superintendent, said today that there also was blasting Monday for the Red Rocks water project

and that more blasting was expected this afternoon. Donahue said there may be more blasting for the Red Rocks project Wednesday and that there will be blasting on the Flagstaff project.

2-27-63
Flagstaff Road Improvement Is Underway

By JON KOLOMITZ
 CU Journalism Student

The county is spending \$25.0 for widening the scenic drive 1 Flagstaff mountain on the west edge of Boulder.

Work started on the project Ja 1 and is expected to end abo April 30, before the start of heat traffic. FEB 7 1963 The widening begins the Panorama Park shelter hou and will go as far as funds permit.

County Commissioner J Smith, who is handling the proje through his District 3 road budget, said the improvement mar another instance of county ce-operation with the city. Lo range plans call for conitau city-county cooperation until 1 entire length of the road threu the city park is improved.

Work now in progress is ma ly blasting and rock remov Smith's road maintenance cre work on the project when an plowing and other essential maintenance work on his Mount District roads permit.

The road was dedicated on C 12, 1926 and cost \$41,000 to bu Little improvement was done u two years ago when Smith c structured the lower end and, w the assistance of Commissio Linton C. Austin, Boulder, pa it.

Smith said the current impro ment was necessitated by the h accident rate on the narr winding road.

The mountain got its name fr the flagpole on its summit, p ed there in 1918.

UP ON FLAGSTAFF

THE COUNTY AND CITIZENS WILL BUILD A ROAD THAT WILL BRING BUSINESS AND SHOW OFF BOULDER TO FINE ADVANTAGE. 6-02-06

The Flagstaff mountain scenic road and road to relieve the traffic in the South Boulder district, is to be built. The county commissioners gave the assurance to Isaac Fair, Joe Bergheim and L. C. Paddock, of the citizens' committee this morning, after a more or less pleasant talk over the situation, that they would give \$2,000 if the rest were secured by subscription. All agreed that the road would be a splendid thing. Starting at the foot of the mountain at the west end of Arapahoe street and running back onto Huggins' park, thence by not greater than a ten per cent grade anywhere, Mr. Fair, the surveyor, says a good road can be found. Capt. Brown of Longmont and Martin Comerford of Magnolia, who viewed the proposed road for the county, estimated its cost at between \$2500 and \$3,000. It is felt certain that the latter figure will build a good road. In any event, the committee are about to undertake raising the funds to make up the amount needed—practically \$1,000. The Gregory canon road has been abandoned. Commissioner Hoover admitted that he would not dare to walk down the road in the night, much less think of driving down. The road is needed now as large mining projects are on foot within six miles of Boulder and the big mill Prof. Langridge is to build will make a population there that Boulder business men should supply.

6-07-47

City's Portion Of Flagstaff Roads To Be Improved

Repaving Job In Town Also Scheduled For Next Week

Nearly the whole crew of the street department will work Monday on the city's portion of the Flagstaff mountain roads, and on Tuesday will start spreading gravel for the first of this summer's repaving jobs in town—from the power plant on the University campus north to University avenue and then down 17th street to Arapahoe avenue.

These plans were announced today by George R. Hubbard, director of public service, and Street Superintendent J. B. Taylor.

Unless there is heavy rain, two graders and four trucks will be assigned to the Flagstaff job Monday morning. They will blade Chapman drive from its lower end at Blanchard's lodge in Boulder canon to the "saddle" or Kossler junction on Flagstaff and then to the top of the mountain, and will clean out the culverts and borrow pits.

"Our part of the roads on Flagstaff came through the winter in unusually good shape," Taylor said, "but there are two or three bad trenches to be repaired and our entire section will be smoothed up. If we get a break in the weather, we expect to complete this work in one day."

The route from Boulder up the east side of Flagstaff to the saddle is a county road.

The department hopes to start distributing oil Thursday on 17th street between Arapahoe and University and its extension through the campus to the power plant on Regent street south of Pennsylvania. This is the only campus road which is a city street.

Further details on this job—the first of this year's major repair projects—will be announced next week.

6-28-71

Flagstaff West Road Is Closed

The dirt road on the west side of Flagstaff Mountain leading to Boulder Canyon is not open to through traffic as a result of a dispute between the city and the few property owners at the west access to the road.

Ron Donahue, city superintendent of parks, today explained that the owner of the Red Lion Inn restaurant had asked the city to share the cost of repairs needed on the bridge over Boulder Creek leading to the restaurant and toward the road on Flagstaff, which is city park land.

Since the bridge is on private property and the Parks Department feels there is adequate access for fire control elsewhere, the city decided not to contribute to the repair cost. Thus, the property owner said no through access would be allowed for travel on the road.

Donahue said the city was reluctant to share the cost because it felt the bridge was of primary benefit to the property owner. He indicated the city's share of repairs would be in the range of \$10,000.

The city has blocked vehicle access to the road at both ends, but noted that some persons say the road is nice now for walking and bicycling. He also noted that the road is always closed in some winter months anyway because of dangerous conditions.

JUN 28 1971

2-22-70

②

FEB 22 1970

Flagstaff Road Blasting Project To Continue Starting Tuesday

Dynamite blasting to widen the road to the summit of Flagstaff Mountain will resume Tuesday and may continue through Friday, Ron Donahue, city parks superintendent, announced.

City and county crews began blasting work last Monday to widen the dirt road, referred to as the "saddle," which begins at the intersection where roads lead to Gross Reservoir, down the west side of Flagstaff and to the summit. The saddle road is expected to be blacktopped this summer after widening and grading have been completed.

The main road and the saddle road are open today, but the saddle road will be closed Monday to allow crews to drill holes for placing the dynamite, Donahue said.

Tuesday through Friday, the saddle will be closed for the blasting which will occur between 10 a.m. and 2 p.m. The main road also will be closed during the blasting periods at the half-way shelter on the east and the intersection on the west.

Hikers should avoid the Gregory Canyon area trails Tuesday through Friday since that area will be exposed to rock falling from the blast sites. The area will be posted with signs and the crews will try to patrol the area before each blast, he said.

He also mentioned that there was no connection between the city blasting and the explosion heard near Flagstaff by city residents shortly after midnight Friday.

Widening of the road is about 50 per cent complete, but the remaining portion may take longer to complete so that the work may continue through the week after next, Donahue added.

①

Another Mile Of Paving Scheduled For Flagstaff

The Board of County Commissioners agreed Monday to participate with the city in paving at least an additional mile of the Flagstaff Mountain Road.

The new pavement will be laid from where the present surfacing ends at the Panorama Park shelter house up toward the saddle where the road branches, the Kossler Road going to Gross Dam, another to the top of Flagstaff and the third to the Canyon.

Commissioner Joe Smith explained that up to the junction, the Flagstaff Road, while it crosses a Boulder City mountain park, is a county road. The section above the saddle to the top of the mountain is strictly in the city's domain.

Smith's District 3 will pay one half the cost of the first mile and the city the other half. The cost is estimated at \$10,125. The other two county road districts, W. D. (Ted) McCaslin's Longmont District and Linton C. Austin's Boulder District, will continue the paving project beyond the additional as far as their funds will allow.

The length of the stretch from where the pavement now ends to the three-road junction is 2.3 miles. Smith improved and graveled the stretch, which

is in the county's Boulder Road District, last year.

The paving is scheduled to start within a week.

The commissioners also outlined paving projects, either under way or scheduled this summer and early fall, elsewhere in their three road districts.

(Continued On Page 2)

4-13-70

Summit Road Work On Flagstaff To Take Another Two Weeks

AUG 13 1970
A minimum of two weeks remains on the widening and grading project on the Flagstaff Mountain summit road. Ron Donahue, city parks superintendent, reported today.

Some more blasting to widen the road still needs to be done. Donahue said, but added that it will not be as extensive as has already been done.

The project was delayed by the heavy snows in March. Traffic delays on the main road below the summit road should be minor during blasting, he said. The summit road will continue to be closed during most of the construction period.

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County acknowledges that road above saddle is City's.

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ATTACHMENT G
LETTERS FROM CITY ATTORNEY

CITY OF BOULDER, COLORADO

Office of the City Attorney
Municipal Building
1777 Broadway
Post Office Box 791
Boulder, Colorado 80306
Telephone (303) 441-3020
Facsimile (303) 441-3859



MEMORANDUM

TO: William R. Toor, Mayor
Members of the City Council
Crystal Gray, Chair
Members of the Open Space Board of Trustees
Will Meyer, Chair
Members of the Parks and Recreation Advisory Board
Ronald A. Secrist, City Manager
James C. Crain, Director of Open Space/Real Estate Department
Chris Dropinski, Director of Parks and Recreation Department

FROM: Joseph N. de Raismes, III, City Attorney *df*

SUBJECT: Charter Compliance of Mountain Parks Uses

DATE: August 11, 2000

At the August 9, 2000 meeting of the Open Space Board of Trustees, I addressed questions raised by the board, including the ex-officio members, concerning the compliance of the mountain parks uses expected to be continued under the stewardship of the Open Space and Mountain Parks Department with Charter Section 176. As you will recall, Sue Ellen Harrison's August 4, 2000 memorandum indicated that paragraph 176(h) provided authority for the continuation of historical mountain parks uses under the general rubric of "contribution to the quality of life of the community." At the meeting, I clarified that the opinion does not make that catch-all phrase undo any aspect of the open space charter limitations, such as the limitation to passive recreational uses. However, in this unique circumstance, I indicated that the Open Space Board of Trustees' motion to continue historical uses on Open Space would be likely to be granted deference by the courts under the "quality of life" clause. Any issue of Charter compliance has to be dealt with in the specific, which in this case includes the specific intent to provide for a smooth transition for Mountain Parks as the Open Space Board of Trustees undertakes its expanded role. And it is in that context that the August 4, 2000 opinion should be read.

Since the clarification given at the August 9, 2000 meeting seemed to be useful, I am forwarding this memorandum to the Parks and Recreation Advisory Board in order for it to be given consideration at the August 31, 2000 scheduled action on the "disposal" of the Mountain Parks lands to the new Open Space and Mountain Parks Department, pursuant to Charter Section 162.

cc: Sue Ellen Harrison, Assistant City Attorney

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CITY OF BOULDER, COLORADO

Office of the City Attorney
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MEMORANDUM

AUG 10 2000

TO: Ronald A. Secrist, City Manager
Jim Crain, Director, Open Space/Real Estate
Chris Dropinski, Director, Parks and Recreation

FROM: Joseph N. de Raismes, III, City Attorney
Sue Ellen Harrison, Assistant City Attorney 

SUBJECT: Charter Issues Concerning Park Lands, Open Space Lands, and the Permanent Park and Recreation Fund

DATE: August 8, 2000

At the July 26, 2000 meeting of the Open Space Board of Trustees, a request was made that the City Attorney's Office opine on two Charter issues related to the pending change of certain park lands to open space lands:

1. Are the current management and uses of the park lands that are intended to become open space lands consistent with the open space charter provisions (Charter, Article XII, Sections 170 - 177)? Yes.
2. Do the parks and recreation charter provisions (Charter, Article XI, Sections 154 - 169) require reimbursement to the department of parks and recreation of monies expended by that department from the Permanent Parks and Recreation Fund for land and improvements that are now intended to become open space lands? The Charter does not specifically address this issue, thus it becomes a policy issue for Council to decide.

Discussion:

1. The Department of Parks and Recreation compiled a detailed summary of the management and land transfer considerations associated with activities that occur on the properties being considered for change from park lands to open space lands, see Attachment 1. A review of these various activities indicates that all of the activities are consistent with the open space charter provisions. Most of the uses are clearly consistent with the more commonly quoted open space purposes such as the "preservation... of natural areas..., scenic areas or vistas, wildlife habits..." found in paragraphs (a) and (b) of Charter Section 176. However, even those activities which have



**CITY OF BOULDER
OPEN SPACE BOARD OF TRUSTEES**

MEETING DATE: August 14, 2013

AGENDA TITLE: Recommendation to designate the ERTL property as a Habitat Conservation Area.

PRESENTERS:

Michael Patton, Director, Open Space and Mountain Parks
Eric Stone, Resource Systems Division Manager

EXECUTIVE SUMMARY

With the purchase of the Energy Resource Technology Land, Inc. (ERTL) parcel, located east of the Weiser property and west of 95th Street along Boulder Creek (Attachment A), Open Space and Mountain Parks (OSMP) has a contiguous ownership and the opportunity for consistent management of the Boulder Creek Floodplain and White Rocks ecosystems. The property has never been open for public access and will remain closed until a management plan is developed. This memo describes the rationale for designating ERTL as a Habitat Conservation Area (HCA) to provide guidance for future management of the property.

STAFF RECOMMENDATION

Staff recommends that the Open Space Board of Trustees pass a motion to approve and recommend that the City Council pass a motion approving the designation of approximately 655 acres of the 685-acre ERTL property (8323 Valmont Road, Boulder, CO), shown in Attachment B, as part of the Lower Boulder Creek Habitat Conservation Area.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Environmental: Open Space and Mountain Parks is a significant community-supported program that is a leader in preservation of open space lands contributing to the environmental sustainability goal of the City Council. The

department's land acquisition, land and resource management and visitor service programs help preserve and protect the Open Space values of the surrounding publicly-owned lands.

- Economic: Open Space and Mountain Parks contributes to the economic vitality goal of the city as it provides the context for the diverse and vibrant economic system that sustains services for residents. The land system and the quality of life it represents attract visitors and help businesses to recruit and retain quality employees.
- Social: Because Open Space and Mountain Parks lands, facilities and programs are equally accessible to all members of the community, they help to support the city's community sustainability goal because all residents who live in Boulder can feel a part of and thrive in this aspect of their community.

OTHER IMPACTS

- Fiscal: The cost to make the minor improvements necessary to implement the recommended uses on ERTL would be minimal.
- Staff time: Initially it would take some small additional amount of staff time to inform surrounding neighbors and the public at large of the designation and new regulations. Over time, staffing level would decrease to a level representative of the entire OSMP system.

PUBLIC FEEDBACK

On July 10, 2013, the Open Space Board of Trustees (OSBT) heard the staff presentation on the merits of acquiring ERTL in fee with opportunity for public comment. At that time, staff informed OSBT of the intention to manage ERTL as a part of an HCA and in a fashion similar to the Weiser property to the west and the Culver Property to the east. This item is being heard as part of this public meeting advertised in the *Daily Camera* on August 11, 2013.

BACKGROUND

The ERTL property is a large holding in eastern Boulder County on which the city acquired conservation easements/developments rights in 1982 and 1984. These agreements were made to preserve and protect the natural resources found on the property. The ERTL property borders four other Open Space lands and its acquisition gives the city fee ownership of the entire two and a half mile reach of Boulder Creek between 75th Street and 95th Street, forming a land assemblage of over 2,700 contiguous acres. OSBT approved fee title acquisition at its July 10, 2013 meeting.

The location, topography and geology of the ERTL property create a variety of different habitats that support an exceptionally diverse suite of wildlife and plant communities including rare and protected species. Many of these features are shared with the adjoining Weiser property immediately to the west. Restoration potential and ecological value is very high in this area.

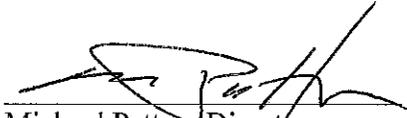
Two of the rarest species OSMP manages breed on or near the ERTL property. A pair of bald eagles has nested just west of ERTL since 2002 and northern leopard frogs have

bred on the property for the last several years. Bald eagles are very sensitive to disturbance during the nesting season and will rarely initiate nesting in an area where they experience disturbance. The extensive riparian and wetland complexes on ERTL provide ideal breeding, foraging and over-wintering habitat for northern leopard frogs, a species in decline in Colorado and throughout the western U.S.

In addition, crevices on the cliff face of the White Rocks harbor the black spleenwort fern which is one of the rarest ferns in North America, and wet meadows provide habitat for the federally-listed Ute ladies'-tresses orchid.

Staff has carefully reviewed the unique characteristics of the ERTL property and believes it fulfills the characteristics, goals and criteria for HCA designation established in the Visitor Master Plan (Attachment C). In recognition of the significant resource values, staff is proposing the ERTL property be managed similar to adjoining properties and be included as part of the Lower Boulder Creek HCA. An excerpt from the July 10, 2013 OSBT memo outlining specific ecological values is included as Attachment D.

Submitted by:



Michael Patton, Director



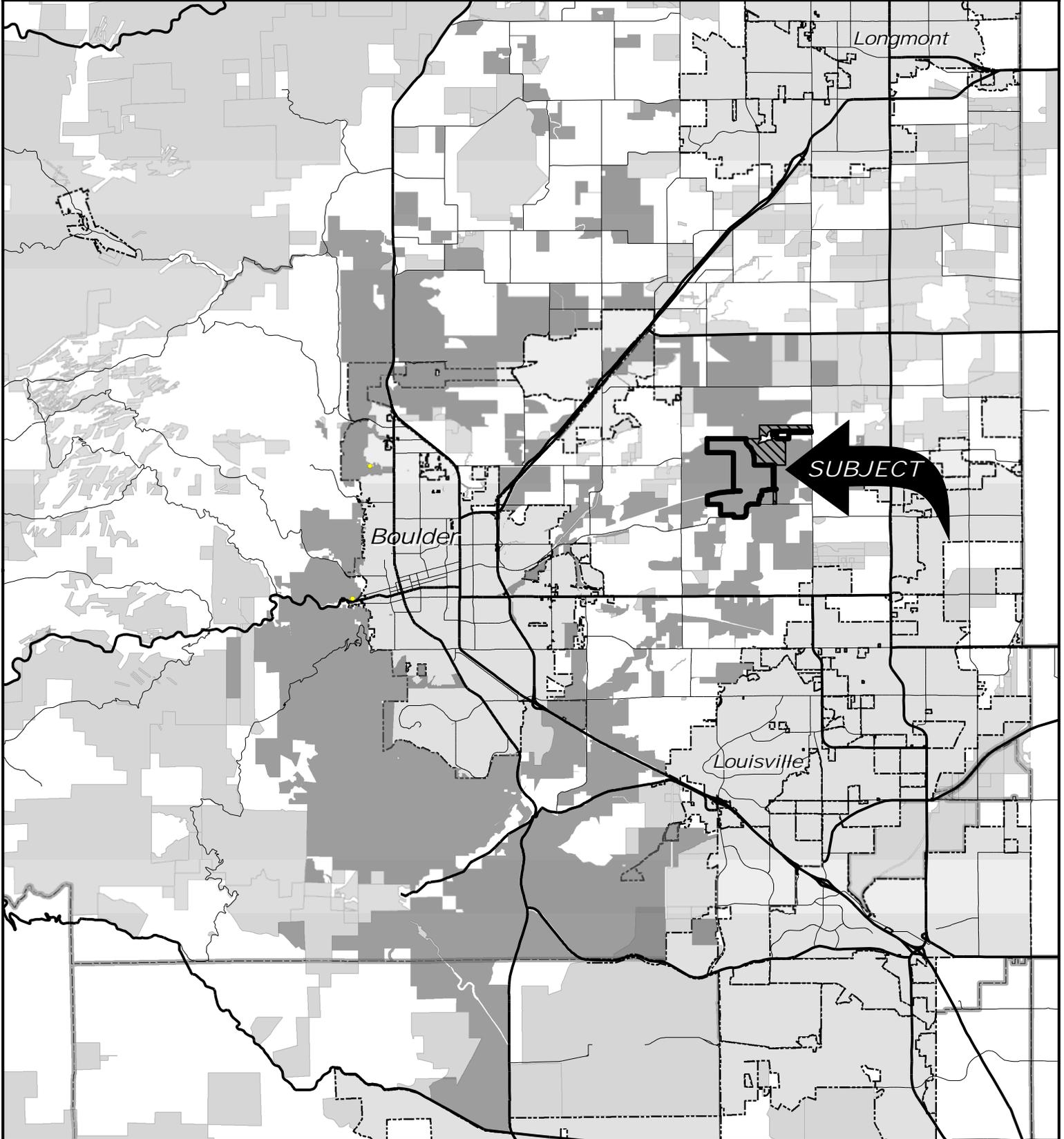
Eric Stone, Resource Systems Division Manager

ATTACHMENTS:

- A. Vicinity Map
- B. Proposed Habitat Conservation Area - ERTL
- C. Visitor Master Plan: Habitat Conservation Area Designation
- D. Excerpt from the July 10, 2013 OSBT Memo

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ATTACHMENT A - City of Boulder Open Space & Mountain Parks VICINITY MAP - ERTL Property



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 The information depicted is provided as a graphical representation only. While source documents were developed in compliance with National Map Accuracy Standards, the City of Boulder provides no guarantee, express or implied, as to the accuracy and/or completeness of the information contained herein.
 E:\Mapfiles\Property\vicinity-.mxd

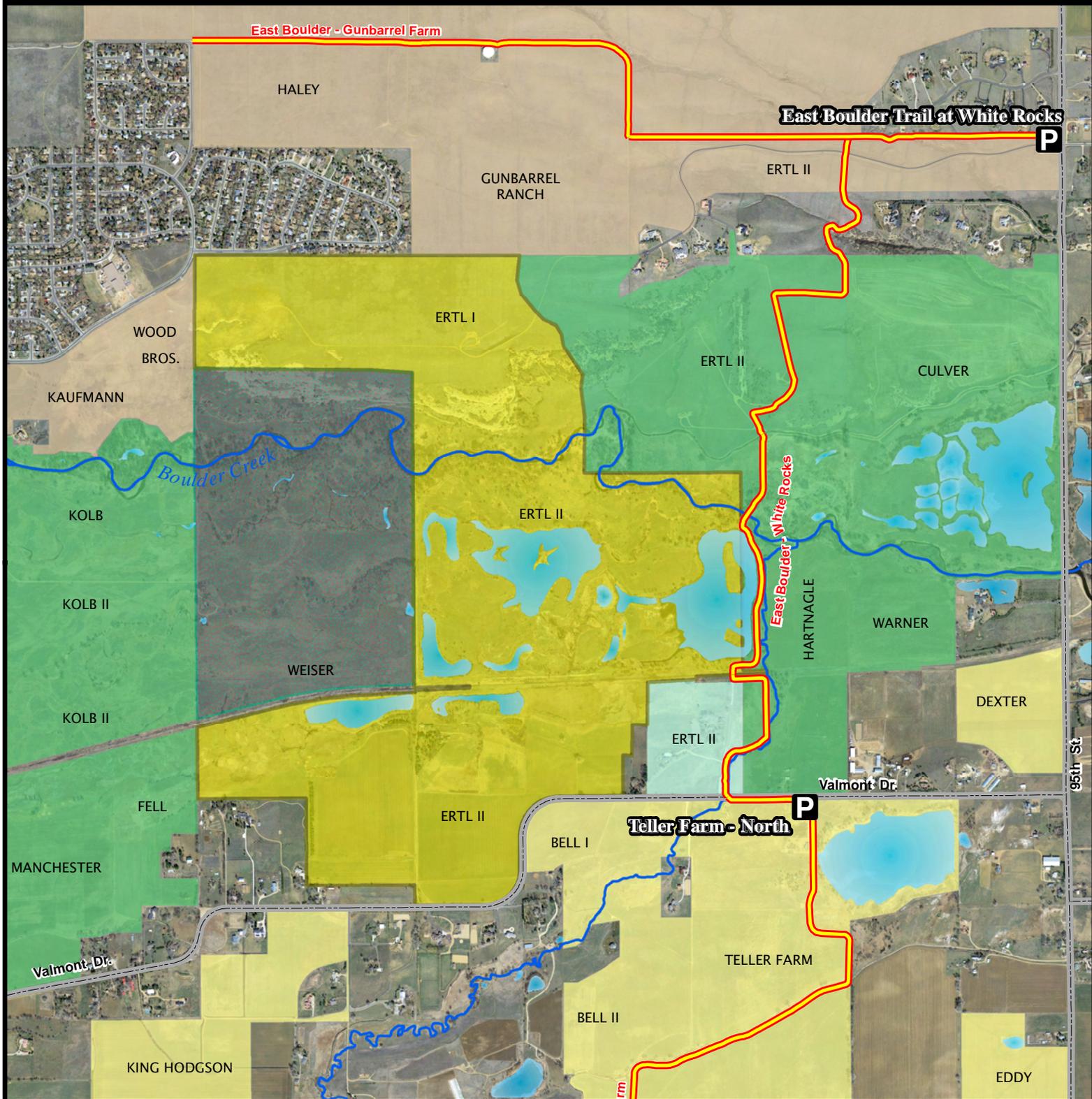
-  Proposed Purchase
-  Leasehold Termination Area
-  City of Boulder OSMP



Approximate property boundaries from Boulder County Assessor's data.

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ATTACHMENT B - City of Boulder Open Space & Mountain Parks Proposed Habitat Conservation Area - ERTL



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- Proposed HCA
- Habitat Conservation Area
- Habitat Conservation Area - Conditional
- Passive Recreation Area
- Agricultural Area
- P OSMP Trailhead with Designated Parking
- OSMP Managed Multi-Use Trail
- OSMP Conservation Easement



Miles 0 0.125 0.25 0.5

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ATTACHMENT C

Visitor Master Plan: Habitat Conservation Area Designation

Characteristics

Tend to be located in more remote areas.

Typically represent the largest blocks of an ecosystem type with few, if any, trails or roads.

Lower level of visitor use; no or few trails and trailheads.

Naturally functioning ecosystems (but may contain areas with evidence of human use and impacts).

Goals

Maintain, enhance and/or restore naturally functioning ecological systems.

Maintain, enhance and restore habitat for species of concern identified in the Boulder County and Boulder Valley Comprehensive Plans.

Provide public access and passive recreational opportunities that foster appreciation and understanding of ecological systems and have minimal impacts on native plant communities and wildlife habitats or other resources.

Eliminate all undesignated trails, unless they are made part of the designated trails system or provide specialized access to appropriate low-use destinations.

Where sustainable infrastructure exists, continue to allow public access to appropriate destinations.

Criteria for Inclusion of Management Areas in the Habitat Conservation Area Designation

Large habitat blocks with a low density of trails, roads or development.

High potential for restoration of natural ecosystems (including areas with restoration underway).

Plant communities that are rare or unique on Open space and Mountain Parks lands.

Habitat for species of concern such as threatened, endangered, rare and other species.

Areas with high biodiversity such as wetlands and riparian areas (especially un-trailed riparian reaches).

Comparatively lower visitation levels.

Compatibility with adjacent land (i.e., opportunities for coordinating habitat protection and connections and recreational activities/trail linkages).

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ATTACHMENT D

Excerpt from the July 10, 2013 OSBT Memo

Ecological Significance

The ERTL property contains an unusual outcropping of Fox Hills Sandstone, a unique geologic formation known locally as the White Rocks. It is a continuation of the formation found on the Windhover Ranch property to the west. In addition, one of the largest relatively undeveloped remnants of the Boulder Creek floodplain sets the stage for the extremely rich diversity of plant and animal life found there. This property is one of the last remaining private parcels in the Boulder Creek floodplain and its acquisition will create nearly seven miles of publicly owned and protected riparian habitat from 75th Street to the confluence of Boulder and Coal Creeks.

Rare Plants and Plant Communities

Sandstone cliffs: At the top of the White Rocks cliffs where soil has collected between rocks, habitat for the forktip three-awn grass (listed by the Colorado Natural Heritage Program as critically imperiled in Colorado) occurs along with an unusual mix of tallgrass prairie and sand prairie plant species. Crevices on the cliff face harbor the black spleenwort fern which is one of the rarest ferns in North America. Seeps in the White Rocks cliff face provide habitat for moisture-loving Great Plains species including great blue lobelia and American groundnut, as well as an uncommon liverwort (*Phaeoceros laevis*). Sandy soils at the base of the cliffs support some of the farthest western occurrences in Colorado of sand prairie species like sand sage, narrowleaf four o'clock, silky sophora, lemon scurfpea and the plains black nightshade. Native shrub stands and a large grove of western hackberry add to the plant diversity and provide important structure and food for birds and other wildlife species.

Floodplain wet meadows and agricultural vegetation: The Boulder Creek floodplain portion of the property is a mosaic of riparian forest, native wet meadow vegetation in old stream channels, artificial lakes and fields dominated by European pasture grasses. The plains cottonwood was historically the dominant canopy species along plains streams in the Boulder Valley and still occurs in remnant stands along Boulder Creek. Nonnative Russian olive and crack willow trees now occupy much of the floodplain. The Ute ladies'-tresses orchid, a federally protected wetland species, occurs on the ERTL property in an area that has not been gravel mined. Additional habitat for the rare orchid and other native wetland species could be restored on the ERTL property through prescriptive cattle grazing, irrigation water management and nonnative tree removal. Gravel mining has created artificial aquatic habitat in two large lakes and approximately seven smaller ponds in the floodplain. While these are not natural features in the landscape, they provide open water habitat with aquatic vegetation and marsh-like wetland habitat along their shorelines.

Wetland communities dominated by native species support the prairie gentian, an uncommon species in Colorado with declining habitat across the Great Plains. The prairie gentian habitat is concentrated in wet meadows south of the railroad tracks. The Weiser and ERTL prairie gentian population represents the farthest western occurrence of this species in Colorado.

Wildlife Resources

Bald eagles have nested on the adjacent Weiser property since 2002. Because the currently-occupied eastern nest is very close to the ERTL/Windhover Ranch property line, a large portion of the area directly surrounding the nest lies on ERTL. The eagles have experienced nest failures twice during the last nine years, making it important to manage the property in a way most likely to support successful nesting.

The cliffs of the White Rocks support multiple uncommon species including four rare ants, one of which (*Aphaenogaster huachucana*) is considered globally imperiled; a species of solitary bee that burrows into the soft sandstone of the rocks and feeds on prickly pear pollen; tiny fairy shrimp and crawling water beetles both of which live in ephemeral pools in depressions on top of the cliffs; and six-lined racerunner lizards, found locally only on the White Rocks, that live in the saltbush at the base of the cliffs. The White Rocks cliffs on ERTL have also provided one of the county's only natural nesting sites for barn owls and have been the center of recent prairie falcon activity during the nesting season. The extensive wetland and aquatic habitat on ERTL provide ideal breeding, foraging and over-wintering habitat for northern leopard frogs, a species in decline in Colorado and throughout the western U.S. Boulder Creek provides habitat for uncommon species like the American dipper and wood duck and may support extremely rare species like the northern river otter. The artificial lakes and ponds on the property provide open water habitat for waterfowl and shorebirds and shoreline emergent marshes for wading birds such as little blue and great blue herons and great egrets.

The diversity of habitats on the property supports a wide variety of bird communities during summer and winter. According to the annual Boulder Christmas Bird Count, one of the highest species richness and total bird counts is consistently recorded on the survey route that includes ERTL. In the summer, American bitterns, Virginia rails, marsh wrens and yellow-headed blackbirds are some of the rare/ uncommon species that have been seen on the property. Because of this, the Colorado Office of the National Audubon Society is in the process of officially designating the lower Boulder Creek area, including ERTL as an "Important Bird Area."

The exact location and extent of prairie dogs on the property, although known to be limited is not certain. If acquired, prairie dog colonies will be mapped and assigned a management designation according to the criteria in the OSMP Grassland Ecosystem Management Plan.

Threats and Sensitivity of Resources

Previous intensive grazing on the property has likely had a negative impact on grassland- and shrub-nesting birds. Habitat for these species can be improved through initiating prescriptive grazing techniques and removing nonnative species. Improving habitat conditions, along with minimizing human disturbance, can increase bird community diversity and lead to higher nesting success. Organisms such as the boring bees, fairy shrimp and six-lined racerunner occupy small, restricted and fragile habitats that could be impacted by extensive use of the area. In addition, the presence of New Zealand mudsnails in Boulder Creek requires restricted access to the creek in an effort to avoid further spread of the snails to other waterways.

Bald eagles can be very sensitive to disturbance during nesting. The pair nesting at Weiser has been accustomed to an area with minimal human presence, making them more likely to respond negatively to even low levels of disturbance. Protection under the Federal Eagle Protection Act prohibits disturbance to birds that could result in nest abandonment or negative impact to their reproductive success. U.S. Fish and Wildlife Service recommendations to protect nesting eagles in open landscapes such as those on the ERTL property are based on Colorado Division of Wildlife buffers for protecting nesting raptors. These recommendations include no surface occupation within ¼ mile of nest sites at any time and no human presence within ½ mile of the nest seasonally during the nesting season (November - July).

White Rocks in the Grassland Ecosystem Management Plan

In recognition of the unique ecological importance of the White Rocks cliffs, staff included the White Rocks (on both the ERTL conservation easement and the Windhover Ranch property to the west) as one of eight conservation targets in the Grassland Ecosystem Management Plan approved by OSBT and City Council. Within the Grassland Plan framework, issues, threats, management considerations and strategies were identified for each conservation target.

Agricultural Values

There is a long history of agricultural activity on the ERTL property. The Sullivan family farmed and ranched the property for more than 60 years before the current agricultural tenants began farming the property. The Sullivans generally operated a traditional family farming and ranching operation. They grew various grain crops, hay and forage crops and had a small cow herd to utilize the grazing land. The Schwartz family has been leasing the irrigated agricultural land on the ERTL property for approximately 10 years and have recently taken over the grazing land as well. The Schwartz family also leases the OSMP Manchester and King Hodgson properties located in the same vicinity as the ERTL property. Their agricultural operation primarily focuses on grass and alfalfa hay production, although they have recently added cattle to their operation.

The soils underlying the irrigated land of the ERTL property are primarily sandy loam in texture with gentle slopes and are well suited for agricultural production. The irrigated lands are considered to be of high quality when evaluating the soil texture and the water rights associated with the property. OSMP will be acquiring water rights from the Green, Jones and Donnelly, Cottonwood No. 2, and the Andrews-Farwell Ditches. The Jones and Donnelly Ditch has the longest average operational season of 174 days. The Andrews-Farwell Ditch has the shortest operational season of 52 days. OSMP will be acquiring 199 acres of irrigated land, much of which will be most suited to livestock grazing because of previous mining activities. There are about 65 acres of productive cropland suitable for a wide variety of agricultural activities, including the production of organic vegetables for local sale.

Restoration and Weed Management

Historic land management, including disturbance related to mining, site hydrology and presence of invasive species on adjacent lands, lead to known and likely populations of various invasive species on the ERTL property. Russian olive currently occupies over 60 acres of the property. Purple loosestrife, a Colorado List – A noxious weed, occupies 15 acres of the property, but was managed by the landowner in 2010 and 2011. Eurasian watermilfoil is common in Boulder Creek, the Green Ditch and likely some of the ponds that receive water from the Green Ditch. Other species likely present on the property include common teasel, perennial pepperweed, perennial sowthistle, whitetop, crack willow, Canada thistle, musk thistle, yellow toadflax (mandatory eradication), garlic mustard, diffuse knapweed, houndstongue, reed canarygrass, yellow iris and tamarisk. Additional mapping and monitoring of the property to obtain estimates of cover and occupied area for the above and other invasive species is required. Given past mining operations, it is likely that planting and seeding of native plants species is needed in areas following invasive species management.

Cultural Resources

While no professional cultural resource inventories have been conducted on this property, it is adjacent to the White Rocks/Weiser property where numerous Native American and historical archaeological sites are located. It is expected that similar resources would be located on the ERTL property.

Visitor Use

As with all OSMP property acquisitions not previously open to the public, the ERTL property will be closed until a property inventory and site management plan are developed. This plan will recommend how to provide appropriate visitor infrastructure and services while protecting the natural and cultural resources on the site. OSMP intends to complete this plan over the next 12 months, and the acquisition budget will fund the development of this plan. Given what staff knows about the property, actions to protect resources will be especially important. Staff recommends that the property be designated as a Habitat Conservation Area similar to adjoining Windhover Ranch. This designation recognizes the known resource values of the property and is consistent with the Habitat Conservation Area designation of the surrounding and nearby lands

in the Boulder Creek floodplain. Given the seasonality of nesting bald eagles, the property has been, and will be recommended to be closed to the public and most staff from November 1 to July 31. However, with OSMP's purchase of this property a new opportunity for the public would exist in the seasonal window of August to October, when staff would lead scheduled, guided hikes on subjects ranging from wildflowers to geology. These visits would be carefully arranged to protect vulnerable biological and cultural resources on the property. The East Boulder-White Rocks trail is located on the eastern edge of the property. There are no plans for further trail development.



**CITY OF BOULDER
OPEN SPACE BOARD OF TRUSTEES AGENDA ITEM**

MEETING DATE: August 14, 2013

AGENDA TITLE: Consideration of a motion to approve disposal of Open Space and Mountain Parks land described as a permanent easement on approximately 34,747 square feet, or about 0.798 acres, to Public Service Company of Colorado and CenturyLink to place power poles on the East Rudd property for the purpose of facilitating the construction of the planned Community Ditch Trail underpass at State Highway 93. This is a disposal of Open Space land under City Charter Section 177.

PRESENTER/S:

Michael D. Patton, Director, Open Space and Mountain Parks
James L. Reeder, Land and Visitor Services Division Manager
James S. Schmidt, Property Agent

EXECUTIVE SUMMARY

Currently, Public Service Company (PSCo) of Colorado has an electric power line and supporting poles that cross the area where the planned Community Ditch Trail underpass at State Highway (SH) 93 will be constructed. There are three poles that need to be relocated onto the Open Space and Mountain Parks (OSMP) property known as East Rudd. The poles cannot be relocated within Colorado Department of Transportation (CDOT) right-of-way (ROW) due to the grade differences and tight layout that will exist between the ditch, trail, underpass and retaining walls. Also, the highway itself will be widened to accommodate bike paths on both sides of the highway. At the present time, CenturyLink has a buried fiber cable in the CDOT ROW on SH 93. The building of the trail underpass will require this cable to be realigned and strung on the new power poles which PSCo will erect for its power line.

STAFF RECOMMENDATION

Staff requests that the Open Space Board of Trustees pass a motion to approve, and recommend that City Council pass a motion approving, the disposal of Open Space land described as a permanent easement approximately 34,747 square feet, or about 0.798 acres, on the East Rudd Open Space property to Public Service Company of Colorado and CenturyLink for the placement of power poles for an electric power line and media cable across the East Rudd property in order to facilitate the construction of the planned Community Ditch Trail underpass at State Highway 93.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – This easement will facilitate the construction of the Community Ditch Trail underpass and widening of SH 93. Both are likely to entice more people to visit and do business in Boulder.
- Environmental – There are always environmental impacts associated with the construction of infrastructure on OSMP lands. However, OSMP staff continues to work with PSCo and CenturyLink to minimize any potential impacts of this project. These pole relocations add very little impact to this project.
- Social - There are no known negative social impacts associated with this easement. The building of the Community Ditch underpass will greatly benefit the Open Space trail connectivity in this region of the system and greatly increase the safety of trail users.

OTHER IMPACTS

- Fiscal – This easement will have no fiscal impact on the city. The poles are being relocated at PSCo's expense.
- Staff time – The only staff time involved is the time needed to create the easement document and pole relocation monitoring.

PUBLIC COMMENT AND PROCESS

This item is being heard as part of this public meeting advertised in the *Daily Camera* on August 11, 2013. A Notice of Disposal of Open Space lands was published in the *Daily Camera* on August 2 and 3, 2013 pursuant to Section 177 of the City Charter.

BACKGROUND

Currently, PSCo of Colorado has an electric power line and supporting poles that cross the area where the planned Community Ditch Trail underpass at SH 93 will be constructed. There are three poles supporting the line that are presently in CDOT ROW that need to be relocated to allow for the construction of the planned trail underpass and the widening of the highway. The wider highway will accommodate multi-modal traffic (bikes) in a much safer manner than is possible today. The affected OSMP property is known as East Rudd.

In addition, CenturyLink has a buried fiber cable in the CDOT ROW in this same area. The building of the trail underpass will require this cable to be realigned and strung on the new power poles which PSCo will erect for its power line.

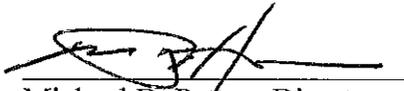
PSCo is willing to effect the relocation at its cost and staff is recommending that the city not seek compensation from PSCo for the new easement. See Attachment A.

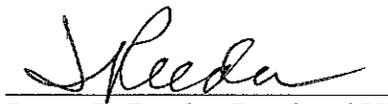
CDOT and its contractor have begun initial work to widen the road to create bike lanes and will start work on the underpass in the near future.

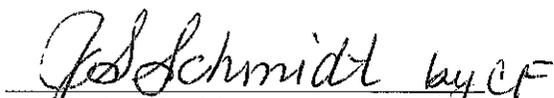
ANALYSIS

Staff believes that it is in the city's interest for the city to grant the easement to PSCo of Colorado which will allow it to relocate the supporting poles onto OSMP lands. CenturyLink will coordinate with PSCo to use the same poles to hang the fiber cable. While this relocation is to accommodate the planned construction of the Community Ditch Trail underpass, PSCo has indicated it will relocate the poles at its cost. Therefore, staff is recommending that the city not seek compensation from the utility for this easement. Staff will require that PSCo follow staff's recommended reclamation plan and utilize best management practices during the relocation activities.

Submitted by:


Michael D. Patton, Director


James L. Reeder, Land and Visitor Services Division Manager


James S. Schmidt, Property Agent

ATTACHMENTS:

A. Easement Description

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EXHIBIT "A"

**EASEMENT DESCRIPTION
CITY OF BOULDER – PUBLIC SERVICE COMPANY OF COLORADO
STATE HIGHWAY 93 POWER LINE EASEMENT
DATE: JULY 31, 2013**

An easement lying in that parcel of land described at Reception Number 00720064, as recorded on October 17, 1985, in the Boulder County, Colorado records, said easement being in the Southwest Quarter of Section 21, Township 1 South, Range 70 West, of the 6th Principal Meridian, in Boulder County, Colorado, containing 34,747 sq. ft. (0.798 acres) of land, more or less, and being more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 21 (a found 1 5/8" brass cap), Whence the South Quarter Corner of said Section 21 (a found 1 5/8" brass cap set in iron pipe) bears N89°42'37"E a distance of 2672.51 feet, Thence N65°57'06"E a distance of 1624.88 feet to a point on the easterly right-of-way line of State Highway 93 (August 2013), said point being the POINT OF BEGINNING;

1. Thence N. 04°15'12" W., a distance of 708.07 feet;
2. Thence N. 85°44'48" E., a distance of 45.00 feet;
3. Thence S. 04°15'12" E., a distance of 785.33 feet;
4. Thence S. 85°44'48" W., a distance of 29.66 feet, to a point on said easterly right-of-way line;
5. Thence along said easterly right of way line, N. 15°29'11" W., a distance of 78.77 feet, more or less, to the POINT OF BEGINNING.

The above described Easement contains 34,747 sq. ft. (0.798 acres), more or less.

BASIS OF BEARINGS: Bearings are based on a line connecting the S 1/4 Corner of Section 28, Township 1 South, Range 70 West of the 6th Principal Meridian (being a found 2 1/2" brass cap in a stone pile), and the Center 1/4 Corner of Section 28, Township 1 South, Range 70 West of the 6th Principal Meridian (being a found 2 1/2" aluminum cap on 2" iron pipe in a mound of stone), being an assumed bearing of N 00°07'31" W, 2,664.85' as obtained from a global positioning system (GPS) survey based on the Colorado High Accuracy Reference Network (CHARN).

Prepared by: Geoffrey F. Stephenson, PLS 23521
For and on Behalf of
The Lund Partnership, Inc.
12265 West Bayaud Avenue, Suite 130
Lakewood, Colorado 80228



